

2011 HOUSE HUMAN SERVICES

HB 1297

2011 HOUSE STANDING COMMITTEE MINUTES

House Human Services Committee Fort Union Room, State Capitol

HB 1297
January 31, 2011
Job #13676

☐ Conference Committee

Committee Clerk Signature

Vicky Crabtree

Explanation or reason for introduction of bill/resolution:

It is to clean up some of the obsolete language and inconsistencies of the language of the abortion control act.

Minutes:

See attached Testimonies #1-7.

Chairman Weisz: Opened the hearing on HB 1297.

Rep. Bette Grande: From District 41 in Fargo sponsored and introduced the bill. I will be offering amendments to you to this bill. (See attachment #1.) There was a portion that was not meant to be struck and brought out and put that back in and then a couple other technical pieces. It is to clean up some of the obsolete language and inconsistencies of the language of the abortion control act. We are updating laws to address abortion induced drugs. We are using the FDA guidelines for definitions and safe practices and for informational purposes. We are asking for clarification in pregnancy reduction and we are looking at requiring better printed material. As far as I have been able to tell the material hasn't been updated since 1997. Those of us who know how technology has changed and the fact we have a much better handle on fetal development, it is time for update of materials to be handed out so the women who are coming in for this procedure make the best decisions for herself and her baby. We are asking for clarification of provisions of parental notification laws and in the end what we are looking at is strengthening the enforcement mechanisms. We are requiring the improvement of reporting from the Health Dept. and the reports to the Legislative Management. There is a need for clarification on the forms and the signing off of these forms and what time frames are being dealt with. We are hoping through this process we have people are best informed to the procedures they are facing when they go into an abortion clinic. I'm going to handout of a list of the different things that are required and it gives you an idea of what we are looking for from the Health Department. (See attachment #2.) Because trying to keep up with statistics and understanding and what needs to be taking place, we just want to clear that everybody is all on the same page. So, we broke it out and we have a statement and where it is at in code so you can understand a little bit more about what this is regarding. I will stand for questions.

Chairman Weisz: In page 10 of the bill it requires that a physician has to contract with another physician to handle the emergencies associated with the use of ingesting of the

abortion inducing drug. I'm curious why or a specific reason why it wouldn't be that same doctor necessarily.

Rep. Grande: I am not an expert on that. But, what I would conclude with this is that many of the physicians we are dealing with here are not ND residents. So they are contracted with a facility (in ND) so they can have follow-up because they (the physicians) are not in town.

Christopher Dobson: Executive Director ND Catholic Conference testified in support of the bill with adopted amendments. (See Testimony #3.)

Tom Freier: With the ND Family Alliance testified in support of the bill.
(See Testimony #4.)

Opposition

Connie Hildebrand: Representing AAUW-ND testified in opposition. (See Testimony #5.)

Amy Jacobson: From Planned Parenthood testified in opposition. (See Testimony #6.)

Rep. Paur: You repeatedly mentioned the unconstitutionality of this and I appreciate you straightening me out on that. Because, I was under the impression that the laws we passed must be declared unconstitutional by the courts, but you are able to do that here. Thank you.

Neutral

Darrin Metske: Director of Vital Records with Health Dept. The Health Dept. has concerns over section 8 of the bill regarding privacy and would like Mike Mullen to step to the podium and talk about those privacy concerns.

Michael Mullen: Asst. Attorney General. My comments are at the request of the Dept. of Health. I'd like you to refer to page 12 of the bill beginning at line 22. Subdivision B of Subsection 1 of section 1402.107 states that medical records of abortion facilities and hospitals where abortions are performed and all information contained therein, must remain confidential and maybe used by the State Dept. of Health only for the gathering of statistical data and insuring compliance with the provisions of this chapter. If you look at lines 26-28, line 26 is the introduction to subsection 2 of section 7 of the abortion control law. Subdivision A of subsection 2 states an individual abortion report for each abortion performed upon a woman must be completed by the attending physician. The next sentence begins, the report. Now in current law it says, the report must be confidential, but that language is removed. And if you turn to page 13 and go down to beginning at line 5 -12 you will see that there is a new sentence that is added to subdivision B which says that, excuse me I made a mistake. You need to go down to line 20 subdivision D on page 13. This talks about the duty of the State Dept. of Health to collect all abortion reports and complication reports and adverse events reports and to annually publish a statistic report based on the data from the abortion performed in the previous calendar year. Then at the end of line 23-27 is a new sentence which says, all abortion reports, complications reports

and adverse events reports received by the Dept. of Health are public records, that is new language. The next sentence states, the board and that is probably an error, it probably means the Dept. of Health, may not release the name or other personal identifying information regarding a woman upon whom the abortion is performed. The concern of the Dept. of Health is that until now these reports are received by the Dept. of Health, but they are confidential records so the reports are not available under the open records law or otherwise. These and including all the enhanced reporting information that is required under 1297 would be utilized by the Dept. of Health to create these annual statistical reports. How many abortions, how many minors, whether the women married or not and how many adverse outcomes there were. The problem is that this section may conflict with the HIPPA privacy rule which is a federal regulation. Dept. of Health is a covered entity under HIPPA privacy rule. They can only disclose de-identified information. HIPPA has 18 specific identifiers that you have to take out of any health record before you can disclose it. The obvious ones like name and address, phone number and so on. The abortion report contains if woman married or not, how many live births, race and other demographic information. The problem is in rural ND there is only a small number of females. Looked up information in 2000 census as 2010 coming out tomorrow. In a zip code I looked up there were only 3 females aged 18 and 19, none 20 and 21 there were 3. The concern is they might be able to recognize who had an abortion. The burden for the Dept. of Health is that they would have to make a particularized look at each abortion report. It would be burdensome to them to make sure they don't disclose any information that would identify the person who had the abortion. For that reason the Dept. of Health would prefer that the existing law making the records confidential remain.

Rep. Porter: If decided to open the records, how would the language on page 13, line 26 have to read in order to assure that the record is brought down to a level of HIPPA compliance?

Mullen: The technical language would be, the Dept. of Health would only release the de-identified information regarding the woman. The word de-identified word has a specific meaning. You will still impose a significant burden on the Dept. of Health if you want to go in that direction. The default rule says you have to remove these 18 items and then they have to take out anything else that might identify the woman.

Rep. Porter: Looking at the fiscal note and hearing your explanation of what the burden of that particular piece would be, I don't see that burden explained in the fiscal note.

Mullen: I was asked by the Dept. to comment on the HIPPA privacy rule. They will be in a better position to describe the fiscal note.

Vice-Chair Pietsch: Could you give us a written testimony so we can make sure we don't miss any of this?

Mullen: I'll check with the Attorney General and see what I can do for you. Under the HIPPA privacy rule, ND has to follow federal law if there rule is more stringent than North Dakota's.

Rep. Weisz: Why do you have to go beyond the 18 identifiers that you have to remove for the federal?

Mullen: The HIPPA privacy rule in the pre-emption section says if the federal law is more restrictive you have to follow that law, but in the definition of de-identified information, it says, that the default rule in determining whether information is de-identified is to remove these 18 items. Then it says in subsection 2, or you have to remove any other information which you know or reasonably expect is going to allow the recipient of the information to identify the person.

Rep. Weisz: From your perspective and what you are seeing what additional items would have to be removed over the 18? For example the rural areas.

Mullen: Might be marital status and previous lives births.

Rep. Weisz: I don't follow you. You mentioned the zip code would be taken off. You are now saying that is the only person in the state of ND because you wouldn't have the identifier to say what city they were from anymore.

Mullen: You don't remove the zip codes completely. What you do is go down to a 3 digit zip code. Sometimes even in a 3 digit zip code which has to have more than 20,000 people you still may end up with one person who is married and has 2 children and the report also gives the race of the individual. You might have to eliminate race.

Vice-Chair Pietsch: Closed the hearing on HB 1297.

