This revised analysis replaces the analysis dated 6-16-93.

House
Legislative
Analysis
Section

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ABORTION: 24-HOUR WAIT

Senate Bill 384 (Substitute H-12)
Revised First Analysis (6-22-93)

Sponsor: Sen. Jack Welborn
Senate Committee: Family, Criminal Law, Corrections
House Committee: Public Health

THE APPARENT PROBLEM:

The abortion issue has bitterly divided public opinion for decades in this country. The United States Supreme Court's 1973 Roe v. Wade decision affirmed women's constitutional right to choose whether or not to terminate a pregnancy, but as the court has changed over the years since then this right has been gradually restricted through a series of court decisions. Many supporters of women's right to choose abortions believe that much of the 1973 court decision was reversed in 1989 in another case, Webster v. Reproductive Health Services. Opponents of abortion, on the other hand, see the increasing limitations on the 1973 supreme court decision as steps in the right direction, and believe that further limitations are needed in order to protect not only the fetus but also the woman faced with an unwanted pregnancy.

Many abortion opponents believe that women making the decision to have an abortion do so without adequate time for reflection on their decision and without adequate information.

THE CONTENT OF THE BILL:

The bill would amend the Public Health Code to list a set of legislative findings and to require that before performing an abortion, a physician (or his or her "qualified assistant") give a prospective abortion patient certain information (including a picture of a fetus) at least 24 hours before the abortion. In addition, a physician would have to give a prospective patient, before performing an abortion, certain information verbally, and obtain her written consent to the abortion and acknowledgment that she had received the required information. Physicians (and qualified assistants) who failed to comply with the bill's requirements would be subject to disciplinary sanctions.

Legislative findings. The bill would say that the legislature recognized that under federal constitutional law, states were allowed to enact "persuasive" measures which favored childbirth over abortion even if those measures did not further a health interest. The bill also would say that its provisions nevertheless were "designed to provide objective, truthful information" and were not intended to be "persuasive." Finally, the bill would say that the legislature found that enactment of the bill was "essential" for all of the following reasons:

(A) The knowledgeable exercise of a woman's decision to have an abortion depends on the extent to which the woman receives sufficient information to make an informed choice regarding abortion.

(B) The decision to obtain an abortion is an important and often stressful one, and it is in the state's interest that the decision be made with full knowledge of its nature and consequences.

(C) Enactment [of the bill] is necessary to ensure that, before an abortion, a woman is provided information regarding her available alternatives, and to ensure that a woman gives her voluntary and informed consent to an abortion.

(D) The receipt of accurate information about abortion and its alternatives is essential to the physical and psychological well-being of a woman considering an abortion.

(E) Because many abortions in this state are performed in clinics devoted solely to providing abortions, women who seek abortions at these facilities normally do not have a prior patient-physician relationship with the physician performing the abortion nor do these women continue a patient-

physician relationship with the physician after the abortion. In many instances, the woman's only actual contact with the physician performing the abortion occurs simultaneously with the abortion procedure, with little opportunity to receive counsel concerning her decision. Consequently, certain safeguards are necessary to protect a woman's opportunity to select the option best suited to her particular situation.

(F) This state has an interest in protecting women and, subject to United States constitutional limitations and supreme court decisions, this state has an interest in protecting the fetus.

(G) Providing a woman with factual, medical, and biological information about the fetus she is carrying is essential to safeguard the state's interests described [above]. The dissemination of the information [required by the bill] is necessary due to the irreversible nature of the act of abortion and the often stressful circumstances under which the abortion decision is made.

(H) The safeguards that will best protect a woman seeking advice concerning abortion include the following:
(i) Private, individual counseling, including dissemination of certain information, as the woman's individual circumstances dictate, that affect her decision of whether to choose an abortion.
(ii) A 24-hour waiting period between a woman's receipt of that information provided to assist her in making an informed decision, and the actual performance of an abortion, if she elects to undergo an abortion. A 24-hour waiting period affords a woman, in light of the information provided by the physician or a qualified person assisting the physician, an opportunity to reflect on her decision and to seek counsel of family and friends in making her decision.

