

Abortions in Kansas 1998

Preliminary Report



KANSAS DEPARTMENT OF HEALTH & ENVIRONMENT
Center for Health & Environmental Statistics
Office of Health Care Information
900 SW Jackson, Room 904
Topeka, KS 66612-1220

Abortions in Kansas 1998 Preliminary Report

Table of Contents

Letter from the State Registrar	1
Selected Statistics	
Total Abortions Reported	2
Total of Physician's Report on Number of Certifications Received	2
Residence of Patient	2
Age Group of Patient	2
Race of Patient	2
Marital Status of Patient	3
Weeks Gestation	3
Method of Abortion	3
Number of Previous Pregnancies	4
Number of Living Children	4
Number of Previous Spontaneous Abortions	4
Previous Induced Abortions	4
Reported Abortions by Place of Residence, Kansas, 1971-1998	5
Induced Abortions by County of Residence of Patient	6
Induced Abortions by State of Residence of Patient	7
Abortions Performed at 22 Weeks or More Statistics	8
"Partial Birth" Procedures Statistics	10
Appendices	
VS 213 ITOP Report Sample Form	12
VS 214 ITOP Physician's Report on Number of Certifications Received Sample Form	14
Kansas Laws and Regulations Pertaining to Induced Termination of Pregnancy	
KSA 65-443	15
KSA 65-445	15
KSA 65-2401	16
1998 Supp KSA 65-6701-6721	17



KANSAS
DEPARTMENT OF HEALTH & ENVIRONMENT
BILL GRAVES, GOVERNOR
Clyde D. Graeber, Acting Secretary

March 26, 1999

Dear Interested Party:

State statutes require physicians, ambulatory surgical centers, and hospitals to report abortions to the Kansas Department of Health and Environment. The law also requires physicians, who perform abortions, to report to KDHE the number of certifications received under the Women's Right-to-Know Act. These data are compiled by the Center for Health and Environmental Statistics, Office of Health Care Information.

This report provides a preliminary summary of the abortion data collected by the department for 1998. The full report of 1998 abortion information will be contained in the *Kansas Annual Summary of Vital Statistics*, published later this year.

This preliminary report also contains information the 1998 Legislature required physicians to report beginning July 1. This information pertains to two categories: a) abortions performed at 22 weeks or more and b) to "partial birth" procedures. Responses to each of the numbered questions in these two categories are included and tabulated.

In reviewing information for these two categories, one should note data were collected only for the last half of 1998, July 1 to December 31.

Please free to contact me regarding any questions you have.

Sincerely,

Lorne A. Phillips, Ph.D.
State Registrar
Acting Director of Health

CENTER FOR HEALTH AND ENVIRONMENTAL STATISTICS
Office of Health Care Information

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Selected Induced Abortion Statistics Kansas, 1998		
Selected Statistics	Number	Percent
Total* induced abortions reported	11,624	100.0
Total ** physician certifications reported	11,980	100.0
<u>Residence of Patient:</u>		
Number of in-state residents	6,440	55.4
Number of out-of-state residents	5,184	44.6
Not Stated	-	n.a.
Total Reported	11,624	100.0
<u>Age Group of Patient:</u>		
Under 15 years	112	1.0
15-19 years	2,585	22.2
20-24 years	3,757	32.3
25-29 years	2,509	21.6
30-34 years	1,449	12.5
35-39 years	913	7.8
40-44 years	274	2.4
45 years and over	23	0.2
Not Stated ¹	2	n.a.
Total Reported	11,624	100.0
<u>Race of Patient:</u>		
White	8,685	75.3
Black	2,262	19.6
Native American	133	1.1
Chinese	64	0.6
Japanese	12	0.1
Hawaiian	3	0.0
Filipino	8	0.1
Other Asian or Pacific Islander	363	3.1
Other Nonwhite	8	0.1
Not Stated ¹	86	n.a.
Total Reported	11,624	100.0

* All reported, includes 129 Kansas resident abortions that occurred out-of-state

** Occurrence data

¹ Patient(s) refused to provide information

Source: KDHE, Center for Health and Environmental Statistics, Office of Health Care Information

**Selected Induced Abortion Statistics
Kansas, 1998**

Selected Statistics	Number	Percent
<u>Marital Status of Patient:</u>		
Yes	2,232	19.3
No	9,352	80.7
Not Stated ¹	40	n.a.
Total Reported	11,624	100.0
<u>Weeks Gestation:</u>		
Less than 9 weeks	6,795	58.5
9-12 weeks	2,832	24.4
13-16 weeks	847	7.3
17-21 weeks	547	4.7
22 weeks & over	586	5.1
Not Stated ²	17	n.a.
Total Reported	11,624	100.0
<u>Method of Abortion:</u>		
Suction curettage	9,837	84.7
Sharp curettage	22	0.2
Dilation & Evacuation	1,114	9.6
Medical Procedure I	-	-
Medical Procedure II	125	1.1
Intra-uterine prosta-glandin instillation	3	0.0
Hysterotomy	-	-
Hysterectomy	-	-
Digoxin/Induction	459	3.9
"Partial Birth" Procedure	58	0.5
Other ³	2	0.0
Not Stated ³	4	n.a.
Total Reported	11,624	100.0

¹ Patient(s) refused to provide information

² Gestation information not available for 17 Kansas residents whose abortions occurred out-of-state

³ Method of abortion information not available for 6 Kansas residents whose abortions occurred out-of-state

**Selected Induced Abortion Statistics
Kansas, 1998**

Selected Statistics	Number	Percent
<u>Number of Previous Pregnancies:</u>		
None	3,835	33.0
One	2,470	21.3
Two	2,101	18.1
Three	1,506	13.0
Four	807	6.9
Five	457	3.9
Six	232	2.0
Seven or more	215	1.8
Not Stated ¹	1	n.a.
Total Reported	11,624	100.0
<u>Number of Living Children:</u>		
None	5,342	46.0
One	2,982	25.7
Two	2,132	18.3
Three	779	6.7
Four	263	2.3
Five or more	121	1.0
Not Stated ¹	5	n.a.
Total Reported	11,624	100.0
<u>Number of Previous Spontaneous Abortions:</u>		
None	9,952	85.6
One	1,338	11.5
Two	237	2.0
Three	68	0.5
Four or more	26	0.2
Not Stated ¹	3	n.a.
Total Reported	11,624	100.0
<u>Previous Induced Abortions:</u>		
None	7,410	63.8
One	2,910	25.0
Two	920	7.9
Three	255	2.2
Four or more	126	1.1
Not Stated ¹	3	n.a.
Total Reported	11,624	100.0

