KANSAS

Abortions in Kansas, 2000

Preliminary Report

Center for Health and Environmental Statistics
Kansas Department of Health and Environment
Landon State Office Building - 900 SW Jackson, Topeka, KS 66612-1220
http://www.kdhe.state.ks.us/ches/

Abortions in Kansas 2000
Preliminary Analysis

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

March 26, 2001

Dear Interested Party:

Physicians, ambulatory surgical centers, and hospitals are required under state statutes 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.

The in-state collection of these vital statistics reports for 2000 is now complete. This report is a summary of the preliminary analysis of that data. The final analysis of the 2000 abortion data, including any additional abortion reports provided by other states, will be in the *Kansas Annual Summary of Vital Statistics*.

This report also contains information the Legislature requires physicians to report regarding a) abortions performed at 22 weeks or more and b) "partial birth" procedures. Responses to each of the numbered questions in these two categories are included and tabulated. No "partial birth" procedures were performed in Kansas in 2000.

Please free to contact me regarding any questions you have.

Sincerely,

Lorne A. Phillips, Ph.D.
State Registrar & Director
Center for Health and Environmental Statistics

CENTER FOR HEALTH AND ENVIRONMENTAL STATISTICS
900 SW Jackson, Room 904 Topeka, KS 66612-1290
PHONE (785) 296-1415 FAX (785) 368-7118

Printed on Recycled Paper

Selected Induced Abortion Statistics Kansas, 2000		
Selected Statistics	Number	Percent
Total* induced abortions reported	12,323	100.0
Total ** physician certifications reported	12,561	100.0
Residence of Patient:		
Number of in-state residents	6,352	51.5
Number of out-of-state residents	5,971	48.5
Not Stated	-	n.a.
Total Reported	12,323	100.0
Age Group of Patient:		
Under 15 years	102	0.8
15-19 years	2,412	19.6
20-24 years	4,204	34.1
25-29 years	2,681	21.8
30-34 years	1,605	13.0
35-39 years	980	8.0
40-44 years	321	2.6
45 years and over	18	0.1
Not Stated [1]	-	n.a.
Total Reported	12,323	100.0
Race of Patient:		
White	8,961	72.9
Black	2,739	22.3
Native American	118	1.0
Chinese	81	0.7
Japanese	15	0.1
Hawaiian	-	0.0
Filipino	16	0.1
Other Asian or Pacific Islander	337	2.7
Other Nonwhite	25	0.2
Not Stated [1]	31	n.a.
Total Reported	12,323	100.0

* All reported, includes 98 Kansas resident abortions that occurred out-of-state.
This total is subject to change as other states submit information on Kansas resident abortions in their 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, 2000		
Selected Statistics	Number	Percent
Hispanic Origin of Patient [1]		
Hispanic	960	7.8
Non-hispanic	11,363	92.2
Total Reported	12,323	100.0
Marital Status of Patient:		
Married	2,433	19.8
Unmarried	9,852	80.2
Not Stated [2]	38	n.a.
Total Reported	12,323	100.0
Weeks Gestation:		
Less than 9 weeks	7,226	58.7
9-12 weeks	3,059	24.9
13-16 weeks	854	6.9
17-21 weeks	525	4.3
22 weeks & over	639	5.2
Not Stated [3]	20	n.a.
Total Reported	12,323	100.0
Method of Abortion:		
Suction curettage	10,432	84.7
Sharp curettage	6	0.0
Dilation & Evacuation	852	6.9
Medical Procedure I	1	0.0
Medical Procedure II	403	3.3
Intra-uterine prosta-glandin instillation	1	0.0
Hysterotomy	-	-
Hysterectomy	-	-
Digoxin/Induction	628	5.1
"Partial Birth" Procedure [4]	-	-
Other	-	-
Not Stated	-	n.a.
Total Reported	12,323	100.0

[1] Hispanic origin may be of any race.

[2] Patient(s) refused to provide information.

[3] Information not collected by other states.

[4] No Partial Birth procedures have been performed in Kansas since October 1999.

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

Selected Induced Abortion Statistics Kansas, 2000		
Selected Statistics	Number	Percent
Number of Previous Pregnancies:		
None	3,672	29.8
One	2,625	21.3
Two	2,298	18.6
Three	1,667	13.5
Four	984	8.0
Five	524	4.3
Six	285	2.3
Seven or more	268	2.2
Not Stated [1]	-	n.a.
Total Reported	12,323	100.0
Number of Living Children:		
None	5,267	42.8
One	3,243	26.3
Two	2,390	19.4
Three	965	7.8
Four	307	2.5
Five or more	151	1.2
Not Stated [1]	-	n.a.
Total Reported	12,323	100.0
Number of Previous Spontaneous Terminations:		
None	10,486	85.1
One	1,478	12.0
Two	250	2.0
Three	73	0.6
Four or more	36	0.3
Not Stated [1]	-	n.a.
Total Reported	12,323	100.0
Previous Induced Abortions:		
None	7,721	62.7
One	3,106	25.2
Two	980	7.9
Three	354	2.9
Four or more	162	1.3
Not Stated [1]	-	n.a.
Total Reported	12,323	100.0