(I) The safeguards identified [above] advance a woman's interests in the exercise of her discretion to choose or not to choose an abortion, and are justified by the objectives and interests of this state to protect the health of a pregnant woman and, subject to United States constitutional limitations and supreme court decisions, to protect the fetus.

Information requirements. At least 24-hours before an abortion, the physician (or a qualified person assisting him or her) would have to do all of the following, either at the health facility where the abortion was to be performed or somewhere else:

* confirm that the pregnant woman was indeed pregnant;
* verbally give the woman, in appropriate language, information about the probable gestational age of the fetus, information on what to do and whom to contact if medical complications arose after the abortion, and information on how to get contraceptive information from the Department of Public Health (DPH);
* after explaining that the patient had the option to review or not the written summary, give the woman a written summary, provided or approved by the DPH, of the abortion procedure;
* after explaining that the patient had the option of reviewing or not the picture and description, give the woman a copy of a medically accurate picture and description (provided by the DPH) of a fetus the same size as and at the gestational age nearest the probable gestational age of the woman's fetus; and
* give the patient a copy of the prenatal care and parenting information pamphlet distributed by the DPH.

In addition, before performing an abortion, a physician would be required to: tell the woman (a) the name of the physician that would be doing the abortion, (b) that she had the right to decide not to have the abortion, and, (c) in appropriate language, the specific risks, if any, of the abortion procedure and the specific risks of continuing the pregnancy; get the woman's signature, on a form prepared or approved by the DPH, consenting to the abortion and acknowledging that she had received the required information, along with the explanations that she had the option to review or not the written summary, the fetal pictures, and descriptions required by the bill; and give the woman a copy of the written acknowledgement and consent form.

Prenatal and parenting pamphlet. In addition to the above information, each woman would have to be given, at least 24 hours before she had an abortion, a pamphlet regarding prenatal care and parenting distributed by the Department of Public Health.

Other physician duties and restrictions, penalties. Physicians would be prohibited from performing legal abortions without the patient's "informed written consent, given freely and without coercion." Physicians would be required to keep a copy of the acknowledgement and consent form with the woman's medical record. The required information could not be disclosed to the woman in the

presence of another patient. The duty imposed by the bill upon physicians to inform patients would not require disclosure of information beyond what a "reasonably well-qualified" licensed physician would have.

Physicians (and any qualified people assisting physicians) who failed to comply with the bill's requirements could have their licenses denied, revoked, suspended, or limited, or could be placed on probation, reprimanded, fined, or be required to make restitution.

Exemption. If a medical emergency (defined in the bill) existed, a physician could perform an abortion without giving the required information or obtaining the required signature. In such cases, physicians would have to keep a written record identifying ("with specificity") the reasons for the emergency abortion.

Requirements for the Department of Public Health. Under the bill, the Department of Public Health would be required to produce a number of documents, including:

* fetal pictures and descriptions of fetal development,
* an "acknowledgement and consent form,"
* descriptions of abortion procedures and complications of abortion and "live birth,"
* statements regarding adverse psychological effects of abortion, and
* identification of certain public services regarding counseling for adverse psychological effects of abortion, for carrying the pregnancy to term and keeping the baby, and for giving the baby up for adoption.

More specifically, the bill would require the department to do the following:

(1) produce, using curriculum materials from the Michigan Model for Comprehensive School Health Education (in use for the sixth grade on January 1, 1992), a series of pictures of the developing fetus that reflected the actual size of the fetus at four-week intervals from the fourth through the twenty-eighth week of gestation;

(2) accompany each picture of a fetus with a printed, non-technical description (in English and Spanish) of the "probable anatomical and physiological characteristics of the fetus at that particular state of gestational development";

(3) produce an acknowledgment and consent form (specified in the bill) or approve one that would include places for the signatures of both the pregnant woman and the doctor, the name of the abortion procedure, and the number of weeks the woman was pregnant.