Handed in Testimony

Renee Stromme: Executive Director of ND Women's Work. (See Testimony #7.)

2011 HOUSE STANDING COMMITTEE MINUTES

House Human Services Committee
Fort Union Room, State Capitol

HB 1297
February 7, 2011
Job # 14138

☐ Conference Committee

Committee Clerk Signature

Vicky Crabtree

Minutes:

See attachment #1

Chairman Weisz: We need to look at HB 1297. The current bill has a fiscal note and it is high enough where it would need to go out today. Look at the amendments (See attachment #1) and I'm not sure how these amendments take care of the fiscal note. Look at 01001 which should be in your files.

Rep. Kilichowski: Are they preparing both sets of amendments to be included?

Chairman Weisz: Yes. One is to fix some of the problems brought up in the hearing and this is to (drops sentence). From the fact that we have barely had time to look at these and they are extensive. The only issue we run into is appropriations. We could amend this down that says, they will not exceed \$50,000 on printing publications and that takes care of our fiscal note problem.

Rep. Paur: On the second set of amendments on page 7, line 12 that must mean at the end of that sentence, right?

Chairman Weisz: After the underscored period, so you are at the end. At the end of line 12 you are adding this information. If you need time on this I at least need a motion to limit the funding or it has to go out today. We need language to say that printing will not exceed \$50,000.

(Inaudible discussion as microphones not on.)

Chairman Weisz: The language could be in the subsection that is under the page 6 b where it talks about the materials. If you look at subsection 2 there where it says, the materials required under subsection 1 must be available at no cost from the State Dept. of Health upon request and in appropriate number to any person, facility, the department may make the material available, you could add language in there to say, the cost should not exceed \$50,000.

Rep. Pietsch: I would move that we put the language in there that would bring the appropriation down to \$50,000.

Rep. Holman: Second

Voice Vote: Motion Carried

Chairman Weisz: Study these amendments and tomorrow afternoon we will probably take them up. We are adjourned.

2011 HOUSE STANDING COMMITTEE MINUTES

House Human Services Committee
Fort Union Room, State Capitol

HB 1297
February 8, 2011
Job #14205

☐ Conference Committee

Committee Clerk Signature

Vicky Crabtree

Minutes:

See attachment #1

Chairman Weisz: Everyone should have some additional suggested amendments. (See attachment #1) There is a lot of language in 1297. We already have amendments by Rep. Grande. For those of who weren't in interim committee, the issue of judicial bypass came up and there was concern because the numbers were for most of us quite high when you are looking at on the average roughly 40 Judicial bypasses every year. A Judicial bypass is when a minor who doesn't have consent can get the court to allow her to have an abortion. As part of the information that was presented it was also apparent that almost all the judicial bypasses were occurring in Cass Co. Current ND law does say that the petition for a judicial bypass has to be filed in the county where the person lives. Virtually all of them were having a change of venue into Cass County. The language that is on page 9 that is in this bill would require it to stay within that county. The language in front of you would say, "a court may change the venue proceedings under this section to another county only upon finding that a transfer is required in the best interest of the minor. For example, it could be for undue publicity. I don't know when the original law was passed, but it was clear that the legislature intended for these to be done where the person resided. I was shocked at how high the number of minor without consent.

Rep. Paur: Was that change of venue, was that to find, locate a more friendly Judge?

Chairman Weisz: That was some of the discussion and concern. You can't pick your Judge. You could have a change of venue in Cass County and would be assigned a Judge randomly. Sometimes Judges from where you are from know the principles and they are glad for a request for a change of venue so they don't have to deal with it. That was discussion in the interim committee that there must be a reason they are all going to Cass County. Is everybody comfortable with this language and understand what it does?

Rep. Devlin: Coming from a small town, everyone knows what is going on. There has to be some room for privacy and maybe moving it to a larger court. I'm fine with this, but that was my concern with the bill originally in this particular section. I will move the amendment we just discussed about change of venue proceedings.

Rep. Hofstad: Second.

Voice Vote: Motion Carried

Rep. Porter: I move both sets of amendments.

Rep. Paur: Second.

Rep. Louser: On the full page of amendments that are not numbered where we have page 13, line 27, are we saying those are the four identifying demographic characteristics, which would be race, marital status, number of previous births and education? Rep. Ruby yesterday I think we took out in his bill some of the identifying characteristics because it limited. Are we saying these are the four that should be eliminated?

Chairman Weisz: It is four of because it says, including, so if there are any other identifiable characteristics, they would ask to be removed. It is saying those will be removed.

Voice Vote: Motion Carried

Chairman Weisz: Are there any other amendments or questions? Otherwise I'm going to take it up. I'll give you a minute because there is a lot of language in this bill and the amendments.

Rep. Holman: There is a line towards the end on page 15, it uses the word normal child birth and I don't see that defined anywhere else. Is it defined somewhere in statute?

Chairman Weisz: It is in a couple of places. Line 21.

Rep. Holman: I couldn't find it in the definitions. I assume, would a C-Section be called normal?

Chairman Weisz: You raise a good question. The section it refers to where it brings up normal childbirth, it is merely saying that the state needs to give preference to normal childbirth. If it isn't defined I'm not sure it makes a difference.

Rep. Holman: I tend to agree.

Rep. Louser: On the numbered amendment where we have 0001 where it says in page 13, line 25 replace "board" with "the State Dept. of Health; on the unnumbered amendment we removed those altogether. They are somewhat in conflict.

Chairman Weisz: If you incorporate both in removing the language then it is redundant on the numbered amendment then just becomes redundant because it is no longer there anymore. Legislative Council ends up having to reconcile that. They are not in conflict just overlapping so Legislative Council will incorporate the one set of amendments and then incorporate the other and if it makes changes to the prior set amendments, it will make the changes.

Rep. Porter: I move a Do Pass as amended.

Rep. Anderson: Second.

VOTE: 10 y 3 n DO PASS CARRIED

Bill Carrier: Rep. Damschen

FISCAL NOTE
Requested by Legislative Council
02/10/2011

Amendment to: HB 1297

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures			\$72,100		\$8,000	
Appropriations			\$72,100		\$8,000	

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

HB 1297 relates to the regulation of abortion. Amended Section 2: 14-02.1-02.1 a & b) adds language requirements to already produced materials on abortion, c & d) adds new requirements for material development.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Amended Section 2: 14-02.1-02.1 a) Currently requires geographically indexed materials designed to inform women of public and private agencies and services available to assist a woman through pregnancy, upon childbirth, and while the child is dependent, including adoption agencies. The publication to fulfill this requirement is in print and has been distributed.

The amended portion requires additional language stating it is unlawful to coerce a woman to undergo an abortion; a physician who performs an abortion upon a woman without her informed consent may be liable for damages; the law permits adoptive parents to pay costs of prenatal care, childbirth and neonatal care; there are many public and private agencies able to help a woman carry a child to term and assist after the child is born; the state of North Dakota strongly urges the contact of one or more agencies before making a final decision about abortion and; the law requires the physician give opportunity to call agencies before you undergo an abortion. This amendment will require updating of the current publication, printing and distribution (postage) of the new publication.

Amended Section 2: 14-02.1-02.1 b) Currently requires materials printed in a booklet format, designed to inform women of the probable anatomical and physiological characteristics of an unborn child at two-week gestational increments, using color pictures for the majority of images. This booklet was produced in 1998 and reprinted in 2001. Due to content stability, reprinting has not been necessary. The booklet is distributed as needed/ requested.

The amended portion requires color photographs of the development of an unborn child and removes the language stating the majority of pictures must be in color. Additional language to the booklet includes descriptions about brain and heart function, the presence of external members and internal organs during the stages of development and any relevant information on the possibility of the unborn child's survival. This amendment will require updating of the current publication, and printing and distribution (postage) of the new booklet.

Amended Section 2: 14-02.1-02.1 c) Adds new requirements for material development including information on

support obligations of the father; and how paternity establishment and child support services and enforcement may be obtained. Costs associated with this include professional fees (contractor), printing and distribution (postage).