¹ Patient(s) refused to provide information

Source: KDHE, Center for Health and Environmental Statistics, Office of Health Care Information

Reported Abortions by Place of Residence Kansas, 1971-1998				
Year	Total	Out of State Residents	Kansas Residents	N.S.
1971.....	9,472	5,763	3,709	-
1972.....	12,248	7,736	4,512	-
1973.....	12,612	7,695	4,917	-
1974.....	10,171	4,503	5,657	11
1975.....	9,160	3,565	5,581	14
1976.....	9,154	3,455	5,686	13
1977.....	7,965	2,918	5,045	2
1978.....	9,740	3,957	5,722	61
1979.....	12,335	5,042	7,281	12
1980.....	11,791	4,750	7,038	3
1981.....	10,448	4,150	6,291	7
1982.....	9,976	3,823	6,153	-
1983.....	8,547	3,218	5,329	-
1984.....	8,008	2,689	5,319	-
1985.....	7,092	2,447	4,645	-
1986.....	6,561	2,316	4,245	-
1987.....	6,409	2,357	4,052	-
1988.....	7,930	3,161	4,769	-
1989.....	8,984 *	3,270	4,149	1,565 ***
1990.....	9,459 *	3,341	4,175	1,943 ***
1991.....	10,141 *	4,071	6,070	-
1992.....	11,135 *	4,904	6,231	-
1993.....	11,247	4,853	6,394	-
1994.....	10,847	4,245	6,596	6
1995.....	11,149 **	4,562	6,566	21
1996.....	11,181	4,367	6,806	8
1997.....	11,507	4,973	6,532	2
1998.....	11,624	5,184	6,440	-

* The increase in the 1989-1992 figures may not reflect an increase in the number of abortions being performed but rather an increase in the number of providers voluntarily reporting data.

** As of July 1, 1995, reporting became mandatory for every medical care facility and every person licensed to practice medicine and surgery.

*** Residency data was not available for all abortions in 1989-1990 but due to improved reporting, was obtained for most of the abortions reported in subsequent years. This improved reporting is also responsible for the increase in the resident abortion ratio between 1990 and 1991.

**Induced Abortions
By County of Residence of Patient
Kansas, 1998**

County	Total	County	Total	County	Total
Kansas Residents	6,440				
Allen	24	Greeley	-	Osborne	3
Anderson	14	Greenwood	16	Ottawa	6
Atchison	31	Hamilton	-	Pawnee	4
Barber	8	Harper	11	Phillips	2
Barton	55	Harvey	60	Pottawatomie	14
Bourbon	21	Haskell	5	Pratt	19
Brown	10	Hodgeman	2	Rawlins	-
Butler	95	Jackson	15	Reno	118
Chase	3	Jefferson	20	Republic	2
Chautauqua	3	Jewell	3	Rice	15
Cherokee	19	Johnson	1,183	Riley	185
Cheyenne	2	Kearny	5	Rooks	12
Clark	6	Kingman	6	Rush	3
Clay	12	Kiowa	8	Russell	4
Cloud	9	Labette	22	Saline	92
Coffey	9	Lane	6	Scott	7
Comanche	2	Leavenworth	156	Sedgwick	1,424
Cowley	56	Lincoln	2	Seward	52
Crawford	89	Linn	6	Shawnee	445
Decatur	-	Logan	-	Sheridan	-
Dickinson	26	Lyon	92	Sherman	2
Doniphan	12	Marion	14	Smith	3
Douglas	434	Marshall	5	Stafford	5
Edwards	4	McPherson	32	Stanton	1
Elk	3	Meade	5	Stevens	7
Ellis	56	Miami	36	Sumner	40
Ellsworth	5	Mitchell	3	Thomas	12
Finney	106	Montgomery	30	Trego	4
Ford	69	Morris	4	Wabaunsee	8
Franklin	49	Morton	1	Wallace	-
Geary	118	Nemaha	4	Washington	1
Gove	-	Neosho	12	Wichita	3
Graham	-	Ness	4	Wilson	13
Grant	3	Norton	1	Woodson	5
Gray	7	Osage	20	Wyandotte	762
				Unknown	18

Source: KDHE, Center for Health and Environmental Statistics, Office of Health Care Information

**Induced Abortions
State of Residence of Patient
Kansas, 1998**

State	Total
Out-of-state residents	5,184
Alabama	9
Alaska	2
Arizona	5
Arkansas	11
California	10
Colorado	21
Connecticut	2
Delaware	-
District of Columbia	1
Florida	18
Georgia	10
Hawaii	1
Idaho	2
Illinois	58
Indiana	13
Iowa	31
Kentucky	6
Louisiana	9
Maine	-
Maryland	10
Massachusetts	9
Michigan	12
Minnesota	31
Mississippi	6
Missouri	4,408
Montana	3
Nebraska	41
Nevada	1
New Hampshire	-
New Jersey	20
New Mexico	4
New York	31
North Carolina	7
North Dakota	1
Ohio	10
Oklahoma	235
Oregon	3
Pennsylvania	15
Rhode Island	2
South Carolina	5
South Dakota	4
Tennessee	24
Texas	37
Utah	1
Vermont	-
Virginia	8
Washington	1
West Virginia	-
Wisconsin	16
Wyoming	2
Puerto Rico	-
Canada	20
All other Countries	8

Source: KDHE, Center for Health and Environmental Statistics, Office of Health Care Information

Abortions Performed at 22 Weeks or More Statistics

Physicians reporting abortions performed at 22 weeks or more were required to fill out three numbered questions on the back of the VS-213 form. The questions and the answers are provided below for Kansas and out-of-state residents. All data are occurrence. A sample of the VS-213 form is contained in the appendices.

Number of procedures performed at 22 weeks or more *

Time Period	KS Residents	Out-of-State Residents	Total
January 1 - June 30	45	314	359
July 1 - December 31 *	18	209	227
	63	523	586

* New law went into effect July 1, 1998 requiring additional information on abortions at 22 weeks or more

14) Reasons for determining gestational age 22 weeks or more

Answers	KS Residents	Out-of-State Residents	Total
Physical examination, sonogram results and last menstrual period (if known).	17	204	221
Based on sonogram and biparietal diameter (BPD), determined gestational age to be 22 weeks.	1	5	6
<i>Total</i>	18	209	227

15a) Was the fetus viable?