(4) based on the various abortion procedures, produce written summaries that;

(a) described medical abortion procedures recognized by the DPH;

(b) identified physical complications that had been statistically associated with each abortion procedure and with live birth;

(c) said that some women feel depressed, guilty, or angry after an abortion or experienced disturbed sleep or a loss of interest in sex or work, and said that if these symptoms occurred intensely or persistently the woman should seek professional help;

(d) said that not all of the risks of abortion or childbirth may apply to the particular woman and referred her to her physician for "more personalized" information;

(e) identified a number of public services, including those to help women who experienced "adverse psychological effects" after an abortion, to help women who decided to give birth and keep their babies, and to help women place their babies up for adoption or foster homes.

(5) in consultation with appropriate professional organizations and other appropriate state departments and agencies, distribute a pamphlet containing information regarding prenatal care and parenting.

The department could use an existing pamphlet (or pamphlets) containing information regarding prenatal care or parenting (or both) or could develop its own pamphlet if it so chose. In any case, the pamphlet would have to be printed in English, Spanish, and any other languages deemed appropriate by the department, and be written in easily understood, non-technical terms.

In identifying complications of abortion and live birth, the department would be required to consider the annual statistical report required under the Public Health Code and would have to consult with the federal Center for Disease Control, the American College of Obstetricians and Gynecologists, the Michigan State Medical Society,

"or any other source that the department determine[d] appropriate."

The department would have to make copies of these documents available to physicians through either the Michigan Board of Medicine (for medical doctors) or the Michigan Board of Osteopathic Medicine and Surgery (for osteopathic doctors). In the case of the prenatal care and parenting pamphlet, the department also would have to make the pamphlet available free, upon request, to physicians and local health departments, and at cost, upon written request, from anyone else. The department also would have to approve alternative written summaries and forms submitted to the department for approval if they contained information substantially similar to that described in the bill.

Acknowledgement and consent form. The bill would require "an acknowledgement and consent form that include[d] only the following language above a signature line for the patient":

I, _____, hereby authorize Dr. _____ ("the physician") and any assistant designated by the physician to perform upon me the following operation(s) or procedure(s):

_____

(name of operation(s) or procedure(s) as described in the attached summary.)

I understand that I am approximately ____ weeks pregnant. I have received the attached summary, and I consent to an abortion procedure to terminate my pregnancy. I understand that I have the right to withdraw my consent to the abortion procedure at any time prior to performance of that procedure. I acknowledge I have received the following:

(A) A copy of a medically accurate depiction of a fetus at the probable gestational age of the fetus I am carrying, preceded by an explanation that I have the option to review or not review the depiction.

(B) A description of the medical procedure that will be used to perform the abortion, preceded by an explanation that I have the option to review or not review the description.

(C) Information pertaining to potential risks and complications that have been associated with abortion and with live birth.

(D) Information about what to do and whom to contact in the event that complications arise from abortion.

(E) Information pertaining to available pregnancy related services.

(F) A prenatal care and parenting information pamphlet.

I have been given an opportunity to ask questions about the operation(s) or procedure(s), and freely and voluntarily sign this form.

Definitions. The bill would define "abortion" to mean "the intentional use of an instrument, drug, or other substance or device to terminate a woman's pregnancy for a purpose other than to increase the probability of a live birth, to preserve the life and health of the child after live birth, or to remove a dead fetus." "Abortion" would not include the use of prescription drugs or devices intended as contraceptives.

"Medical emergency" would mean "that condition which, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function."

"Fetus" would mean "an individual organism of the species homo sapiens in utero." (Medically, a "fetus" is distinguished from an "embryo" and a "blastocyst.")

"Qualified" people "assisting the physician" would include other physicians, physician's assistants, licensed psychologists (whether at the master's or doctorate level), licensed professional counselors, licensed nurses (both RNs and LPNs), and registered social workers.

Other provisions. The bill would specify that it did not create a right to an abortion and would reaffirm that illegal abortions were prohibited.

Written consent forms required by the bill would be presumed valid, though this presumption could be rebutted by a preponderance of evidence that consent had been obtained "through fraud,

negligence, deception, misrepresentation, coercion, or duress."

If one part of the bill were invalidated by a court, the other parts would remain in effect unless the court determined they also were inoperable.

MCL 333.16221 et al.