Amended Section 2: 14-02.1-02.1 d) Adds new requirements for material development including information describing the various surgical and drug-induced methods of abortion as well as the immediate and long-term medical risks commonly associated with each abortion. Costs associated with this include professional fees (contractor), printing and distribution (postage).

There are no categorical grant funds within the department that could accommodate these projects without having to eliminate existing services and/or projects.

Ongoing costs of printing and distribution will be required in the 2013-2015 biennium.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

2011-2013

Postage: \$2,600 - required for mailing the publications.

Printing: \$52,000 - required for printing the publications. (see following breakdown of printing costs)

Section 2.14-02.1-02.1-

a) This is a current publication and is updated on a regular schedule. The amended requirements can be included with the next revision, \$0.

b) This is a current publication that is not scheduled for reprinting because sufficient quantity is on hand. Reprinting the booklet will be necessary to meet the new requirements. Federal funds used to print the original document have been reduced and cannot accommodate this reprinting without eliminating existing services and/or projects. Because this information is unlikely to change, printing a large quantity of 25,000 booklets lasting 8-10 years would be cost effective. \$50,000;

c&d) Printing two new brochures \$2,000.

Professional Fees: \$17,500

Section 2.14-02.1-02.1 b, c, & d, includes amount for a contractor and graphic artist to development and design materials. \$50/hr x 300 hours for contractor and \$50/hr x 50 hrs for graphic designer.

2013-2015

Postage: \$3,000 - required for mailing publications.

Printing: \$5,000 - the two new brochures developed in 2011-13 will require updating/reprinting to stay current.

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Funding for this project is not included in the Department's appropriation bill (HB 1004). The Department will need a general fund appropriation to carry out this project.

Name:	Kathy J. Albin	Agency:	Health Dept.
Phone Number:	328.4542	Date Prepared:	02/10/2011

FISCAL NOTE

Requested by Legislative Council
01/11/2011

Bill/Resolution No.: HB 1297

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

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2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
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2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

HB 1297 relates to the regulation of abortion. Amended Section 2: 14-02.1-02.1 a & b) adds language requirements to already produced materials on abortion, c & d) adds new requirements for material development.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Amended Section 2: 14-02.1-02.1 a) Currently requires geographically indexed materials designed to inform women of public and private agencies and services available to assist a woman through pregnancy, upon childbirth, and while the child is dependent, including adoption agencies. The publication to fulfill this requirement is in print and has been distributed.

The amended portion requires additional language stating it is unlawful to coerce a woman to undergo an abortion; a physician who performs an abortion upon a woman without her informed consent may be liable for damages; the law permits adoptive parents to pay costs of prenatal care, childbirth and neonatal care; there are many public and private agencies able to help a woman carry a child to term and assist after the child is born; the state of North Dakota strongly urges the contact of one or more agencies before making a final decision about abortion and; the law requires the physician give opportunity to call agencies before you undergo an abortion. This amendment will require updating of the current publication, printing and distribution (postage) of the new publication.

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The amended portion requires color photographs of the development of an unborn child and removes the language stating the majority of pictures must be in color. Additional language to the booklet includes descriptions about brain and heart function, the presence of external members and internal organs during the stages of development and any relevant information on the possibility of the unborn child's survival. This amendment will require updating of the current publication, and printing and distribution (postage) of the new booklet.

Amended Section 2: 14-02.1-02.1 c) Adds new requirements for material development including information on support obligations of the father; and how paternity establishment and child support services and enforcement may be obtained. Costs associated with this include professional fees (contractor), printing and distribution (postage).

Amended Section 2: 14-02.1-02.1 d) Adds new requirements for material development including information describing the various surgical and drug-induced methods of abortion as well as the immediate and long-term medical risks commonly associated with each abortion. Costs associated with this include professional fees (contractor), printing and distribution (postage).

There are no categorical grant funds within the department that could accommodate these projects without having to eliminate existing services and/or projects.

Ongoing costs of printing and distribution will be required in the 2013-2015 biennium.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

2011-2013

Postage: \$2,600 - required for mailing the publications.

Printing: \$52,000 - required for printing the publications. (see following breakdown of printing costs)

Section 2.14-02.1-02.1-

a) This is a current publication and is updated on a regular schedule. The amended requirements can be included with the next revision, \$0.

b) This is a current publication that is not scheduled for reprinting because sufficient quantity is on hand. Reprinting the booklet will be necessary to meet the new requirements. Federal funds used to print the original document have been reduced and cannot accommodate this reprinting without eliminating existing services and/or projects. Because this information is unlikely to change, printing a large quantity of 25,000 booklets lasting 8-10 years would be cost effective. \$50,000;

c&d) Printing two new brochures \$2,000.

Professional Fees: \$17,500

Section 2.14-02.1-02.1 b, c, & d, includes amount for a contractor and graphic artist to development and design materials. \$50/hr x 300 hours for contractor and \$50/hr x 50 hrs for graphic designer.

2013-2015

Postage: \$3,000 - required for mailing publications.

Printing: \$5,000 - the two new brochures developed in 2011-13 will require updating/reprinting to stay current.

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Funding for this project is not included in the Department's appropriation bill (HB 1004). The Department will need a general fund appropriation to carry out this project.

Name:	Kathy J. Albin	Agency:	Health
Phone Number:	328.4542	Date Prepared:	01/28/2011

Date: 2-7-11
Roll Call Vote # 7

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1297

House HUMAN SERVICES Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Pietsch Seconded By Rep. Holman

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN WEISZ			REP. CONKLIN		
VICE-CHAIR PIETSCH			REP. HOLMAN		
REP. ANDERSON			REP. KILICHOWSKI		
REP. DAMSCHEN					
REP. DEVLIN					
REP. HOFSTAD					
REP. LOUSER					
REP. PAUR					
REP. PORTER					
REP. SCHMIDT					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

*motion to add language to
bring FN down to \$50,000
Voice Vote Motion Carried*

Date: 2-8-11
Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1297

House HUMAN SERVICES Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Devlin Seconded By Rep. Hofstad

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN WEISZ			REP. CONKLIN		
VICE-CHAIR PIETSCH			REP. HOLMAN		
REP. ANDERSON			REP. KILICHOWSKI		
REP. DAMSCHEN					
REP. DEVLIN					
REP. HOFSTAD					
REP. LOUSER					
REP. PAUR					
REP. PORTER					
REP. SCHMIDT					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

*Voice Vote
Motion Carried*

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1297

Page 4, line 15, replace "the" with "an"

Page 4, line 15, remove "of her pregnancy without first determining"

Page 4, line 16, remove "postfertilization age"

Page 4, line 16, after "the" insert "twenty-four-hour"

Page 4, line 16, remove "necessary to determine"

Page 4, line 17, remove "postfertilization age"

Page 4, line 22, after "10." insert "\"Physician\" means an individual who is licensed to practice medicine or osteopathy under chapter 43-17 or a physician who practices in the armed services of the United States or in the employ of the United States.

11."

Page 4, line 22, overstrike "the judgment of the"

Page 4, line 23, overstrike "attending physician" and insert immediately thereafter "reasonable medical judgment"

Page 4, line 25, replace "11." with "12."

Page 4, line 28, replace "12." with "13."

Page 4, line 29, replace "13." with "14."

Page 13, line 25, replace "board" with "state department of health"

Renumber accordingly

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1297

Page 7, line 9, after "abortion" insert "compliance" and after "form" insert "and an abortion data report form"

Page 7, line 10, after "The" insert "abortion compliance report"

Page 7, line 12, after the underscored period insert "The abortion data report form must include the data called for in the United States standard report of induced termination of pregnancy as recommended by the national center for health statistics."