Answers	KS Residents	Out-of-State Residents	Total
Yes	-	91	91
No	18	118	136
<i>Total</i>	18	209	227

Abortions Performed at 22 Weeks or More Statistics (continued)

15b) Reasons for determination of fetus viability

Answers	KS Residents	Out-of-State Residents	Total
It is the professional judgement of the attending physician that there is a reasonable probability that this pregnancy is not viable.	17	113	130
It is the professional judgement of the attending physician that there is a reasonable probability that this pregnancy may be viable.	-	91	91
No reasonable probability at this gestational age.	1	5	6
<i>Total</i>	18	209	227

16a) If 15a was yes, was this abortion necessary to:

Answers	KS Residents	Out-of-State Residents	Total
Prevent patient's death	-	-	-
Prevent substantial and irreversible impairment of a major bodily function	-	91	91
<i>Total</i>	-	91	91

16b) If 15a was yes, reasons for determination in 16a:

Answers	KS Residents	Out-of-State Residents	Total
The patient would suffer substantial and irreversible impairment of a major bodily function if she were forced to continue the pregnancy.	-	91	91
<i>Total</i>	-	91	91

16c) If 15a was yes, basis for determination in 16a:

Answers	KS Residents	Out-of-State Residents	Total
Gestational and diagnostic information provided by the referring physician and other health care professional(s) as well as examination and interview of the patient by attending physician.	-	91	91
<i>Total</i>	-	91	91

Source: KDHE, Center for Health and Environmental Statistics, Office of Health Care Information

"Partial Birth" Procedure Statistics

Physicians reporting "partial birth" abortions were required to fill out three numbered questions on the back of the VS-213 form. Those questions and the answers are provided below for Kansas and out-of-state residents. The questions would be in addition to those filled out if gestation was 22 weeks or more. All data are occurrence.

A sample of the VS-213 form is contained in the appendices.

Number of "partial birth" procedures*

Time Period	KS Residents	Out-of-State Residents	Total
January 1 - June 30	-	-	-
July 1 - December 31	-	58	58
	-	58	-

* New law went into effect July 1, 1998 requiring additional information on "partial birth" abortion procedures

17a) For terminations where "partial birth procedure was performed, was fetus viable?

Answers	KS Residents	Out-of-State Residents	Total
Yes	-	58	58
No	-	-	-
<i>Total</i>	-	58	58

17b) Reasons for determination of fetus viability

Answers	KS Residents	Out-of-State Residents	Total
It is the professional judgement of the attending physician that there is a reasonable probability that this pregnancy is <u>not viable</u> .	-	-	-
It is the professional judgement of the attending physician that there is a reasonable probability that this pregnancy <u>may be viable</u> .	-	58	58
<i>Total</i>	-	58	58

"Partial Birth" Procedure Statistics (continued)

18a) Was this abortion necessary to:

Answers	KS Residents	Out-of-State Residents	Total
Prevent patient's death	-	-	-
Prevent substantial and irreversible impairment of a major bodily function	-	58	58
<i>Total</i>	-	58	58

18a) If the abortion was necessary to prevent substantial and irreversible impairment of a major bodily function, was the impairment:

Answers	KS Residents	Out-of-State Residents	Total
Physical	-	-	-
Mental	-	58	58
<i>Total</i>	-	58	58

18b) Reasons for Determination of 18a

Answers	KS Residents	Out-of-State Residents	Total
Based on the patient's history and physical examination by the attending physician and referral and consultation by an unassociated physician, the attending physician believes that continuing the pregnancy will constitute a substantial and irreversible impairment of the patient's mental function.	-	58	58
<i>Total</i>	-	58	58

Occurrence Data

Source: KDHE, Center for Health and Environmental Statistics, Office of Health Care Information

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KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT
Office of Health Care Information
Landon Building, Room 904
900 SW Jackson
Topeka, Kansas 66612-1290
785-296-8627

REPORT OF INDUCED TERMINATION OF PREGNANCY

STATE FILE NUMBER

INSTRUCTIONS SEE HANDBOOK	1. PROVIDER IDENTIFICATION CODE:															
	2. PATIENT'S IDENTIFICATION NUMBER	3. AGE LAST BIRTHDAY	4. MARRIED? <input type="checkbox"/> Yes <input type="checkbox"/> No	5. DATE OF PREGNANCY TERMINATION <table style="display: inline-table; border: none;"> <tr> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> </tr> <tr> <td style="text-align: center;">Month</td> <td style="text-align: center;">Day</td> <td colspan="4" style="text-align: center;">Year</td> </tr> </table>							Month	Day	Year			
	Month	Day	Year													
	6a. RESIDENCE - STATE	6b. COUNTY	6c. CITY OR TOWN	6d. INSIDE CITY LIMITS? <input type="checkbox"/> Yes <input type="checkbox"/> No												
	7. ANCESTRY--CUBAN, MEXICAN, PUERTO- RICAN, VIETNAMESE, HMONG, ENGLISH, GERMAN, ETC. Specify _____	8. RACE 1. <input type="checkbox"/> White 2. <input type="checkbox"/> Black 3. <input type="checkbox"/> Native American 4. <input type="checkbox"/> Other (Specify) _____	9. EDUCATION (Specify only highest grade completed)													
			Elementary/Secondary (0-12)	College (1-4 or 5 +)												
	10. DATE LAST NORMAL MENSES BEGAN <table style="display: inline-table; border: none;"> <tr> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> </tr> <tr> <td style="text-align: center;">Month</td> <td style="text-align: center;">Day</td> <td colspan="4" style="text-align: center;">Year</td> </tr> </table>							Month	Day	Year				11. CLINICAL ESTIMATE OF GESTATION (Weeks) *	12. PREVIOUS PREGNANCIES (Complete Each Section)	
	Month	Day	Year													
		LIVE BIRTHS	12c. PREVIOUS INDUCED ABORTIONS	12d. SPONTANEOUS TERMINATIONS (Miscarriages, Stillbirths)												
		12a. Now Living Number _____ None <input type="checkbox"/>	12b. Now Dead Number _____ None <input type="checkbox"/>	Number _____ None <input type="checkbox"/>												
13. TERMINATION PROCEDURES																
13a. PROCEDURE THAT TERMINATED PREGNANCY (Check only one)	TYPE OF TERMINATION PROCEDURES		13b. ADDITIONAL PROCEDURES USED FOR THIS TERMINATION, IF ANY (Check all that apply)													
<input type="checkbox"/>	Suction Curettage		<input type="checkbox"/>													
<input type="checkbox"/>	Sharp Curettage		<input type="checkbox"/>													
<input type="checkbox"/>	Dilation & evacuation		<input type="checkbox"/>													
<input type="checkbox"/>	Medical Procedure I		<input type="checkbox"/>													
<input type="checkbox"/>	Medical Procedure II		<input type="checkbox"/>													
<input type="checkbox"/>	Intra-Uterine Prostaglandin Instillation		<input type="checkbox"/>													
<input type="checkbox"/>	Hysterotomy		<input type="checkbox"/>													
<input type="checkbox"/>	Hysterectomy		<input type="checkbox"/>													
<input type="checkbox"/>	Digoxin/Induction		<input type="checkbox"/>													
<input type="checkbox"/>	"Partial Birth" *1		<input type="checkbox"/>													
<input type="checkbox"/>	Other Specify _____		<input type="checkbox"/>													

SAMPLE

*If clinical estimate of gestational age is 22 weeks or more or a "Partial Birth" Procedure is performed complete reverse side of form.