HOUSE COMMITTEE ACTION:

The House Committee on Public Health amended the Senate-passed version of the bill to do the following:

* Require, in addition to the written information on abortion required by the bill, that women also receive a prenatal care and parenting pamphlet;

* Require that a physician provide the patient with the name of the physician who would be performing the abortion, and do so not 24 hours before the abortion but simply before the abortion; and

* Require that when prospective abortion patients are given written and pictorial information 24 hours before the contemplated abortion, the patient first be told that she has the option of reviewing this information or not, as she chooses.

BACKGROUND INFORMATION:

Other Michigan abortion laws. In 1990, the Parental Rights Restoration Act was enacted. An initiated law (that is, a law initiated by petition and voted on by the citizens of the state), the act requires parental consent for abortions performed on minors while permitting pregnant girls to petition the probate court for a waiver of this requirement.

Previous legislative history. Last session, a similar bill was introduced into the Senate (Senate Bill 141), and passed both the Senate and the House of Representatives. However, the House substitute was not accepted by the Senate, and the bill died in conference committee.

United States Supreme Court decisions. The following is a brief discussion of several significant abortion decisions of the United States Supreme Court.

Roe v. Wade (410 U.S. 113). In this 1973 decision, the court held that a state law that criminalized abortions except those necessary to save the mother's life, without regard to pregnancy stage and without recognition of the other interests involved, violated the due process clause of the fourteenth amendment. The court found that the constitutional right of privacy "is broad enough to encompass a woman's decision whether or not to terminate her pregnancy . . . but that this right is not unqualified and must be considered against important state interests in regulation;" and, "a state may properly assert important interests in safeguarding health, in maintaining medical standards, and in protecting potential life. At some point in pregnancy, these respective interests become sufficiently compelling to sustain regulation of the factors that govern the abortion decision."

The court then concluded that, for the stage before the approximate end of the first trimester, the abortion decision must be left to the medical judgment of the pregnant woman's attending physician. For the stage after the approximate end of the first trimester, the state, in promoting its interest in the health of the mother, may regulate the abortion procedure in ways that are reasonably related to maternal health. For the stage subsequent to viability, the state, in promoting its interest in the potentiality of human life, may regulate and even proscribe abortion except when it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother.

Akron v. Akron Center for Reproductive Health, Inc. (462 U.S. 416). The court in 1983 found unconstitutional provisions of an Akron, Ohio ordinance that mandated a 24-hour waiting period before an abortion could be performed and required a physician to inform a patient of all of the following:

* The probable gestational age of her fetus.

* The anatomical and physiological characteristics of the fetus.

* That the fetus could be viable if more than 22 weeks had passed since conception.

* Particular physical and emotional complications that could result from undergoing an abortion.

* The availability of agencies to provide information and assistance with respect to birth control, childbirth, and adoption.

* Particular risks associated with her pregnancy and the abortion technique to be used.

The court held that, although physicians may be required to make certain that a patient understands the physical and emotional implications of having an abortion, "The validity of an informed consent requirement . . . rests on the state's interest in protecting the health of the pregnant woman." The court found that much of the information required by the Akron ordinance was misleading and contradictory to previous court rulings and that the ordinance was "designed not to inform the woman's consent but rather to persuade her to withhold it altogether."

The court also objected to the requirement that specific information be provided to the patient without regard to whether each outlined risk applied in the particular medical case. The court referred to this requirement as an "intrusion upon the discretion of the pregnant woman's physician." Akron's mandated waiting period also was invalidated, because there was "no evidence suggesting that the abortion procedure will be performed more safely." The court ruled that "the state's legitimate concern that the woman's decision be informed is not reasonably served by requiring a 24-hour delay as a matter of course."

Thornburgh v. American College of Obstetricians and Gynecologists (476 U.S. 747). In 1986, the court stated that requiring a woman to give true voluntary and informed consent "is proper and is surely not unconstitutional," but reiterated its assertion in Akron that "the state may not require the delivery of information designed 'to influence the woman's informed choice between abortion or childbirth.'" In Thornburgh, the court ruled invalid Pennsylvania's informed consent requirement because, like the Akron ordinance, the Pennsylvania law prescribed a detailed method for obtaining the informed consent.