Page 12, line 14, after "abortion" insert "data" and after the underscored comma insert "abortion compliance reports,"

Page 12, line 27, after the first "abortion" insert "compliance" and after "report" insert "and an individual abortion data report"

Page 12, line 28, after "The" insert "abortion data" and remove the overstrike over "~~must be confidential and~~"

Page 12, line 29, overstrike "This reporting" and insert immediately thereafter "The abortion data report"

Page 13, line 20, after "abortion" insert "compliance" and after "reports" insert ", abortion data reports"

Page 13, line 22, overstrike "therefrom" and insert immediately thereafter "from these reports"

Page 13, line 23, after "abortion" insert "compliance"

Page 13, line 24, remove "reports, complication reports, and adverse event"

Page 13, line 25, remove "The board may not release the name or"

Page 13, remove line 26

Page 13, line 27, replace "abortion was performed" with "Except for disclosure to a law enforcement officer or state agency, the department may not disclose an abortion compliance report without first removing any individually identifiable health information and any other demographic information, including race, marital status, number of previous live births, and education regarding the woman upon whom the abortion was performed"

Renumber accordingly

Date: 2-8-11
Roll Call Vote # 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1297

House HUMAN SERVICES Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Porter Seconded By Rep. Paur

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN WEISZ			REP. CONKLIN		
VICE-CHAIR PIETSCH			REP. HOLMAN		
REP. ANDERSON			REP. KILICHOWSKI		
REP. DAMSCHEN					
REP. DEVLIN					
REP. HOFSTAD					
REP. LOUSER					
REP. PAUR					
REP. PORTER					
REP. SCHMIDT					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

adopt both amendments
Voice Vote
Motion Carried

February 8, 2011

Y/K
2/9/11
1082

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1297

Page 1, line 6, remove "and"

Page 1, line 6, after "report" insert "; and to provide a statement of legislative intent"

Page 4, line 15, replace "the" with "an"

Page 4, line 15, remove "of her pregnancy without first determining"

Page 4, line 16, remove "postfertilization age"

Page 4, line 16, after "the" insert "twenty-four-hour"

Page 4, line 16, remove "necessary to determine"

Page 4, line 17 remove "postfertilization age"

Page 4, line 22, after "10." insert "Physician means an individual who is licensed to practice medicine or osteopathy under chapter 43-17 or a physician who practices in the armed services of the United States or in the employ of the United States."

11."

Page 4, line 22, overstrike "the judgment of the"

Page 4, line 23, overstrike " attending physician" and insert immediately thereafter "reasonable medical judgment"

Page 4, line 25, replace "11." with "12."

Page 4, line 28, replace "12." with "13."

Page 4, line 29, replace "13." with "14."

Page 7, line 9, after "abortion" insert "compliance"

Page 7, line 9, after "form" insert "and an abortion data report form"

Page 7, line 10, after "The" insert "abortion compliance report"

Page 7, line 12, after the underscored period insert "The abortion data report form must include the data called for in the United States standard report of induced termination of pregnancy as recommended by the national center for health statistics."

Page 8, line 29, overstrike "Proceedings" and insert immediately thereafter "All proceedings"

Page 9, line 2, after the period insert "A court may change the venue of proceedings under this section to another county only upon finding that a transfer is required in the best interests of the minor."

Page 9, line 3, remove "in the juvenile court of the county of the minor's residence"

Page 12, line 14, after "abortion" insert "data"

Page 12, line 14, after the underscored comma insert "abortion compliance reports."

2082

Page 12, line 27, after the first "abortion" insert "compliance"

Page 12, line 27, after "report" insert "and an individual abortion data report"

Page 12, line 28, after "The" insert "abortion data"

Page 12, line 28, remove the overstrike over "~~must be confidential and~~"

Page 12, line 29, overstrike "This reporting" and insert immediately thereafter "The abortion data report"

Page 13, line 20, after "abortion" insert "compliance"

Page 13, line 21, after the first underscored comma insert "abortion data reports,"

Page 13, line 22, overstrike "therefrom" and insert immediately thereafter "from these reports"

Page 13, line 24, replace "reports, complication reports, and adverse event" with "compliance"

Page 13, line 25, remove "The board may not release the name or"

Page 13, replace lines 26 and 27 with "Except for disclosure to a law enforcement officer or state agency, the department may not disclose an abortion compliance report without first removing any individually identifiable health information and any other demographic information, including race, marital status, number of previous live births, and education regarding the woman upon whom the abortion was performed."

Page 16, after line 26, insert:

"SECTION 16. STATEMENT OF LEGISLATIVE INTENT. The costs incurred by the state department of health as a result of producing the printed information required under section 2 of this Act may not exceed fifty thousand dollars."

Renumber accordingly

Date: 2-8-11
Roll Call Vote # 3

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1297

House HUMAN SERVICES Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Porter Seconded By Rep. Anderson

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN WEISZ	✓		REP. CONKLIN		✓
VICE-CHAIR PIETSCH		✓	REP. HOLMAN		✓
REP. ANDERSON	✓		REP. KILICHOWSKI	✓	
REP. DAMSCHEN	✓				
REP. DEVLIN	✓				
REP. HOFSTAD	✓				
REP. LOUSER	✓				
REP. PAUR	✓				
REP. PORTER	✓				
REP. SCHMIDT	✓				

Total (Yes) 10 No 3

Absent _____

Floor Assignment Rep. Damschen

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1297: Human Services Committee (Rep. Weisz, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (10 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). HB 1297 was placed on the Sixth order on the calendar.

Page 1, line 6, remove "and"

Page 1, line 6, after "report" insert "; and to provide a statement of legislative intent"

Page 4, line 15, replace "the" with "an"

Page 4, line 15, remove "of her pregnancy without first determining"

Page 4, line 16, remove "postfertilization age"

Page 4, line 16, after "the" insert "twenty-four-hour"

Page 4, line 16, remove "necessary to determine"

Page 4, line 17 remove "postfertilization age"

Page 4, line 22, after "10." insert "Physician means an individual who is licensed to practice medicine or osteopathy under chapter 43-17 or a physician who practices in the armed services of the United States or in the employ of the United States."

11."

Page 4, line 22, overstrike "the judgment of the"

Page 4, line 23, overstrike "attending physician" and insert immediately thereafter "reasonable medical judgment"

Page 4, line 25, replace "11." with "12."

Page 4, line 28, replace "12." with "13."

Page 4, line 29, replace "13." with "14."

Page 7, line 9, after "abortion" insert "compliance"

Page 7, line 9, after "form" insert "and an abortion data report form"

Page 7, line 10, after "The" insert "abortion compliance report"

Page 7, line 12, after the underscored period insert "The abortion data report form must include the data called for in the United States standard report of induced termination of pregnancy as recommended by the national center for health statistics."

Page 8, line 29, overstrike "Proceedings" and insert immediately thereafter "All proceedings"

Page 9, line 2, after the period insert "A court may change the venue of proceedings under this section to another county only upon finding that a transfer is required in the best interests of the minor."

Page 9, line 3, remove "in the juvenile court of the county of the minor's residence"

Page 12, line 14, after "abortion" insert "data"

Page 12, line 14, after the underscored comma insert "abortion compliance reports."

Page 12, line 27, after the first "abortion" insert "compliance"

Page 12, line 27, after "report" insert "and an individual abortion data report"

Page 12, line 28, after "The" insert "abortion data"

Page 12, line 28, remove the overstrike over "~~must be confidential and~~"

Page 12, line 29, overstrike "This reporting" and insert immediately thereafter "The abortion data report"

Page 13, line 20, after "abortion" insert "compliance"

Page 13, line 21, after the first underscored comma insert "abortion data reports."

Page 13, line 22, overstrike "therefrom" and insert immediately thereafter "from these reports"

Page 13, line 24, replace "reports, complication reports, and adverse event" with "compliance"

Page 13, line 25, remove "The board may not release the name or"

Page 13, replace lines 26 and 27 with "Except for disclosure to a law enforcement officer or state agency, the department may not disclose an abortion compliance report without first removing any individually identifiable health information and any other demographic information, including race, marital status, number of previous live births, and education regarding the woman upon whom the abortion was performed."