¹ "Partial Birth" Procedure as defined by L. 1998, ch. 142, sec.18.

COMPLETE THE FOLLOWING ITEMS ONLY IF THE CLINICAL ESTIMATE OF GESTATIONAL AGE IS 22 WEEKS OR MORE

14.	REASONS FOR DETERMINING GESTATIONAL AGE 22 WEEKS OR MORE
15a.	WAS FETUS VIABLE? <input type="checkbox"/> YES <input type="checkbox"/> NO
15b.	REASONS FOR THE DETERMINATION. COMPLETE 16a-c ONLY IF 15a IS YES
16a.	WAS THIS ABORTION NECESSARY TO (Check all that apply) <input type="checkbox"/> PREVENT PATIENT'S DEATH <input type="checkbox"/> PREVENT SUBSTANTIAL AND IRREVERSIBLE IMPAIRMENT OF A MAJOR BODILY FUNCTION
16b.	REASONS FOR DETERMINATION
16c.	BASIS FOR DETERMINATION

SAMPLE

COMPLETE THE FOLLOWING ITEMS ONLY IF A "PARTIAL BIRTH" PROCEDURE WAS PERFORMED

17a.	WAS FETUS VIABLE? <input type="checkbox"/> YES <input type="checkbox"/> NO
17b.	REASONS FOR THE DETERMINATION COMPLETE 18a-b ONLY IF 17a IS YES
18a.	WAS THIS ABORTION NECESSARY TO (Check all that apply) <input type="checkbox"/> PREVENT PATIENT'S DEATH <input type="checkbox"/> PREVENT SUBSTANTIAL AND IRREVERSIBLE IMPAIRMENT OF A MAJOR BODILY FUNCTION IF SO, WAS THE IMPAIRMENT <input type="checkbox"/> PHYSICAL <input type="checkbox"/> MENTAL
18b.	REASONS FOR DETERMINATION

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KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT
Center for Health and Environmental Statistics
Office of Health Care Information
109 SW 9th Street, Mills Building, Suite 400A
Topeka, Kansas 66612-2219
Ph 785-296-0632---Fax 785-368-7118

STATE FILE NUMBER
(Office Use Only)

**INDUCED TERMINATION OF PREGNANCY
PHYSICIAN'S REPORT ON NUMBER OF CERTIFICATIONS RECEIVED**

PHYSICIAN IDENTIFICATION CODE: _____

DATE REPORTED:
 Month Day Year

NUMBER OF CERTIFICATIONS RECEIVED: (Month Received from Patient)

JANUARY	<input type="text"/> <input type="text"/> <input type="text"/>	MAY	<input type="text"/> <input type="text"/> <input type="text"/>	SEPTEMBER	<input type="text"/> <input type="text"/> <input type="text"/>
FEBRUARY	<input type="text"/> <input type="text"/> <input type="text"/>	JUNE	<input type="text"/> <input type="text"/> <input type="text"/>	OCTOBER	<input type="text"/> <input type="text"/> <input type="text"/>
MARCH	<input type="text"/> <input type="text"/> <input type="text"/>	JULY	<input type="text"/> <input type="text"/> <input type="text"/>	NOVEMBER	<input type="text"/> <input type="text"/> <input type="text"/>
APRIL	<input type="text"/> <input type="text"/> <input type="text"/>	AUGUST	<input type="text"/> <input type="text"/> <input type="text"/>	DECEMBER	<input type="text"/> <input type="text"/> <input type="text"/>

SAMPLE

Rev. 7/98

vs214.fm

INSTRUCTIONS: Please see sample provided.

PHYSICIAN IDENTIFICATION CODE: This is the code used for the induced termination of pregnancy reporting system. Each physician must have his/her own identification number. For this identification number, it is preferable to continue to use the facility's identification number with the physician being coded with a letter after the number. For example: Facility X's identification number is 23571. Dr. Jones at facility X's identification number would be 23571A. Other physicians' identification numbers would follow with increasing the alphabet--23571B, C etc. For those facilities that do not have a facility/physician identification number, please contact the Office of Health Care Information at the number listed above.

DATE REPORTED: Please put in a two-digit number for the month (01-12), a two digit number for the day (01-31) and the four digit year (1998) in which the report is being completed.

NUMBER OF CERTIFICATIONS RECEIVED: Please put the number of certifications performed corresponding to the appropriate month.

ACCORDING TO KSA 65-6709 (SUPP. 1997) THIS FORM NEEDS TO BE FILED MONTHLY WITH THE KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT AT THE ADDRESS LISTED ABOVE.

PUBLIC HEALTH

K.S.A. 65-443. Termination of human pregnancy; performance or participation in medical procedures not required. No person shall be required to perform or participate in medical procedures which result in the termination of a pregnancy, and the refusal of any person to perform or participate in those medical procedures shall not be a basis for civil liability to any person. No hospital, hospital administrator or governing board of any hospital shall terminate the employment of, prevent or impair the practice or occupation of or impose any other sanction on any person because of such person's refusal to perform or participate in the termination of any human pregnancy.

65-445. Termination of human pregnancy; records; annual report to secretary of health and environment; confidentiality of information; penalties for violations. (a) Every medical care facility shall keep written records of all pregnancies which are lawfully terminated within such medical care facility and shall annually submit a written report thereon to the secretary of health and environment in the manner and form prescribed by the secretary. Every person licensed to practice medicine and surgery shall keep a record of all pregnancies which are lawfully terminated by such person in a location other than a medical care facility and shall annually submit a written report thereon to the secretary of health

and environment in the manner and form prescribed by the secretary.