The information required under Pennsylvania's informed consent law included the name of the physician performing the abortion; the "fact that there may be detrimental physical and psychological effects;" the "particular medical risks associated with the particular abortion procedure to be employed;" and the fetus's probable gestational age and its probable physiological and anatomical characteristics at two-week gestational increments. The court stated, "The printed materials required by [the statute] seem to us to be nothing less than an outright attempt to wedge the Commonwealth's message discouraging abortion into the privacy of the informed-consent dialogue between the woman and her physician."

Webster v. Reproductive Health Services (109 S.Ct. 3040). In this case, decided July 3, 1989, the court abandoned its trimester framework of Roe v. Wade, stating that, "we do not see why the state's interest in protecting potential human life should come into existence only at the point of viability, and that there should therefore be a rigid line allowing state regulation after viability but prohibiting it before viability." The court upheld a Missouri statute that requires a physician, before performing an abortion on a woman whom the doctor has reason to believe is 20 or more weeks pregnant, to ascertain whether the fetus is viable by performing certain medical examinations and tests; prohibits public employees from performing an abortion not necessary to save the mother's life; and prohibits the use of public facilities for performing an abortion not necessary to save the mother's life.

Planned Parenthood of Southeastern Pennsylvania v. Casey (112 S.Ct. 2791) In this plurality opinion, rendered June 29, 1992, the court reaffirmed the essential holdings in Roe that: A woman has the right to terminate her pregnancy before fetal viability occurs without any undue interference from the state; a state has the power to restrict abortions after viability, if the law contains exceptions for a pregnancy that endangers the woman's life or health; and the state has a legitimate interest from the outset of a pregnancy in protecting the health of the woman and the potential life of the fetus that may become a child. The court, however, reaffirmed the rejection in Webster of the rigid trimester framework outlined in Roe, reasoning that that approach was incompatible with the state's interest in potential life throughout the pregnancy. To promote this interest, the state may take measures to ensure that a woman's choice is informed. In a departure from principles opined in Thornburgh, Casey reasoned that informed consent measures are not invalid if their purpose is to persuade choice of childbirth, as long as those measures do not place an "undue burden" on the woman's right of choice.

The plurality Casey opinion, then, adopted an "undue burden" standard for evaluating a state's abortion restrictions and held that an undue burden exists when a provision of law has as its purpose or effect the placement of a "substantial obstacle" in the path of a woman seeking an abortion before fetal viability. Using this standard, the court ruled that Pennsylvania's informed consent provisions--including a 24-hour waiting period and fetal descriptions--did not pose an undue burden on a woman's right to terminate a pregnancy. In upholding major portions of Pennsylvania's abortion restrictions statute, the court overruled Akron and Thornburgh to the extent that they found a constitutional violation when government requires the giving of truthful, nonmisleading information regarding the nature of abortion procedures, attendant health risks of abortion and childbirth, and a fetus's probable gestational age. The Akron and Thornburgh rulings, according to Casey, were inconsistent with the acknowledgement in Roe of an important interest in potential life.

Other Developments. Since handing down the Casey decision, the supreme court has declined to hear cases regarding abortion laws in Guam, Louisiana, and Mississippi. The Guam and Louisiana laws, which were ruled unconstitutional at the appellate level, would have outlawed most abortions. The Mississippi law, which was upheld at the appellate level, enacted informed consent restrictions on abortions similar to the Pennsylvania provisions upheld in Casey.

FISCAL IMPLICATIONS:

A representative of the Department of Public Health testified before the House Committee on Public Health that the bill would have fiscal implications, possibly ranging from $100,000 to $500,000 per year, depending on how much existing printed materials were used. (6-9-93)

ARGUMENTS:

For:

Holding that the state has an interest in protecting potential life and safeguarding public health, the United States Supreme Court has recognized a state's authority to regulate abortion, as long as the restrictions do not place an "undue burden" on a woman's right to choose abortion. It only stands to reason, then, that Michigan should ensure that a pregnant woman is well informed of the possible medical risks and long-term complications, both physical and psychological, of terminating her pregnancy. She also should know about the development of her fetus. In addition, she should be made aware of all the possible alternatives to aborting her pregnancy, so that she can consider carrying the pregnancy to term and seeking assistance and counseling either to raise her child or to release the child for adoption or foster care. The bill would effectuate Michigan's legitimate interest in these issues by precluding a physician from performing an abortion, except in the case of a medical emergency, until 24 hours after a woman received all the required information and acknowledged receipt on a signed form that would represent her consent to induce abortion.