Page 16, after line 26, insert:

"SECTION 16. STATEMENT OF LEGISLATIVE INTENT. The costs incurred by the state department of health as a result of producing the printed information required under section 2 of this Act may not exceed fifty thousand dollars."

Renumber accordingly

2011 SENATE HUMAN SERVICES

HB 1297


2011 SENATE STANDING COMMITTEE MINUTES

Senate Human Services Committee Red River Room, State Capitol

HB 1297
3-14-2011
Job Number 15362

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to an abortion report form and abortion inducing drugs.

Minutes:

Attachments

Senator Judy Lee opened the hearing on **Engrossed HB 1297**. The fiscal note indicates about 72,000 in general fund expenditures this biennium.

Rep. Betty Grande (District 41) introduced HB 1297. She made a correction to the fiscal note. The last paragraph of the bill says "this act may not exceed fifty thousand dollars". This bill is to clarify some wording in the abortion control act because an issue has surfaced where an unlicensed physician was performing abortions at the abortion clinic in Fargo. The wording was shored up so everybody involved in this knows what their role is in law. She brought this forward to ensure the health and safety of the women of ND when it comes to this procedure and how it is necessary to have laws in place to protect.

Christopher Dodson, ND Catholic Conference, testified in support of HB 1297. Attachment #1

Senator Tim Mathern noted the situation in Fargo and asked what part of this bill deals with it.

Mr. Dodson said the part of the bill that makes a difference is the change in the report form because there was no mechanism. The abortion compliance report form would go to the Department of Health and then there would be a public record as to what occurred. It provides a better enforcement tool or paper trail to determine whether or not all the conditions of a legal abortion occurred.

Janne Myrdal, State Director for Concerned Women for America of ND, testified in support of HB 1297. Testimony #2 She also made reference to in vitro and reduction and relayed a story that twins will be born at the end of the month on the East Coast. They happen to be frozen embryos for 10 years in long term storage and will be adopted.

Senator Tim Mathern asked for information about her organization.

Ms. Myrdal replied that nationwide there are over half a million members. They are the largest women's organization in ND but she didn't have the specific membership numbers.

Ms. Myrdal provided more information on the frozen embryos at the request of Sen. Berry.

Tom Freier, ND Family Alliance, testified in support. Attachment #3

Opposing Testimony

Tammi Kromenaker, Director of Red River Women's Clinic, testified in opposition to 1297. Attachment #4

Senator Judy Lee asked for her perspective on the incident pertaining to the unlicensed physician.

Ms. Kromenaker answered that it was an unfortunate administrative oversight. The doctor travels to their clinic six times a year from Colorado. She helps out where it's difficult to find local physicians to provide the service. This doctor had moved earlier in the year and failed to notify the state board about her address change. She is one of only two licensed staff whose license expires in June rather December as is every other licensed personnel in their clinic. It was an oversight and has been corrected.

She continued to be licensed in Colorado and South Dakota. She has never had a black mark on any of her licenses and it had no effect on her abilities or competency as a physician.

Senator Tim Mathern wondered what the top reasons given by people these days for having an abortion.

Ms. Kromenaker said that most women feel that another child would not fit into their family at this time because of economic reasons or continuing school reasons. A lot say they are not ready right now. For many other women it is a birth control failure.

Senator Spencer Berry asked for an explanation of the two available procedures.

Ms. Kromenaker explained that the FDA label is three pills and three visits. The evidence based regimen is one pill and two visits.

Senator Spencer Berry asked if there is a reason manufacturers haven't pursued an FDA approval for the second.

Ms. Kromenaker said they are in the process of changing the label.

Amy Jacobson, ND public Affairs Manager for Planned Parenthood MN, ND, SD, presented testimony against 1297. Attachment #5

Connie Hildebrand, AAUW-ND, appeared in opposition to HB 1297. Attachment #6

Becca Sorgert, ND District 44 resident, spoke against HB 1297. Attachment #7

Katrina Turman Lang, Fargo Attorney and voter in District 46, urged a Do Not Pass. Attachment #8

Senator Tim Mathern asked if she was suggesting amendments to sections 5 and 6 or deletions of them.

Ms. Turman Lang said she was suggesting a Do Not Pass recommendation on the whole bill. She would specifically suggest deletions of those sections.

Senator Tim Mathern said she had implied that there were pro choice and anti choice judges. He asked if there was such a list or how it was determined.

Ms. Turman Lang was not aware of any such list.

Janelle Moos, ND Council on Abused Women's Services, presented written testimony to the committee in opposition. Attachment #9

Senator Spencer Berry asked her to clarify her statement that this bill all but eliminates the option.

Ms. Moos responded that the funding would be such that it would be less available to provide those services to victims of sexual assault and rape – the bill as drafted in its current form.

Senator Judy Lee pointed out that the fiscal note describes the fact that the costs incurring here strictly have to do with the printed materials. The state doesn't fund abortions.

Attachment #10 – Written testimony from **Renee Stromme**, ND Women's Network, recommending a Do Not Pass was entered into the record.

There was no neutral testimony.

Senator Spencer Berry addressed a question to Ms. Kromenaker about the evidence based method which is used throughout the nation. He wanted to know how far into the estimated gestational age the clinic recommends the use of that procedure.

Ms. Kromenaker explained that the FDA regimen is recommended up to 49 days and the evidence based regimen will go up to 63 days. She also addressed the cost of abortion.

Senator Judy Lee asked whether or not someone would have trouble having access to health care if they ended up having some kind of a complication after the procedure.

Ms. Kromenaker said they had only five reportable adverse events out of nearly a thousand medication abortions since Sept. 2007. She explained those events. She also explained that they require routine follow up at their clinic. Since they are the only provider

of abortion in ND they feel they are the best people who can evaluate the post medication abortion vaginal ultrasounds that they do.

She explained some of the requirements to be eligible for the medication abortion.

She said they had never heard of a woman being denied care but they have heard of women being made to feel bad about her decision. They have treated her medically but treated her poorly.

There was a discussion on the dosage of the medications, the availability of the physician, and follow up. It is rare that a woman does not return for follow up from a medication abortion.

The hearing on HB 1297 was closed.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Human Services Committee
Red River Room, State Capitol

HB 1297
3-15-2011
Job Number 15486

☐ Conference Committee

Committee Clerk Signature

Remonson

Explanation or reason for introduction of bill/resolution:

Minutes:

Attachments.

Senator Judy Lee opened committee work on HB 1297.

Senator Tim Mathern requested to have Legislative Council be asked whether or not specific items can be placed in here regarding the FDA's labeling.

Senator Judy Lee felt it is a mistake for them to legislate medical care. Everything changes and that is the reason physicians should be able to do whatever is appropriate at the time based on whatever the most current information is.

Discussion: There was no testimony that indicated there was more risk with off label use.

Senator Spencer Berry was concerned with having contracts in place. He addressed his concerns of a woman needing medical care after taking the medications for abortion. It could require someone who has a moral objection to it to have to be involved by taking care of a complication or problem. The procedure is an ongoing procedure and takes place over time. A person who chooses to perform an abortion should be the one to do the follow up. He didn't feel a person should be a part of the abortion process that has a moral objection to it.

Senator Judy Lee felt it wasn't right to intrude into something that is legal as long as it is being done safely. She didn't feel it was right to say one has to have a contract with another physician to do the follow up. If a woman is coming in after the second or third day she is coming in after the fact to be treated. The person treating is not a part of the process itself.

Senator Tim Mathern asked about the medicine used and discussion followed on the types of medication and when they are given.

The morning after pill is a different situation and is not addressed by this.

Senator Judy Lee said there are other things in that section that are of concern. One is number 13 on page 4 line 31. With one line all categories of development have been included under one definition. She thought they should see how the Judiciary committee is looking at the definitions when they are dealing with a bill there, too.

Off label usage of medications was discussed.