(b) Each report required by this section shall include the number of pregnancies terminated during the period of time covered by the report, the type of medical facility in which the pregnancy was terminated and such other information as may be required by the secretary of health and environment, but the report shall not include the names of the persons whose pregnancies were so terminated.

(c) Information obtained by the secretary of health and environment under this section shall be confidential and shall not be disclosed in a manner that would reveal the identity of any person licensed to practice medicine and surgery who submits a report to the secretary under this section or the identity of any medical care facility which submits a report to the secretary under this section. Information obtained by the secretary under this section may be used only for statistical purposes, except that no information may be released which would identify any county or other area of this state in which the termination of the pregnancy occurred. A violation of this subsection (c) is a class A nonperson misdemeanor.

(d) In addition to such criminal penalty under subsection (c), any person licensed to practice medicine and surgery or medical care facility whose identity is revealed in violation of this section may bring a civil action against the responsible person or persons for any damages to the person licensed to practice medicine and surgery or medical care facility caused by such violation.

(e) For the purpose of maintaining confidentiality as provided by subsections (c) and (d), reports of terminations of pregnancies required by this section shall identify the person or facility submitting such reports only by confidential code number assigned by the secretary of health and environment to such person or facility and the department of health and environment shall maintain such reports only by such number.

History: L. 1969, ch. 182, § 3; L. 1975, ch. 462, § 72; L. 1995, ch. 260, § 2; July 1.

65-448. Physicians at medical care facilities to examine victims of sexual offenses, when; remedy for refusal; costs. (a) Upon the request of any law enforcement officer and with the written consent of the reported victim, any physician on call or on duty at a medical care facility of this state, as defined by subsection (h) of

Article 24.—UNIFORM VITAL
STATISTICS ACT

65-2401. Definitions. As used in this act:

(1) "Vital statistics" includes the registration, preparation, transcription, collection, compilation, and preservation of data pertaining to birth, adoption, legitimation, death, stillbirth, marriage, divorce, annulment of marriage, induced termination of pregnancy, and data incidental thereto.

(2) "Live birth" means the complete expulsion or extraction from its mother of a product of human conception, irrespective of the duration of pregnancy, which, after such expulsion or extraction, breathes or shows any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles; whether or not the umbilical cord has been cut or the placenta is attached.

(3) "Stillbirth" means any complete expulsion or extraction from its mother of a product of human conception the weight of which is in excess of 350 grams, irrespective of the duration of pregnancy, resulting in other than a live birth, as defined in this act, and which is not an induced termination of pregnancy.

(4) "Induced termination of pregnancy" means the purposeful interruption of pregnancy with the intention other than to produce a live-born infant or to remove a dead fetus and which does not result in a live birth.

(5) "Dead body" means a lifeless human body or such parts of a human body or the bones thereof from the state of which it reasonably may be concluded that death recently occurred.

(6) "Person in charge of interment" means any person who places or causes to be placed a stillborn child or dead body or the ashes, after cremation, in a grave, vault, urn or other receptacle, or otherwise disposes thereof.

(7) "Secretary" means the secretary of health and environment.

History: L. 1951, ch. 355, § 1; L. 1963, ch. 319, § 1; L. 1974, ch. 352, § 119; L. 1995, ch. 260, § 4; July 1.

Article 67.—ABORTION

Law Review and Bar Journal References:

"Roe to Casey: A Survey of Abortion Law," Rachael K. Pirner and Laurie B. Williams, 32 W.L.J. 166, 183 (1993).

65-6701. Definitions. As used in this act:

(a) "Abortion" means the use of any means to intentionally terminate a pregnancy except for the purpose of causing a live birth. Abortion does not include: (1) The use of any drug or device that inhibits or prevents ovulation, fertilization or the implantation of an embryo; or (2) disposition of the product of *in vitro* fertilization prior to implantation.

(b) "Counselor" means a person who is: (1) Licensed to practice medicine and surgery; (2) licensed to practice psychology; (3) licensed to practice professional or practical nursing; (4) registered to practice professional counseling; (5) licensed as a social worker; (6) the holder of a master's or doctor's degree from an accredited graduate school of social work; (7) registered to practice marriage and family therapy; (8) a registered physician's assistant; or (9) a currently ordained member of the clergy or religious authority of any religious denomination or society. Coun-

selor does not include the physician who performs or induces the abortion or a physician or other person who assists in performing or inducing the abortion.

(c) "Department" means the department of health and environment.

(d) "Gestational age" means the time that has elapsed since the first day of the woman's last menstrual period.

(e) "Medical emergency" means 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.

(f) "Minor" means a person less than 18 years of age.

(g) "Physician" means a person licensed to practice medicine and surgery in this state.

(h) "Pregnant" or "pregnancy" means that female reproductive condition of having a fetus in the mother's body.

(i) "Qualified person" means an agent of the physician who is a psychologist, licensed social worker, registered professional counselor, registered nurse or physician.

(j) "Unemancipated minor" means any minor who has never been: (1) Married; or (2) freed, by court order or otherwise, from the care, custody and control of the minor's parents.

(k) "Viable" means that stage of gestation when, in the best medical judgment of the attending physician, the fetus is capable of sustained survival outside the uterus without the application of extraordinary medical means.

History: L. 1992, ch. 183, § 1; L. 1997, ch. 190, § 26; July 1.

CASE ANNOTATIONS

1. Whether trial court erred by construing 65-6705 more restrictively than legislature intended examined; judicial procedure discussed. *In re Doe*, 19 K.A.2d 204, 209, 866 P.2d 1069 (1994).

65-6703. Abortion prohibited when fetus viable, exceptions; determination of age of fetus; determination of viability; reports; retention of medical records; viable, defined; criminal penalties. (a) No person shall perform or induce an abortion when the fetus is viable unless such person is a physician and has a documented referral from another physician not legally or financially affiliated with the physician per-

forming or inducing the abortion and both physicians determine that: (1) The abortion is necessary to preserve the life of the pregnant woman; or (2) a continuation of the pregnancy will cause a substantial and irreversible impairment of a major bodily function of the pregnant woman.

(b) (1) Except in the case of a medical emergency, prior to performing an abortion upon a woman, the physician shall determine the gestational age of the fetus according to accepted obstetrical and neonatal practice and standards applied by physicians in the same or similar circumstances. If the physician determines the gestational age is less than 22 weeks, the physician shall document as part of the medical records of the woman the basis for the determination.