For:

The plurality Casey opinion, issued in the summer of 1992, marked a change in the direction of the supreme court's abortion rulings. Although the court had struck down informed consent laws similar to Senate Bill 384 in Akron and Thornburgh, the Casey opinion upheld most of Pennsylvania's informed consent law, reasoning that requiring certain information to be provided to a woman considering abortion does not place an undue burden on her constitutional right to terminate a pregnancy. Unlike the Thornburgh ruling, the Casey court ruled that Pennsylvania's informed consent restrictions on abortion do not pose an undue burden even if the provision of the information is designed to persuade the woman to opt for childbirth over abortion. The bill is so similar to those aspects of the Pennsylvania law upheld in Casey that it represents an appropriate restriction on abortion and surely would survive any constitutional challenge.

Response:

Although the bill is similar to the Pennsylvania statute upheld in Casey, that law does not require the provision of fetal depictions.

For:

There is precedent for legislating that informed consent be provided to a patient before she decides what course to pursue. Public Act 195 of 1986 added to the Public Health Code an informed consent provision concerning the treatment of breast cancer. Senate Bill 384 resembles that act. Although Public Act 195 originally had some opponents--who said that requiring informed consent would intrude on the patient-doctor

relationship--its implementation has gone smoothly and has been generally well received by the medical profession.

Response:

Unlike Public Act 195, Senate Bill 384 would mandate the specific information that would have to be delivered to a patient, including some items with little or no medical relevancy, rather than generally requiring that the patient be informed of alternative procedures.

For:

As a number of women who have had abortions and later regretted this decision testified before the House Public Health Committee, it is imperative that women be made aware that abortion is a decision that a woman will have to live with for the rest of her life and one that she may later come to regret. Hopefully, by mandating that women faced with an abortion decision be given certain information, fewer women who do decide to have an abortion will not later regret their decision or go through the emotional pain so eloquently attested to in committee testimony.

Response:

While the emotional -- and sometimes physical -- pain and suffering of those women testifying regarding abortion decisions they now regret is very real and deserves attention and compassion, it also is the case that a decision to give birth and either keep the baby or relinquish it for adoption also is a decision that a woman will have to live with for the rest of her life. The recent attempts to change adoption procedures -- as well as the notorious case of a relinquishing mother who later changed her mind and initiated court proceedings that well may go all the way to the U.S. Supreme Court -- further attest to the fact that no reproductive choice is free of possible physical and emotional pain and suffering (including feelings of guilt, depression, sleep disturbances, loss of interest in work or sex, or anger). Surely women contemplating the options of abortion versus adoption should be given the information and support (both before and after the abortion or adoption takes place) to make the decision right for them. All women -- and men -- should be better informed about reproductive choices and their consequences, not just those of abortion.

Against:

The bill is simply a thinly veiled attempt on the part of anti-abortionists to encourage--even intimidate--a woman seeking an abortion instead to continue her pregnancy. The 24-hour waiting period, for instance, neither serves the interest that a woman's consent be informed nor is it related to a woman's maternal health. Simply because the bill would not violate the undue burden standard articulated by three justices of the U.S. Supreme Court does not mean that the state cannot extend greater protections to a woman's privacy and liberty interests. After all, the undue burden standard is a bottom-line test of constitutionality; it is not a ceiling.