[1] Patient(s) refused to provide information

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

Induced Abortions
By County of Residence of Patient
Kansas, 2000

County	Total	County	Total	County	Total
Kansas Residents	6,352				
Allen	21	Greeley	2	Osborne	1
Anderson	8	Greenwood	7	Ottawa	4
Atchison	16	Hamilton	1	Pawnee	4
Barber	1	Harper	14	Phillips	5
Barton	52	Harvey	51	Pottawatomie	19
Bourbon	19	Haskell	6	Pratt	10
Brown	17	Hodgeman	1	Rawlins	-
Butler	110	Jackson	16	Reno	111
Chase	2	Jefferson	22	Republic	4
Chautauqua	4	Jewell	2	Rice	7
Cherokee	16	Johnson	1,187	Riley	169
Cheyenne	-	Kearny	3	Rooks	1
Clark	3	Kingman	2	Rush	2
Clay	12	Kiowa	1	Russell	5
Cloud	9	Labette	35	Saline	107
Coffey	13	Lane	2	Scott	10
Comanche	2	Leavenworth	124	Sedgwick	1,409
Cowley	57	Lincoln	3	Seward	45
Crawford	92	Linn	7	Shawnee	454
Decatur	-	Logan	2	Sheridan	-
Dickinson	27	Lyon	88	Sherman	3
Doniphan	9	Marion	17	Smith	1
Douglas	378	Marshall	4	Stafford	2
Edwards	1	McPherson	36	Stanton	4
Elk	2	Meade	3	Stevens	6
Ellis	43	Miami	41	Sumner	35
Ellsworth	1	Mitchell	1	Thomas	3
Finney	100	Montgomery	64	Trego	4
Ford	78	Morris	1	Wabaunsee	9
Franklin	46	Morton	5	Wallace	-
Geary	139	Nemaha	-	Washington	1
Gove	-	Neosho	11	Wichita	1
Graham	2	Ness	3	Wilson	7
Grant	9	Norton	1	Woodson	4
Gray	4	Osage	22	Wyandotte	807
				Unknown[1]	20

1 County of residence information not collected by some states that provide data on abortions to Kansas residents occurring in those states.

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

Induced Abortions State of Residence of Patient Kansas, 2000	
State	Total
Out-of-state residents	5,971
Alabama	6
Alaska	2
Arizona	9
Arkansas	17
California	19
Colorado	39
Connecticut	8
Delaware	1
District of Columbia	1
Florida	14
Georgia	16
Hawaii	-
Idaho	-
Illinois	62
Indiana	12
Iowa	27
Kentucky	7
Louisiana	6
Maine	4
Maryland	12
Massachusetts	4
Michigan	23
Minnesota	37
Mississippi	1
Missouri	5,124
Montana	3
Nebraska	27
Nevada	2
New Hampshire	-
New Jersey	30
New Mexico	8
New York	44
North Carolina	16
North Dakota	9
Ohio	22
Oklahoma	200
Oregon	-
Pennsylvania	19
Rhode Island	2
South Carolina	7
South Dakota	5
Tennessee	12
Texas	41
Utah	1
Vermont	-
Virginia	14
Washington	2
West Virginia	-
Wisconsin	12
Wyoming	1
Puerto Rico	1
Canada	28
All other Countries	14

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 and represent a full year of reports. A sample VS-213 form is contained in the appendices.

14) Reasons for determining gestational age 22 weeks or more

Answers	KS Residents	Out-of-State Residents	Total
Sonogram	-	2	2
Physical examination, sonogram results and last menstrual period (if known).	55	568	623
Based on sonogram and biparietal diameter (BPD), determined gestational age to be 22 weeks.	4	10	14
Last menstrual period, sonogram, and perinatal consultation	-	-	-
Estimated date of delivery/confinement and ultrasound	-	-	-
Total	59	580	639

15a) Was the fetus viable?

Answers	KS Residents	Out-of-State Residents	Total
Yes	12	368	380
No	47	212	259
Total	59	580	639

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 may be viable.	12	368	380
It is the professional judgement of the attending physician that there is a reasonable probability that this pregnancy is not viable.	43	202	245
No reasonable probability at this gestational age.	4	10	14
Ultrasound - Extreme immaturity of heart and lungs	-	-	-
Hypoplastic Left Heart, Chromosome abnormality	-	-	-
0 Apgar score; mother had severe oligohydramnios; fetus had poly/multicystic kidney disease	-	-	-
Diagnosis by genetic specialist with no amniotic fluid and other abnormalities	-	-	-
Total	59	580	639

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

Abortions Performed at 22 Weeks or More Statistics (continued)

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	12	368	380
Total	12	368	380

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.	12	368	380
Total	12	368	380

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.	12	368	380
The patient is suffering a medical emergency. Based on examination and interview of the patient by the attending physician, the physician judges that the abortion is necessary to prevent substantial and permanent damage to a major bodily function.	-	-	-
Total	12	368	380

Occurrence Data

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. The data represent a full year of reporting. A sample VS-213 form is in the appendices.