Senator Judy Lee didn't think the legislature should be telling physicians the details of how to do stuff if they are licensed – no matter what the process. It is not the responsibility of the legislature – it is way too specific.

Senator Spencer Berry said he would probably agree on the vast majority of issues but this is a very unique situation and sometimes in unique situations they call for unique remedies.

The printed information part of the bill starting on page 5 was reviewed. A request was made for colored copies of the bill so the members could see what the changes originally were and what was changed in committee.

Next the judicial bypass on page 9 was addressed. Senator Judy Lee had a concern with it having to happen in a home court of the individual. She felt that, in a rural state, it would be a violation of privacy on the part of the individual.

There was concern with the term clear and convincing evidence.

Notifying "parents" was discussed. Does "parents" mean both? If only one parent has custody is that the only parent that needs to be notified?

There was discussion on "designated hospitals" on page 10 and who designates them.

The contracted physician has to have a hospital designated in case it is needed. There were questions as to whether the words "associated with the use or ingestion of the abortion-inducing drug" were needed. It was pointed out that there are different levels of hospitals and just because someone presents with a medical problem it doesn't mean the facility is prepared to provide that service.

Page 11 - Discussion on the procedure of giving the medication in the physical presence of the physician. There are lots of things in which the physician has to be a part of the process but there isn't anything about those processes that are in state law.

Page 13 - The reporting process and making the information available was reviewed. Differences of opinion were voiced on the need for the information to be public record.

Senator Judy Lee suggested they need to consider whether or not it is necessary to have two reports since there are already significant reports required by the FDA and the Health Department.

Page 16 – top of the page - was reviewed and it was felt that it was only talking about the choice between child birth and abortion and was not talking about sex education.

Senator Judy Lee pointed out the term "unborn child" was used again. This was something they needed to talk about.

Attachment #11 – Follow up information from Janelle Moos dated March 14, 2011.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Human Services Committee Red River Room, State Capitol

HB 1297
3-28-2011
Job Number 16061

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Minutes:

Attachments.

Senator Judy Lee opened committee work on HB 1297. They need to pay attention to what is going on with the companion bill 1450. She presented amendment .0200 for committee discussion. Attachment #12

Another amendment presented for discussion was from Christopher Dodson dated 3-28-11. Attachment #12

Both sets of amendments were reviewed.

Christopher Dodson talked about the report forms. The intent of the bill was to put some compliance questions into the form. That raises questions because the data information like race, residence, etc. is protected by HIPAA because that can be used to identify somebody especially in small counties. The idea of the two report forms is to keep all the statistical information on one form and that would be only aggregate information to be released. The other form is basically a compliance checklist form to ensure that the abortion met the legal requirements. That does not have identifying information.

Senator Judy Lee asked if there was any reason to believe, other than the one incident, that there hasn't been compliance with the law.

Mr. Dodson replied that they don't know one way or another because they don't have information to confirm compliance. The current form requests only data information and doesn't deal with compliance except the ultra sound question which was required last session.

The situation regarding HIPAA on the report forms was taken care of by House amendments.

Another area of concern with the reports was the 24 hour reports instead of the monthly reports even though the current law requires compliance reports within 30 days.

The bill drafters and sponsors were concerned that 30 days was too long to find out if there had been a problem with compliance. The suggested amendment (Attachment #13) addresses that.

Senator Tim Mathern asked what the consequence would be in his estimation of the amendments in regard to "fetus" or "unborn child".

Mr. Dodson explained that over the years that law has been amended so many times using different phrases some of which are not even defined so they use fetus, embryo, unborn child and he thought one other. For legal purposes for that chapter, they are the same organism and it makes no sense to have different terms when you go from section to section so you need one term.

Senator Judy Lee felt using the term "unborn child" all the way through supports the idea that an embryo is the same and it affects the whole picture with contraceptives and in vitro fertilization. She sees it complicating things more than fixing them.

Mr. Dodson responded that the definition only applies within the title. The title does not change the definition of the organism that is involved in this nor does the bill change in any way restrictions regarding abortion.

Discussion returned to the proposed amendment by Mr. Dodson. There was a typographical error. The changes refer to page 13 not page 1.

Senator Spencer Berry asked Mr. Dodson to speak to the clear and convincing evidence standard for judicial bypass.

Mr. Dodson explained that the U.S. Supreme expressly approved the clear and convincing standard for judicial bypass proceedings. He compared clear and convincing evidence and preponderance of evidence which was followed by discussion.

Senator Tim Mathern asked Mr. Dodson to clarify if the bill as it is in front of them changes anything about the issue of parents.

Mr. Dodson replied that the consent and notice requirements are not touched in the bill.

Senator Spencer Berry asked about the portion concerning abortion inducing drugs and the different treatment under the law. He wanted to know if that is permissible in the use of it.

Mr. Dodson answered that the Supreme Court and federal courts have repeatedly stated that abortion can be treated differently under the law from other medical procedures.

Senator Spencer Berry said he would like to see the bill as written. He didn't see a reason for the amendments.

Senator Judy Lee responded that she would like to see the law as it is now.

Senator Tim Mathern asked if the intern could get some information on the clear and convincing evidence and if it applies to the original court deciding whether or not to permit a change in venue.

Mr. Dodson offered that this bill doesn't address the standard needed for the change of venue. It permits the change of venue and simply says "if it's required in the best interest of the minor". The clear and convincing part only goes to the findings necessary to grant the judicial bypass.

He also said that the existing law does not permit a change of venue but it is believed to be happening. This bill would permit a change of venue and provide a standard for doing it that is for the best interest of the minor.

Committee work on HB 1297 was recessed for the day.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Human Services Committee
Red River Room, State Capitol

HB 1297
3-29-2011
Job Number 16122

☐ Conference Committee

Committee Clerk Signature

K. Johnson

Explanation or reason for introduction of bill/resolution:

Minutes:

Attachments.

Senator Judy Lee opened committee discussion on HB 1297.

Darin Meschke (Director of Division of vital Records, Department of Health) He explained that they are the agency responsible for the certification and registration of the abortion data. He provided a copy of the current version of the abortion report form - Report of Induced Termination of Pregnancy. Attachment #14

The bill also asks to add adverse events to the form or to a form.

He said there is some misconception in the language in the bill in that it asks for four reports (data, complication, adverse effects, and compliance). He explained that there is no separate complications report. Complications are on the current form – item #17.

He said it would be their request to have the adverse events added to this report as an additional line under #17. He provided a copy of the FDA MedWatch adverse events. These are the items they would potentially add under 17 as an option. Attachment #15

The abortion data report would include complications and adverse events.

The only other report that the bill is talking about is the compliance report which is the compliance with the abortion control act. Currently that checklist does not exist.

The health department would prefer the passive compliance.

Attachment #16– ND Occurrence Induced Termination of Pregnancy Data 2009 – The Department of Health 2009 abortion report that is required by state law.

He also commented on the requested change to the reports requiring them to be submitted within 24 hours. There is a disconnection with the reporting time. They would have to be the same date requirement because they are on the same form. The health department doesn't see a need to have it reported to them within 24 hours.

Senator Tim Mathern explained that one of the rationales brought to the committee for more than one report was to separate data which could identify an individual from data

which is more of an aggregate form. He asked if that would create problems for patients in terms of being identified.

Mr. Meschke thought as the bill was originally written they asked for the report to be an open record but through an amendment that was removed. These reports would still be confidential by state law. In his understanding the only thing that would be made available to the public would be the compliance report or checklist. As long as there is no identifying information on the compliance report making that a public record is probably reasonable.

He felt the compliance checklist should be separate. They could create that form with the understanding that it is an open record so they could eliminate all the identifiable information.

Senator Judy Lee asked what he saw being included in the compliance report form.

Mr. Meschke said the health department is still looking at that. It's worded in a way that it has to be compliant with the abortion control act which is a very detailed act.