Against:

Although the provision of certain information might be justified to ensure that a woman's abortion decision was informed, imposing a 24-hour waiting period would create an unreasonable obstacle to a woman's choice to terminate her pregnancy. As the Supreme Court noted in Casey, the U.S. District Court's findings of fact indicated that, because of the distances many women must travel to reach an abortion provider, the practical effect of a 24-hour waiting period often will be a delay of much more than a day, since the waiting period requires a woman to make at least two visits to a doctor. (The 24-hour waiting period actually could stretch into more than a week for some women because many smaller clinics have a doctor who visits only once a week.) The district court also found that in many instances this requirement will increase the exposure of women seeking abortions to the "harassment and hostility of anti-abortion protestors demonstrating outside a clinic." As a result, the district court found that for those women who have the fewest financial resources, those who must travel long distances, and those who have difficulty explaining their whereabouts to husbands, employers, or others, the 24-hour waiting period will be "particularly burdensome."

Response:

Despite these findings, the Casey opinion found that, in practice, the waiting period does not amount to an undue burden, and that, at least in theory, the waiting period is a reasonable measure to implement the state's interest in protecting the life of the unborn. Furthermore, to address concerns about a women's having to travel long distances and then wait 24 hours, the bill provides that the 24-hour informational requirements could be fulfilled at a location other than the health facility where the abortion was to be performed.

Against:

The bill would be an intrusion upon the confidential relationship between a doctor and his or her patient. Although some of the information that the bill would require a physician or qualified assistant to deliver to a patient might be of legitimate medical concern, those items routinely are covered under professional medical standards. It is standard practice for a doctor to inform his or her patient of alternatives to and possible complications of a surgical procedure. Determining which alternatives and which complications are relevant to which patients, however, should be left up to the physician's discretion in each particular case. The bill unnecessarily, and perhaps even cruelly, would require a blanket of information--much of which may not be relevant--to be delivered to each patient. For instance, a woman who discovered a serious fetal anomaly and decided to abort, rather than give birth to a child who could not possibly survive, should not be forced to view pictures of a presumably healthy fetus and be made to wait 24 more hours before being permitted to pursue her agonizing decision.

Response:

While, ideally, all physicians always inform all of their patients of all alternatives to and possible complications of surgical procedures, in the real world this does not always happen. In fact, the bill should be broadened to include information on the risks of and alternatives to common technological obstetrical interventions for women who decide to carry the pregnancy to term. While one woman who testified that she had had an abortion after having been raped also said that the rape now seemed "small" in comparison to the abortion, many postpartum women who have experienced technologically invasive obstetrical deliveries also have described their childbirth experiences in terms using the word "rape." Perhaps what is needed is a greater humanizing of the medical system, particularly that part of it involving pregnant women whether or not they decide to have an abortion.

What is more, the Casey court held that a specific informed consent requirement does not interfere with a constitutional right of privacy between a pregnant woman and her physician, and does not underlie or override the abortion right. Further, the court ruled that the requirement infringes on a physician's first amendment rights not to speak only as part of the practice of medicine, which is licensed and regulated by the state. The court found no evidence that requiring a doctor to deliver the information required in Pennsylvania's law amounted to a substantial obstacle to a woman seeking an abortion.

Against:

Rather than enacting an unnecessarily broad informed consent requirement that listed specific information that would have to be provided, the bill should simply require that a patient receive general information about alternatives and available services, while refraining from codifying an ideological value judgment regarding abortion. This could be accomplished by tapping the expertise of the American College of Obstetricians and Gynecologists (ACOG), which publishes a brochure entitled "Important Medical Facts About Induced Abortion." This brochure reportedly is widely used by physicians to inform patients about abortion procedures and the potential risks and complications associated with those procedures. If the bill's proponents are truly interested in ensuring that a woman's consent to abortion is informed, rather than in discouraging that consent, the ACOG brochure should be an acceptable alternative to the bill.

Response:

The bill does provide that, in identifying the physical complications associated with each abortion procedure and with live birth, the DPH would have to consider the annual statistical report on abortions required under the Public Health Code and consult with the ACOG, the Michigan State Medical Society, or any other source that the DPH determined appropriate.