(2) If the physician determines the gestational age of the fetus is 22 or more weeks, prior to performing an abortion upon the woman the physician shall determine if the fetus is viable by using and exercising that degree of care, skill and proficiency commonly exercised by the ordinary skillful, careful and prudent physician in the same or similar circumstances. In making this determination of viability, the physician shall perform or cause to be performed such medical examinations and tests as are necessary to make a finding of the gestational age of the fetus and shall enter such findings and determinations of viability in the medical record of the woman.

(3) If the physician determines the gestational age of a fetus is 22 or more weeks, and determines that the fetus is not viable and performs an abortion on the woman, the physician shall report such determinations and the reasons for such determinations in writing to the medical care facility in which the abortion is performed for inclusion in the report of the medical care facility to the secretary of health and environment under K.S.A. 65-445 and amendments thereto or if the abortion is not performed in a medical care facility, the physician shall report such determinations and the reasons for such determinations in writing to the secretary of health and environment as part of the written report made by the physician to the secretary of health and environment under K.S.A. 65-445 and amendments thereto.

(4) If the physician who is to perform the abortion determines the gestational age of a fetus is 22 or more weeks, and determines that the fetus is viable, both physicians under subsection (a) determine in accordance with the provisions of subsection (a) that an abortion is necessary to pre-

serve the life of the pregnant woman or that a continuation of the pregnancy will cause a substantial and irreversible impairment of a major bodily function of the pregnant woman and the physician performs an abortion on the woman, the physician who performs the abortion shall report such determinations, the reasons for such determinations and the basis for the determination that an abortion is necessary to preserve the life of the pregnant woman or that a continuation of the pregnancy will cause a substantial and irreversible impairment of a major bodily function of the pregnant woman in writing to the medical care facility in which the abortion is performed for inclusion in the report of the medical care facility to the secretary of health and environment under K.S.A. 65-445 and amendments thereto or if the abortion is not performed in a medical care facility, the physician who performs the abortion shall report such determinations, the reasons for such determinations and the basis for the determination that an abortion is necessary to preserve the life of the pregnant woman or that a continuation of the pregnancy will cause a substantial and irreversible impairment of a major bodily function of the pregnant woman in writing to the secretary of health and environment as part of the written report made by the physician to the secretary of health and environment under K.S.A. 65-445 and amendments thereto.

(5) The physician shall retain the medical records required to be kept under paragraphs (1) and (2) of this subsection (b) for not less than five years and shall retain a copy of the written reports required under paragraphs (3) and (4) of this subsection (b) for not less than five years.

(c) A woman upon whom an abortion is performed shall not be prosecuted under this section for a conspiracy to violate this section pursuant to K.S.A. 21-3302, and amendments thereto.

(d) Nothing in this section shall be construed to create a right to an abortion. Notwithstanding any provision of this section, a person shall not perform an abortion that is prohibited by law.

(e) As used in this section, "viable" means that stage of fetal development when it is the physician's judgment according to accepted obstetrical or neonatal standards of care and practice applied by physicians in the same or similar circumstances that there is a reasonable probability that the life of the child can be continued indefinitely outside the mother's womb with natural or artificial life-supportive measures.

(f) If any provision of this section is held to be invalid or unconstitutional, it shall be conclusively presumed that the legislature would have enacted the remainder of this section without such invalid or unconstitutional provision.

(g) Upon a first conviction of a violation of this section, a person shall be guilty of a class A non-person misdemeanor. Upon a second or subsequent conviction of a violation of this section, a person shall be guilty of a severity level 10, non-person felony.

History: L. 1992, ch. 183, § 3; L. 1993, ch. 291, § 240; L. 1998, ch. 142, § 15; July 1.

Law Review and Bar Journal References:

"City of Wichita v. Tilson: The Necessity Defense as Applied to Abortion Clinic Trespass," Terry Pfeifer, 42 K.L.R. Crim. Pro. 79, 86 (1994).

"Medical Care and Criminal Law," Wayne T. Stratton, 97 Kan. Med. No. 1, 8, 9 (1996).

65-6704.

CASE ANNOTATIONS

1. Whether trial court erred by construing 65-6705 more restrictively than legislature intended examined; judicial procedure discussed. *In re Doe*, 19 K.A.2d 204, 206, 210, 866 P.2d 1069 (1994).

65-6705. Same; notice to certain persons required before performance of abortion; waiver of notice; court proceedings; penalties. (a) Before a person performs an abortion upon an unemancipated minor, the person or the person's agent must give actual notice of the intent to perform such abortion to one of the minor's parents or the minor's legal guardian or must have written documentation that such notice has been given unless, after receiving counseling as provided by subsection (a) of K.S.A. 65-6704, the minor objects to such notice being given. If the minor so objects, the minor may petition, on her own behalf or by an adult of her choice, the district court of any county of this state for a waiver of the notice requirement of this subsection. If the minor so desires, the counselor who counseled the minor as required by K.S.A. 65-6704 shall notify the court and the court shall ensure that the minor or the adult petitioning on the minor's behalf is given assistance in preparing and filing the application.

(b) The minor may participate in proceedings in the court on the minor's own behalf or through the adult petitioning on the minor's behalf. The court shall provide a court-appointed counsel to represent the minor at no cost to the minor.

(c) Court proceedings under this section shall be anonymous and the court shall ensure that the minor's identity is kept confidential. The court shall order that a confidential record of the evidence in the proceeding be maintained. All persons shall be excluded from hearings under this section except the minor, her attorney and such other persons whose presence is specifically requested by the applicant or her attorney.

(d) Notice shall be waived if the court finds by a preponderance of the evidence that either: (1) The minor is mature and well-informed enough to make the abortion decision on her own; or (2) notification of a person specified in subsection (a) would not be in the best interest of the minor.

(e) A court that conducts proceedings under this section shall issue written and specific factual findings and legal conclusions supporting its decision as follows:

(1) Granting the minor's application for waiver of notice pursuant to this section, if the court finds that the minor is mature and well-enough informed to make the abortion decision without notice to a person specified in subsection (a);

(2) granting the minor's application for waiver if the court finds that the minor is immature but that notification of a person specified in subsection (a) would not be in the minor's best interest; or

(3) denying the application if the court finds that the minor is immature and that waiver of notification of a person specified in subsection (a) would not be in the minor's best interest.

(f) The court shall give proceedings under this section such precedence over other pending matters as necessary to ensure that the court may reach a decision promptly. The court shall issue a written order which shall be issued immediately to the minor, or her attorney or other individual designated by the minor to receive the order. If the court fails to rule within 48 hours, excluding Saturdays and Sundays, of the time of the filing of the minor's application, the application shall be deemed granted.

(g) An expedited anonymous appeal shall be available to any minor. The record on appeal shall be completed and the appeal shall be perfected within five days from the filing of the notice to appeal.