Senator Judy Lee asked if he had any other recommendations for the committee to consider besides adding the adverse events to the current report and that there is a separate compliance report in order to preserve privacy.

Mr. Meschke replied that the only other one was making the requirement of the number of days the report is due the same.

Senator Judy Lee referred to information she had requested from the intern (Burdens of Proof and Penalties - Attachment #17).

There was discussion on how the compliance report could be handled without using identifying information or redacting such things as signatures.

The reporting time was addressed. The thirty days allows for the lag time to accurately fill out the report if there are complications. The Department of Health doesn't get a separate complication report. Ten business days for the compliance report seemed reasonable.

Adverse events and the likelihood of when they were to happen were discussed.

Collection of new data would be better for the Health Dept. to start as of January 1, 2012. That is usually when they make all of their changes to data collection. The compliance report could start on August 1.

Senator Dick Dever wondered if the reporting dates to Legislative Management would need to be reconciled with the reporting dates to the Department of Health.

Mr. Meschke didn't think those dates would need to be changed.

Discussion followed on changing the reporting date to Legislative Management. Whatever committee receives those reports may not have a meeting after Sept. 1 but they should have one between July 1 and Sept. 1.

Senator Spencer Berry asked Mr. Dodson to comment on the issue on page 13 - moving the reporting days.

Mr. Dodson offered wording to address what the committee had discussed. He broke it down to two sentences so all abortion compliance reports must be signed by the attending physician within 24 hours and submitted to the State Department of Health within 10 business days from the date of the abortion. All other abortion reports must be signed by the attending physician and submitted to the State Department of Health within 30 days from the date of the abortion.

The committee moved on to discussing definitions. Some references to "unborn child" create issues with physicians who are involved with fertility treatment. Attachment #18 is information on the stages of fetal development.

Senator Spencer Berry preferred to see the wording left as it is. He said "unborn child" does fit the bill.

Senator Judy Lee pointed out that current statute does use terminology such as fetus and embryo. There is an important reason to do that particularly when it has to do with the fertility clinics and the ability to decide what the situation is for the embryos that are captured for in vitro fertilization.

Senator Tim Mathern talked about "clinically diagnosable pregnancy" and his understanding of the meaning.

Senator Judy Lee was not comfortable with using "unborn child" all the way through. She wanted to know how it carries over to fertility treatments.

Penalties in Section 9 on page 14 were discussed.

Printed materials are already made available by the health department as well as the clinic. They are available both in print and online. The language about the materials is just to make sure the individual receives them. **Senator Judy Lee** had objections to some of the information that has no scientific basis being included – increased risk of breast cancer and the possible adverse psychological effects.

Page 10, Section 6 was addressed by the committee and various opinions and concerns were expressed concerning having the physician in the room when the medication is given, off label, and signed contracts.

Senator Judy Lee recessed committee work for the day.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Human Services Committee
Red River Room, State Capitol

HB 1297
3-30-2011
Job Number 16173

☐ Conference Committee

Committee Clerk Signature

R. Morrison

Explanation or reason for introduction of bill/resolution:

Minutes:

Attachments.

Senator Judy Lee opened HB 1297 for committee work.

Senator Gerald Ugem was feeling that this bill is making things so restrictive that they would be eliminating abortions in North Dakota. He wondered if they have accomplished anything if the abortion clinic moves across the border into Minnesota.

The intern was asked to do some research on kinds of comparable restrictions in place in MN and also implications with interstate law.

Senator Spencer Berry did not believe it makes it impossible to get an abortion in ND. All they are really asking is to comply with the law in the performance.

Senator Gerald Ugem saw that the contract with another physician might be impossible to get and in that case would eliminate the clinic.

Senator Spencer Berry said the contract only applies to the medical abortion.

Senator Judy Lee disagreed that all the bill does is require compliance. She had no problem with the compliance report but continued to have concerns about the rest of the bill including a lot of the definitions and some of the requirements for time and distance and about being so specific in statute dealing with medical processes. In her view some of the specifics in the bill belong in rule if it's going to be in any kind of state authority area.

Senator Tim Mathern, in response to the comment by Sen. Ugem, said the energy behind this is the annual report that is available from the Department of Health regarding abortions. If there was no clinic, he didn't know what data they would get. The information on how many people get abortions drives the program for alternatives to abortion. That data could be lost if there was no clinic.

Discussion was about interstate laws, women crossing state lines to get abortions, doctors crossing state lines to perform abortions, interstate commerce.

Senator Judy Lee wanted to get information from the Attorney General's office regarding definitions and processes and whether they see any issues.

Committee work was recessed for the day.

Attachment #19 – Results of the research done by the intern.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Human Services Committee
Red River Room, State Capitol

HB 1297
4-5-2011
Job Number 16376

☐ Conference Committee

Committee Clerk Signature

R. Amberson

Explanation or reason for introduction of bill/resolution:

Minutes:

Attachments.

Senator Judy Lee opened committee work on HB 1297.

She reported that she had met with the Attorney General's office to get information relating to this bill. She also visited with a retired district judge to see what her observations were procedurally. Both of the parties talked about the judicial bypass section. In their experience, there are concerns. Not all counties have judges that are there all the time. There ends up being delays because of that and in a time sensitive situation that becomes an obstacle. Another concern she heard was that keeping it in the home county really is intended to create a situation in which the shame or embarrassment of asking for the abortion for the minor is a factor because they might know the judge.

She was waiting for responses to a question she had on the kinds differences there are between clear and convincing evidence and preponderance of evidence which it now is.

Senator Dick Dever said his impression was that the judges' have the ability to work this out. "Must be conducted in the juvenile court of the county of the minor's residence" is in current law. This expands the ability of the judge to move it to another county. He suggested that it might more appropriately say "judicial district" instead of county.

Discussion followed on whether there was a need to change county to "judicial district". After more discussion there was an understanding that "court of the county of the minor's residence" means the district courts.

The portion on penalties was discussed.

Senator Tim Mathern said this was part of the discussion in the Attorney General's office. To him the discussion indicated that the possibility of a charge for a AA felony remains. This section can be changed back to a Class C felony for knowingly or negligently causing the death. That does not preclude a charge being made for a Class AA felony for intentionally causing the death of an infant born alive. There is that section in the homicide

section of the code. He offered amendments to change that section back to a Class C felony for knowingly or negligently causing the death - .02004. Attachment #20
He explained that the amendments address four areas: 1. The forms. 2. The issue of information. 3. The reference to increased risk of breast cancer. 4. The penalty section.

These amendments reflect input from committee members, those who spoke in front of the committee, and input from the state agency that would be involved. They were drafted to reflect the committee discussion.

Senator Tim Mathern moved to adopt amendments .02004.

Seconded by **Senator Dick Dever**.

Darin Meschke (Department of Health) was asked if the amendments were ok with him and he responded that they were.

The rationale for changing the reporting date from July to September was because of the meeting dates of Legislative Management.

The meanings of knowingly, intentionally, and negligently were discussed.

Roll call vote 5-0-0. **Amendments adopted.**

Senator Judy Lee was still concerned about the definition of "unborn child" meaning from conception until birth. She thinks it has an impact on the in vitro fertilization concerns.

Senator Dick Dever wondered if that concern was relieved by the term "clinically diagnosable pregnancy".

Discussion followed on the suggestions of adding intrauterine pregnancy after clinically diagnosable or to add a (c) after line 22.

Ectopic pregnancies were explained and also discussed. It seemed to be the consensus of the committee that they wanted ectopic pregnancies to be able to be treated and addressed. Their goal was to find the best wording and where to place it. The intent was to clarify.

Senator Gerald Uglem wondered if there had been any concerns that this law could be challenged because it makes the use of the abortion drug almost impossible. Those who met with the Attorney General's office said the only legal concern dealt with the reporting form.

Vonette Richter (Legislative Council) appeared in front of the committee at the request of Sen. Lee to talk about the amendments she drafted for Sen. Mathern and amending further to address the concern of ectopic pregnancies.