Against:

As the supreme court assessed the Pennsylvania statute in Thornburgh, the bill would require "the dissemination of information that is not relevant to . . . consent, and, thus, it advances no legitimate state interest." Much of the bill, in fact, is aimed not at ensuring that a woman would make a well-informed decision about abortion, but at influencing that decision. Indeed, the bill's requirement that specific information be provided to all women who sought an abortion nearly parallels the provisions struck down in Akron and Thornburgh. This requirement not only would intrude on the physician's medical discretion, but in regard to the description of possible complications, would be a "'parade of horribles' intended to suggest that abortion is a particularly dangerous procedure," when in fact experience shows that it is not (Akron).

Response:

According to the more recent Casey opinion, as long as the information required to be provided in an informed consent restriction is truthful and is not misleading, it does not place an undue burden on a woman's right to choose abortion. Moreover, the fact that informed consent requirements could dissuade a woman from aborting her pregnancy is consistent with the acknowledgement in Roe that the state has an important interest in potential life.

Against:

The bill's requirement that fetal depictions and descriptions be given to a patient is particularly objectionable. Not only do these items have no medical relevancy to the patient's health, but similar requirements have been overturned in the courts. In 1986, the Thornburgh court ruled that Pennsylvania's required description of fetal characteristics at two-week intervals was not always medically relevant to a woman's decision whether to abort, and that it "may serve only to confuse and punish her and to heighten her anxiety, contrary to accepted medical practice."

Response:

In handing down the Casey decision, the supreme court departed from many of its stances on abortion restrictions articulated in earlier decisions. The Pennsylvania law upheld in 1992 using the undue burden standard included a requirement that a woman seeking an abortion be given a description of a fetus at a similar gestational age as her fetus.

Against:

The legislative findings should be eliminated altogether. In the first place, the legislature doesn't usually include in legislation statements of legislative intent. In fact, the legislature just recently moved to strike the statement of legislative intent from its medical malpractice package. Secondly, however, the bill is so specifically written that it is hard to see how its legislative intent could be interpreted as other than what is simply contained in the bill. And in light of the fact that inclusion of the statement of legislative intent appears to serve no legislative or legal function, some people argue that it is simply offensive and patronizing to women to include it.

At the very least, the statement of legislative intent should be amended to include not just abortion, but the options of childbirth and relinquishing a newborn for adoption. For example, it should include findings that the knowledgeable exercise of a woman's reproductive decisions depends on the extent to which the woman received sufficient information to make informed choices regarding all of her options; that the decision to abort or to carry a pregnancy to term is an important and often stressful one; that enactment of the bill was necessary to ensure that before childbirth, abortion, or relinquishing a newborn for adoption, a woman was provided information regarding her available alternatives, and to ensure that a woman gives her voluntary and informed consent to childbirth, abortion, or adoption; and that the receipt of accurate information about childbirth, abortion, and relinquishing a newborn for adoption is essential to the physical and psychological well-being of a woman considering childbirth, abortion, or relinquishing a newborn for adoption.

Against:

The bill would require the Department of Public Health to provide written summaries containing certain information about abortion only. At the very least, these summaries also should contain descriptions (perhaps individually and on separate documents) of the medical procedures used to deliver babies (including the medical interventions of vaginal and caesarean deliveries), and identify the physical complications that have been statistically associated with each method of delivery. The summaries also should state that as the result of childbirth (including the medical procedures involved) or of relinquishing a newborn for adoption, individual women might also experience the psychological effects listed in the bill for abortion only. Especially in light of the current and highly publicized legal case in which a mother first relinquished her newborn for adoption and then changed her mind, the psychological -- and possible legal and financial -- impact of relinquishing a newborn for adoption should be given to women considering abortion as one of her reproductive options.

POSITIONS:

Right to Life of Michigan supports the bill. (6-15-93)

Representatives of the following offered testimony in support of the bill (6-9-93):

* The Department of Public Health
* Former Women of Choice
* The Pregnancy Care Center of Niles

The Michigan State Medical Society opposes the bill. (6-15-93)

Planned Parenthood Affiliates of Michigan opposes the bill. (6-15-93)

The Michigan Federation of Business and Professional Women opposes the bill. (6-15-93)

Representatives of the following offered testimony in opposition to the bill (6-9-93):

* The Michigan Section of the American College of Obstetrics and Gynecology
* The Michigan Chapter of the National Organization for Women
* The American Civil Liberties Union of Michigan