Number of "partial birth" procedures

Time Period	KS Residents	Out-of-State Residents	Total
January 1 - March 31	-	-	-
April 1 - June 30	-	-	-
July 1 - September 30	-	-	-
October 1 - December 31	-	-	-
Total	-	-	-

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

Answers	KS Residents	Out-of-State Residents	Total
Yes	-	-	-
No	-	-	-
Total	-	-	-

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 not viable.	-	-	-
It is the professional judgement of the attending physician that there is a reasonable probability that this pregnancy may be viable.	-	-	-
Total	-	-	-

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

"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	-	-	-
Total	-	-	-

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	-	-	-
Total	-	-	-

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.	-	-	-
Total	-	-	-

Occurrence Data

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

Appendices

TYPE OR PRINT IN PERMANENT INK

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT
Office of Health Care Information
Landon Building, Room 904
900 SW Jackson
Topeka, Kansas 66612-1220
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? ☐ Yes ☐ No

5. DATE OF PREGNANCY TERMINATION ☐☐ Month ☐☐ Day ☐☐☐☐ Year

6a. RESIDENCE - STATE

6b. COUNTY

6c. CITY OR TOWN

6d. INSIDE CITY LIMITS? ☐ Yes ☐ No

7. ANCESTRY--CUBAN, MEXICAN, PUERTO-RICAN, VIETNAMESE, HMONG, ENGLISH, GERMAN, ETC.

Specify_____

8. RACE
1. ☐ White
2. ☐ Black
3. ☐ Native American
4. ☐ Other (Specify) _____

9. EDUCATION (Specify only highest grade completed)

Elementary/Secondary (0-12)	College (1-4 or 5 +)

10. DATE LAST NORMAL MENSES BEGAN ☐☐ Month ☐☐ Day ☐☐☐☐ Year

11. CLINICAL ESTIMATE OF GESTATION (Weeks) *

12. PREVIOUS PREGNANCIES (Complete Each Section)

LIVE BIRTHS		12c. PREVIOUS INDUCED ABORTIONS	12d. SPONTANEOUS TERMINATIONS (Miscarriages, Stillbirths)
12a. Now Living	12b. Now Dead		
Number ____	Number ____	Number ____	Number ____
None ☐	None ☐	None ☐	None ☐

SAMPLE

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)
☐	Suction Curettage	☐
☐	Sharp Curettage	☐
☐	Dilation & Evacuation	☐
☐	Medical Procedure I (Mifepristone)	☐
☐	Medical Procedure II	☐
☐	Intra-Uterine Prostaglandin Instillation	☐
☐	Hysterotomy	☐
☐	Hysterectomy	☐
☐	Digoxin/Induction	☐
☐	Partial Birth [1]	☐
☐	Other Specify_____	☐

*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 1998 Supp KSA 65-6721.

VS-213 Rev. 12/99

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?

☐ YES ☐ NO

15b. REASONS FOR THE DETERMINATION.

COMPLETE 16a-c ONLY IF 15a IS YES

16a. WAS THIS ABORTION NECESSARY TO
(Check all that apply)

☐ PREVENT PATIENT'S DEATH

☐ PREVENT SUBSTANTIAL AND IRREVERSIBLE IMPAIRMENT OF A MAJOR BODILY FUNCTION

16b. REASONS FOR DETERMINATION

SAMPLE

16c. BASIS FOR DETERMINATION

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

17a. WAS FETUS VIABLE?

☐ YES ☐ NO

17b. REASONS FOR THE DETERMINATION

COMPLETE 18a-b ONLY IF 17a IS YES

18a. WAS THIS ABORTION NECESSARY TO
(Check all that apply)

☐ PREVENT PATIENT'S DEATH

☐ PREVENT SUBSTANTIAL AND IRREVERSIBLE IMPAIRMENT OF A MAJOR BODILY FUNCTION
IF SO, WAS THE IMPAIRMENT

☐ PHYSICAL

☐ MENTAL

18b. REASONS FOR DETERMINATION

VS-213
Rev. 12/99

TYPE OR PRINT IN PERMANENT INK

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT
Center for Health and Environmental Statistics
Health Care Information
900 SW Jackson, LSOB, Room 904 North
Topeka, Kansas 66612-1220
Ph 785-296-8627---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

SAMPLE

NUMBER OF CERTIFICATIONS RECEIVED: (Month Received from Patient)

JANUARY	☐☐☐	MAY	☐☐☐	SEPTEMBER	☐☐☐
FEBRUARY	☐☐☐	JUNE	☐☐☐	OCTOBER	☐☐☐
MARCH	☐☐☐	JULY	☐☐☐	NOVEMBER	☐☐☐
APRIL	☐☐☐	AUGUST	☐☐☐	DECEMBER	☐☐☐

Rev. 7/98 vs214.frm

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 (1999) 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.

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 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) 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 nonperson misdemeanor. Upon a second or subsequent conviction of a violation of this section, a person shall be guilty of a severity level 10, nonperson 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 proceedings 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-

dure 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 agencies 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.