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BLOCKADING ABORTION CLINICS

House Bill 4618 (Substitute H-2)
First Analysis (6-22-93)

Sponsor: Rep. Maxine Berman
Committee: Civil Rights and
Women's Issues

THE APPARENT PROBLEM:

Few topics raise such strong feelings on both sides of the issue as that of abortion. Abortion activists and "pro-choice" groups maintain that a woman has a moral right to bodily integrity and to make her own decision regarding medical procedures that affect her. Organizations such as Right to Life, Operation Rescue, and other "pro-life" groups maintain that abortion is murder. Operation Rescue, a militant anti-abortion group, has now broadened its opposition to include blockades of health care clinics where abortions are performed to prevent women from entering, to scare away future patients, and to convince doctors to abandon abortion practices. In many areas, violence has erupted: staff have been injured; clinics and cars have been damaged by gun shots, and by chemical vandalism; some clinics have been burned to the ground; and at least one death has occurred. When this happens the beleaguered patients and staff at these clinics call on their local police department for assistance to have the trespassers removed. The blockades, however, have largely been successful, since police response has varied from one city to another. In some areas, the response has been effective; in others, the police have been accused of ignoring local trespassing ordinances and allowing trespassers to close the clinics. Police departments, on the other hand, often don't have the staff to deal with these problems. Delays occur while reinforcements are called in from other cities.

The tactics used by groups such as Operation Rescue have sent courts across the nation scurrying to find methods to control these activities. In Wisconsin, for example, the legislature recently passed a law stipulating that those who blocked access to abortion clinics or other medical centers would be imprisoned for up to one year and fined up to \$3,000. In Michigan, family planning clinics, and organizations such as Womancare -- a group of private physicians which provides gynecological services, including abortions, to women -- claim to

have suffered losses of hundreds of thousands of dollars as a result of anti-abortion protests that have led to violence and destruction of property. In addition, the cities where these demonstrations take place suffer the loss of valuable police time while their budgets suffer heavy losses. These groups argue that the civil rights act should be amended to impose civil fines and costs on anyone who interferes with another's right to enter or leave a facility that provides abortion services.

THE CONTENT OF THE BILL:

Prohibited acts. The bill would amend the Revised Judicature Act (MCL 600.2955) to prohibit a person from interfering with another's right to enter, exit, or occupy a facility that offered abortion services or reproductive health services; and to permit a court - at its discretion -- to provide penalties for violations of prohibited activities. A court could also order reimbursement to local governments for costs associated with disturbances. The provisions of the bill would not apply to the state or a local unit of government acting within its statutory or constitutional authority to protect public health or safety. Otherwise, the following activities would be prohibited under the bill:

****Acting, or attempting to act, to physically restrain a person from entering, exiting, or occupying a health facility.**

****Blocking or obstructing a facility that provided abortion services or reproductive health services, or physically interfering with another's ability to enter such a facility.**

****Aiding another person in violating, or attempting to violate, the provisions of the bill.**

Legislative Findings. The bill would say that the legislature recognized that under the United States

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Constitution a woman is permitted to make a decision to terminate a pregnancy, and that the United State Supreme Court ruled in its 1973 Roe v. Wade and Doe v. Bolton decisions that a state cannot interfere with the physician-patient decision about abortion during the first trimester of pregnancy, and that during the second trimester, a state can intervene only to ensure safe medical practices reasonably related to maternal health. For the third trimester, a state can regulate and even proscribe abortion unless medical judgment determines the procedure necessary to preserve the life or health of the pregnant woman. The bill would also say that the legislature also recognizes that the right to an abortion is very controversial and that strong feelings exist on both sides of the issue. Finally, the bill would say that the legislature finds that enactment of the bill was essential for all of the following reasons:

(a) Violence at clinics that offer abortion services or reproductive health services is escalating across the country and in this state. While the right to free speech and protest must be protected, some actions at clinics that offer reproductive health services and abortions have gone beyond those rights and now threaten the decisions in Roe and Doe and the right to privacy and access of people entering, exiting, or occupying such clinics.

(b) The decision to obtain an abortion is very difficult, and attempts by others to physically restrain or block such clinics or patients who intend to use such clinics add additional stress and trauma.

(c) Many people who go beyond their right of protest at clinics that offer abortion services or reproductive health services in attempting to restrain those using such clinics have not been deterred by police presence, threat of arrest, or arrest.

(d) Local governments have been forced to spend thousands of dollars for law enforcement personnel, fire fighters, and emergency medical services personnel in their attempts to protect or guarantee access to clinics that offer abortion services or reproductive health services.

Scope. The bill would specify that nothing in its provisions could be construed to prohibit lawful protest, picketing, or assembly, as guaranteed by the First Amendment to the United States Constitution.