(h) The supreme court shall promulgate any rules it finds are necessary to ensure that pro-

ceedings under this act are handled in an expeditious and anonymous manner.

(i) No fees shall be required of any minor who avails herself of the procedures provided by this section.

(j) (1) No notice shall be required under this section if:

(A) The pregnant minor declares that the father of the fetus is one of the persons to whom notice may be given under this section;

(B) in the best medical judgment of the attending physician based on the facts of the case, an emergency exists that threatens the health, safety or well-being of the minor as to require an abortion; or

(C) the person or persons who are entitled to notice have signed a written, notarized waiver of notice which is placed in the minor's medical record.

(2) A physician who does not comply with the provisions of this section by reason of the exception of subsection (j)(1)(A) must inform the minor that the physician is required by law to report the sexual abuse to the department of social and rehabilitation services. A physician who does not comply with the requirements of this section by reason of the exception of subsection (j)(1)(B) shall state in the medical record of the abortion the medical indications on which the physician's judgment was based.

(k) Any person who intentionally performs an abortion with knowledge that, or with reckless disregard as to whether, the person upon whom the abortion is to be performed is an unemancipated minor, and who intentionally and knowingly fails to conform to any requirement of this section, is guilty of a class A person misdemeanor.

(l) Except as necessary for the conduct of a proceeding pursuant to this section, it is a class B person misdemeanor for any individual or entity to willfully or knowingly: (1) Disclose the identity of a minor petitioning the court pursuant to this section or to disclose any court record relating to such proceeding; or (2) permit or encourage disclosure of such minor's identity or such record.

History: L. 1992, ch. 183, § 5; L. 1993, ch. 291, § 241; July 1.

CASE ANNOTATIONS

1. Kansas residency not required for unemancipated pregnant minor to seek waiver of parental notification. *In re Doe*, 17 K.A.2d 567, 843 P.2d 735 (1992).

2. Whether trial court erred by construing statute more restrictively than legislature intended examined; judicial proce-

dures discussed. In re Doe, 19 K.A.2d 204, 206, 866 P.2d 1069 (1994).

65-6706.

History: L. 1992, ch. 183, § 7; Repealed, L. 1997, ch. 190, § 34; July 1.

65-6708. Woman's-right-to-know act; citation. K.S.A. 65-6701 and K.S.A. 1998 Supp. 65-6708 to 65-6715, inclusive, and amendments thereto shall be known and may be cited as the woman's-right-to-know act.

History: L. 1997, ch. 190, § 25; July 1.

65-6709. Same; abortion, informed consent required; certain information required to be in writing; meeting with physician; copy of certain printed materials to be given women, when; certification in writing of receipt of information; payment not required until waiting period has expired. No abortion shall be performed or induced without the voluntary and informed consent of the woman upon whom the abortion is to be performed or induced. Except in the case of a medical emergency, consent to an abortion is voluntary and informed only if:

(a) At least 24 hours before the abortion the physician who is to perform the abortion or the referring physician has informed the woman in writing of:

- (1) The name of the physician who will perform the abortion;
- (2) a description of the proposed abortion method;
- (3) a description of risks related to the proposed abortion method, including risks to the woman's reproductive health and alternatives to the abortion that a reasonable patient would consider material to the decision of whether or not to undergo the abortion;

(4) the probable gestational age of the fetus at the time the abortion is to be performed and that Kansas law requires the following: "No person shall perform or induce an abortion when the fetus is viable unless such person is a physician and has a documented referral from another physician not financially associated with the physician performing or inducing the abortion and both physicians determine that: (1) The abortion is necessary to preserve the life of the pregnant woman; or (2) the fetus is affected by a severe or life-threatening deformity or abnormality." [*] If the child is born alive, the attending physician has the

legal obligation to take all reasonable steps necessary to maintain the life and health of the child;

(5) the probable anatomical and physiological characteristics of the fetus at the time the abortion is to be performed;

(6) the medical risks associated with carrying a fetus to term; and

(7) any need for anti-Rh immune globulin therapy, if she is Rh negative, the likely consequences of refusing such therapy and the cost of the therapy.

(b) At least 24 hours before the abortion, the physician who is to perform the abortion, the referring physician or a qualified person has informed the woman in writing that:

(1) Medical assistance benefits may be available for prenatal care, childbirth and neonatal care, and that more detailed information on the availability of such assistance is contained in the printed materials given to her and described in K.S.A. 1998 Supp. 65-6710 and amendments thereto;

(2) the printed materials in K.S.A. 1998 Supp. 65-6710 and amendments thereto describe the fetus and list agencies which offer alternatives to abortion with a special section listing adoption services;

(3) the father of the fetus is liable to assist in the support of her child, even in instances where he has offered to pay for the abortion except that in the case of rape this information may be omitted; and

(4) the woman is free to withhold or withdraw her consent to the abortion at any time prior to invasion of the uterus without affecting her right to future care or treatment and without the loss of any state or federally-funded benefits to which she might otherwise be entitled.

(c) Prior to the abortion procedure, prior to physical preparation for the abortion and prior to the administration of medication for the abortion, the woman shall meet privately with the physician who is to perform the abortion and such person's staff to ensure that she has an adequate opportunity to ask questions of and obtain information from the physician concerning the abortion.

(d) At least 24 hours before the abortion, the woman is given a copy of the printed materials described in K.S.A. 1998 Supp. 65-6710 and amendments thereto. If the woman asks questions concerning any of the information or materials, answers shall be provided to her in her own language.

(e) The woman certifies in writing on a form provided by the department, prior to the abortion, that the information required to be provided under subsections (a), (b) and (d) has been provided and that she has met with the physician who is to perform the abortion on an individual basis as provided under subsection (c). All physicians who perform abortions shall report the total number of certifications received monthly to the department. The department shall make the number of certifications received available on an annual basis.

(f) Prior to the performance of the abortion, the physician who is to perform the abortion or the physician's agent receives a copy of the written certification prescribed by subsection (e) of this section.

(g) The woman is not required to pay any amount for the abortion procedure until the 24-hour waiting period has expired.

History: L. 1997, ch. 190, § 27; July 1.

* Source of the quoted provision in subsection (a) (4) is K.S.A. 1997 Supp. 65-6703 prior to amendment by L. 1998, ch. 142, §15. For the current requirement of Kansas law, see K.S.A. 1998 Supp. 65-6703.