Penalties. Under the bill, the attorney general, a prosecuting attorney, or a person aggrieved by a violation of the provisions of the bill could bring a civil action for one or more of the following:

a) An order enjoining conduct that violated the provisions of the bill.

b) The greater of: i) treble damages or ii) exemplary damages in the amount of \$5,000 for each violation (including compensation for pain, suffering, and emotional distress).

c) Costs and reasonable attorney fees.

The bill would also allow a court to order a person in violation of the bill to reimburse the state or a local unit of government for the salaries or wages of law enforcement personnel, fire fighters, and emergency medical service personnel, including volunteer fire fighters and medical service personnel, for time spent in responding to the violation. Unless otherwise ordered by the court, the reimbursement would be immediately paid to the clerk of the court, and the appropriate amount would then be transmitted to the unit or units of government named in the order to receive reimbursement. If the court order did not specify immediate payment then the reimbursement order would have to identify the time period within which payment was to be made, and could provide for installment payments.

Liability. Liability for payment of damages and costs, fees, and reimbursement under the provisions of the bill would be joint and several. Subsequent violations of the provisions of the bill would each constitute separate violations.

FISCAL IMPLICATIONS:

According to the Department of Civil Rights, the bill would have no fiscal implications, since, under the bill, those who violated its provisions would be held liable for any costs resulting from illegal demonstrations. (6-17-93)

ARGUMENTS:

For:

The bill would act as a deterrent by imposing heavy fines on groups such as Operation Rescue and others who abuse the constitutional right to protest.

The issue is not whether abortion should be legal or not, it is a question of one group imposing its moral values on others by means of force. The First Amendment to the United States Constitution guarantees freedom of expression to all citizens. However, those who interpret this right as a tactic to intimidate others by preventing them from entering clinics should be held liable for heavy fines, since their actions threaten other persons' rights to privacy.

Costs for the damage they inflict should also be imposed on these protest groups. The increasingly violent nature of these demonstrations inflicts costs on health clinics and on their patients. Besides the obvious costs incurred when a clinic is burned down or damaged, there are cleanup costs for chemical vandalism, costs for canceled appointments, and costs for security officers. Adjacent businesses also suffer loss of business when the area is surrounded by violence and confusion. There is also the financial cost to patients who have to reschedule their appointments after being turned away from a clinic. In addition, there is the emotional cost inflicted on those who must come to work each day, never knowing what to expect.

The protest groups should also be held liable for reimbursement costs to cities for the extra staff time required to curb disturbances. For example, in testimony before the House Civil Rights and Women's Issues Committee, representatives of family planning clinics and other facilities cited the example of a five-hour blockage at a Romulus clinic that cost the city more than \$12,000. In addition, valuable police time is lost controlling these demonstrations.

For:

In blockading clinics, demonstrators express their opposition to abortion at the expense of innocent victims, many of whom cannot afford other health care options and many of whom may, in fact, be trying to enter a clinic for health reasons unrelated to abortion. Health facilities such as Planned Parenthood, Womancare, and family planning clinics provide a variety of services to their patients: maternity care, pregnancy testing, contraception, and gynecological care. If the efforts of those who blockade health care clinics succeed, and the clinics close down, the result will be that more and more women will be forced to have illegal abortions; and women who rely on these clinics for a variety of health concerns will be deprived of the only health

services of this type available to them. House Bill 4618 would help protect the rights of innocent victims by discouraging those who prevent all women from entering family planning clinics.

Against:

Can the legislature arbitrarily choose to penalize one protest group among others? Can it legislatively discriminate against one group of citizens in particular: those who oppose abortion, and who stage civil disobedience demonstrations outside abortion clinics? And if they do, are any of our rights as citizens protected? Civil disobedience demonstrations have been common in this country since the civil rights movement of the 1960s. Many groups demonstrate by this means against institutions that represent ideologies they oppose: peace groups demonstrate outside defense department missile facilities, for example, and students demonstrate outside university administration buildings in opposition to a university administration's policies. Under the provisions of the bill, however, no penalties are provided for any of these groups. The bill would protect the rights of one group of citizens while discriminating against another group.

The provisions of the bill could also have a chilling effect on all others who might want to exercise the right to freedom of expression. For example, although the provisions of the bill apply only to physical restraint and other acts related to blocking entrances to health clinics, some might interpret them to mean that other acts of protest were prohibited. In addition, assessing costs for acts of civil disobedience could set a negative precedent for other activist organizations.

POSITIONS:

The Department of Civil Rights supports the bill. (6-17-93)

The National Organization for Women (NOW), Michigan Conference supports the bill. (6-17-93)

Planned Parenthood of Mid-Michigan supports the bill. (6-17-93)

Womancare supports the bill. (6-17-93)

The Michigan Abortion Rights Action League (MARAL) supports the bill. (6-17-93)

A representative of the American Civil Liberties Union (ACLU) testified before the committee in support of the concept of the bill, but expressed concerns that other protestors might also be penalized under the provisions of the bill. (6-17-93)

Right To Life of Michigan opposes the bill. (6-17-93)