65-6710. Same; printed materials to be published and distributed by the department of health and environment; materials to be available at no cost. (a) The department shall cause to be published and distributed widely, within 30 days after the effective date of this act, and shall update on an annual basis, the following easily comprehensible printed materials:

(1) Geographically indexed materials designed to inform the woman of public and private agencies and services available to assist a woman through pregnancy, upon childbirth and while her child is dependent, including but not limited to, adoption agencies. The materials shall include a comprehensive list of the agencies, a description of the services they offer and the telephone numbers and addresses of the agencies; and inform the woman about available medical assistance benefits for prenatal care, childbirth and neonatal care and about the support obligations of the father of a child who is born alive. The department shall ensure that the materials described in this section are comprehensive and do not directly or indirectly promote, exclude or discourage the use of any agency or service described in this section. The materials shall also contain a toll-free 24-hour a day telephone number which may be called to obtain, orally, such a list and description of agen-

cies in the locality of the caller and of the services they offer. The materials shall state that it is unlawful for any individual to coerce a woman to undergo an abortion, that any physician who performs an abortion upon a woman without her informed consent may be liable to her for damages. Kansas law permits adoptive parents to pay costs of prenatal care, childbirth and neonatal care. The materials shall include the following statement:

"Many public and private agencies exist to provide counseling and information on available services. You are strongly urged to seek their assistance to obtain guidance during your pregnancy. In addition, you are encouraged to seek information on abortion services, alternatives to abortion, including adoption, and resources available to post-partum mothers. The law requires that your physician or the physician's agent provide the enclosed information."

(2) Materials that inform the pregnant woman of the probable anatomical and physiological characteristics of the fetus at two-week gestational increments from fertilization to full term, including pictures or drawings representing the development of a fetus at two-week gestational increments, and any relevant information on the possibility of the fetus' survival. Any such pictures or drawings shall contain the dimensions of the fetus and shall be realistic. The materials shall be objective, nonjudgmental and designed to convey only accurate scientific information about the fetus at the various gestational ages. The material shall also contain objective information describing the methods of abortion procedures commonly employed, the medical risks commonly associated with each such procedure and the medical risks associated with carrying a fetus to term.

(3) A certification form to be used by physicians or their agents under subsection (e) of K.S.A. 1998 Supp. 65-6709 and amendments thereto, which will list all the items of information which are to be given to women by physicians or their agents under the woman's-right-to-know act.

(b) The materials required under this section shall be printed in a typeface large enough to be clearly legible. The materials shall be made available in both English and Spanish language versions.

(c) The materials required under this section shall be available at no cost from the department upon request and in appropriate number to any person, facility or hospital.

History: L. 1997, ch. 190, § 28; July 1.

65-6711. Same; information where medical emergency compels performances of an abortion. Where a medical emergency compels the performance of an abortion, the physician shall inform the woman, before the abortion if possible, of the medical indications supporting the physician's judgment that an abortion is necessary to avert her death or to avert substantial and irreversible impairment of a major bodily function.

History: L. 1997, ch. 190, § 29; July 1.

65-6712. Same; failure to provide informed consent and printed materials under act is unprofessional conduct. Any physician who intentionally, knowingly or recklessly fails to provide in accordance with K.S.A. 1998 Supp. 65-6709 and amendments thereto the printed materials described in K.S.A. 1998 Supp. 65-6710 and amendments thereto, whether or not an abortion is actually performed on the woman, is guilty of unprofessional conduct as defined in K.S.A. 65-2837 and amendments thereto.

History: L. 1997, ch. 190, § 30; L. 1998, ch. 142, § 16; July 1.

65-6713. Same; physician who complies with act not civilly liable to patient for failure to obtain informed consent to the abortion. Any physician who complies with the provisions of this act shall not be held civilly liable to a patient for failure to obtain informed consent to the abortion.

History: L. 1997, ch. 190, § 31; July 1.

65-6714. Same; severability clause. The provisions of this act are declared to be severable, and if any provision, word, phrase or clause of the act or the application thereof to any person shall be held invalid, such invalidity shall not affect the validity of the remaining portions of the woman's-right-to-know act.

History: L. 1997, ch. 190, § 32; July 1.

65-6715. Same; act does not create or recognize a right to abortion or make lawful an abortion that is currently unlawful. (a) Nothing in the woman's-right-to-know act shall be construed as creating or recognizing a right to abortion.

(b) It is not the intention of the woman's-right-to-know act to make lawful an abortion that is currently unlawful.

History: L. 1997, ch. 190, § 33; July 1.

65-6716 to 65-6720. Reserved.

65-6721. Prohibition against partial birth abortion on viable fetus, exceptions; partial birth abortion, defined; report of determination; criminal penalties. (a) No person shall perform or induce a partial birth abortion on a viable fetus unless such person is a physician and has a documented referral from another physician not legally or financially affiliated with the physician performing or inducing the abortion and both physicians determine: (1) The abortion is necessary to preserve the life of the pregnant woman; or (2) a continuation of the pregnancy will cause a substantial and irreversible impairment of a major physical or mental function of the pregnant woman.

(b) As used in this section:

(1) "Partial birth abortion" means an abortion procedure which includes the deliberate and intentional evacuation of all or a part of the intracranial contents of a viable fetus prior to removal of such otherwise intact fetus from the body of the pregnant woman.

(2) "Partial birth abortion" shall not include the: (A) Suction curettage abortion procedure; (B) suction aspiration abortion procedure; or (C) dilation and evacuation abortion procedure involving dismemberment of the fetus prior to removal from the body of the pregnant woman.

(c) If a physician determines in accordance with the provisions of subsection (a) that a partial birth abortion is necessary and performs a partial birth abortion on the woman, the physician shall report such determination and the reasons for such determination in writing to the medical care facility in which the abortion is performed for inclusion in the report of the medical care facility to the secretary of health and environment under K.S.A. 65-445 and amendments thereto or if the abortion is not performed in a medical care facility, the physician shall report the reasons for such determination in writing to the secretary of health and environment as part of the written report made by the physician to the secretary of health and environment under K.S.A. 65-445 and amendments thereto. The physician shall retain a copy of the written reports required under this subsection for not less than five years.

(d) A woman upon whom an abortion is performed shall not be prosecuted under this section for a conspiracy to violate this section pursuant to K.S.A. 21-3302, and amendments thereto.

(e) Nothing in this section shall be construed to create a right to an abortion. Notwithstanding

any provision of this section, a person shall not perform an abortion that is prohibited by law.

(f) Upon conviction of a violation of this section, a person shall be guilty of a severity level 10 person felony.

History: L. 1998, ch. 142, § 18; July 1.