Senator Judy Lee relayed concerns from a fertility specialist that this, as currently written, is going to be an onerous obstacle to fertilization assistance for people because of the way embryos are handled.

After discussing the options, form and style, language, and definitions Ms. Richter was asked to draft further amendments for consideration.

Aaron Birst (Association of Counties, The State's Attorneys in the Association) appeared to answer questions relating to the judicial bypass process. He addressed the challenges of scheduling a quick hearing in a county where there is no judge chambered and seeking a change in venue.

The section on drugs and signed contracts (page 10) was addressed by committee members. Provision needs to be provided to a woman for follow up care but the signed contract was a point of dissention.

Committee work was recessed until later in the day.

The committee was brought back to order to review amendment .02005. Attachment #21

A sub c. was created on page 1 "to treat a woman for an ectopic pregnancy."

Discussion followed on adding intrauterine which would include ectopic pregnancy and also the IVF. It was agreed to have the amendments redrafted to reflect the addition of intrauterine.

Committee work adjourned for the day.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Human Services Committee
Red River Room, State Capitol

HB 1297
4-6-2011
Job Number 16396

☐ Conference Committee

Committee Clerk Signature *W. M. M. M.*

Explanation or reason for introduction of bill/resolution:

Minutes:

Attachments.

Senator Judy Lee opened committee work on HB 1297.

Amendment .02006 was reviewed. Attachment #22 Adding intrauterine is somewhat redundant but it strengthens and clarifies that ectopic pregnancy can be treated and that fertility treatment is still acceptable.

Senator Tim Mathern moved to further amend to include the three items for page 1 and the three items for page 16 in the .02006 amendment. (The .02004 version was previously adopted. All amendments are reflected in the .02006 version.)

Seconded by **Senator Dick Dever**.

Roll call vote 5-0-0. **Amendment adopted.**

Senator Dick Dever moved a **Do Pass as Amended**.

Seconded by **Senator Spencer Berry**.

Senator Judy Lee pointed out that there were still things in the bill that were onerous and challenging to people who are looking for having an abortion. She was still very concerned about the judicial bypass geographical restrictions and about how they are going to see the signed contract implementation. She felt there is a strict law in ND that has regulated the process appropriately and making it harder doesn't necessarily solve a problem.

Senator Gerald Uglem commented that he thought existing law is good and to him this bill will eliminate abortion by the drug instead of by surgery. He would oppose the bill.

Senator Spencer Berry didn't think this would necessarily eliminate it. He thinks there might be changes in how it is implemented and that will be up to abortion providers to determine how they want to make that change. He said it clarifies and strengthens good policy.

Roll call vote 3-2-0. **Motion carried.**

Carrier is **Senator Spencer Berry.**

April 4, 2011

#20

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1297

Page 2, line 31, remove the overstrike over "and"

Page 3, line 1, remove "and"

Page 3, remove line 2

Page 3, line 3, remove "the decision of whether to undergo the abortion"

Page 6, line 31, after the first underscored comma insert "the possible"

Page 13, line 8, after "abortion" insert "compliance"

Page 13, line 8, after "physician" insert "within twenty-four hours"

Page 13, line 9, after "~~thirty~~" insert "ten business"

Page 13, line 9, remove the overstrike over "days"

Page 13, line 9, remove "twenty-four hours"

Page 13, line 10, after "All" insert "abortion data and"

Page 13, line 10, after the second "the" insert "attending"

Page 13, line 10, overstrike "providing"

Page 13, line 11, overstrike "the post-abortion care"

Page 13, line 12, overstrike "post-abortion care" and insert immediately thereafter "abortion"

Page 13, line 16, replace "twenty-four hours" with "thirty days"

Page 14, line 12, remove the overstrike over "G"

Page 14, line 12, remove "AA"

Page 14, line 12, remove the overstrike over "~~knowingly, or~~"

Page 14, line 13, remove the overstrike over "~~negligently,~~"

Page 14, line 13, remove "intentionally"

Page 17, line 5, replace "July" with "September"

Renumber accordingly

Date: 4-5-11Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1297Senate HUMAN SERVICES

Committee

☐ Check here for Conference CommitteeLegislative Council Amendment Number 05004Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment☐ Rerefer to Appropriations ☐ ReconsiderMotion Made By Sen. Mathern Seconded By Sen. Dever

Senators	Yes	No	Senators	Yes	No
Sen. Judy Lee, Chairman	✓		Sen. Tim Mathern	✓	
Sen. Dick Dever	✓				
Sen. Gerald Uglem, V. Chair	✓				
Sen. Spencer Berry	✓				

Total (Yes) 5 No 0Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

April 5, 2011

JB
4-6-11
102

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1297

Page 1, line 16, after "diagnosable" insert "intrauterine"

Page 1, line 21, remove the second "or"

Page 1, line 22, after "abortion" insert "; or

c. Treat a woman for an ectopic pregnancy"

Page 2, line 31, remove the overstrike over "and"

Page 3, line 1, remove "; and"

Page 3, remove line 2

Page 3, line 3, remove "the decision of whether to undergo the abortion"

Page 6, line 31, after the first underscored comma insert "the possible"

Page 13, line 8, after "abortion" insert "compliance"

Page 13, line 8, after "physician" insert "within twenty-four hours"

Page 13, line 9, after "thirty" insert "ten business"

Page 13, line 9, remove the overstrike over "-days"

Page 13, line 9, remove "twenty-four hours"

Page 13, line 10, after "All" insert "abortion data and"

Page 13, line 10, after the second "the" insert "attending"

Page 13, line 10, overstrike "providing"

Page 13, line 11, overstrike "the post-abortion care"

Page 13, line 12, overstrike "post-abortion care" and insert immediately thereafter "abortion"

Page 13, line 16, replace "twenty-four hours" with "thirty days"

Page 14, line 12, remove the overstrike over "G"

Page 14, line 12, remove "AA"

Page 14, line 12, remove the overstrike over "knowingly, or"

Page 14, line 13, remove the overstrike over "negligently,"

Page 14, line 13, remove "intentionally"

Page 16, line 20, after "diagnosable" insert "intrauterine"

Page 16, line 24, remove "or"

Page 16, line 24, after "abortion" insert "; or treat a woman for an ectopic pregnancy"

Page 17, line 5, replace "July" with "September"

Renumber accordingly

2 of 2

Date: 4-6-11

Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1297

Senate HUMAN SERVICES

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 02006 additions

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ ^{further} Adopt Amendment
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Sen. Mathern Seconded By Sen. Dever

Senators	Yes	No	Senators	Yes	No
Sen. Judy Lee, Chairman	✓		Sen. Tim Mathern	✓	
Sen. Dick Dever	✓				
Sen. Gerald Uglem, V. Chair	✓				
Sen. Spencer Berry	✓				

Total (Yes) 5 No 0

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 4-6-11

Roll Call Vote # 2

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1297

Senate HUMAN SERVICES

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 11.0506.02006 Title 03000

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Sen. Dever Seconded By Sen. Berry

Senators	Yes	No	Senators	Yes	No
Sen. Judy Lee, Chairman		✓	Sen. Tim Mathern	✓	
Sen. Dick Dever	✓				
Sen. Gerald Uglem, V. Chair		✓			
Sen. Spencer Berry	✓				

Total (Yes) 3 No 2

Absent 0

Floor Assignment Sen. Berry

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1297, as engrossed: Human Services Committee (Sen. J. Lee, Chairman)
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends
DO PASS (3 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1297
was placed on the Sixth order on the calendar.

Page 1, line 16, after "diagnosable" insert "intrauterine"

Page 1, line 21, remove the second "or"

Page 1, line 22, after "abortion" insert "; or

c. Treat a woman for an ectopic pregnancy"

Page 2, line 31, remove the overstrike over "and"

Page 3, line 1, remove "; and"

Page 3, remove line 2

Page 3, line 3, remove "the decision of whether to undergo the abortion"

Page 6, line 31, after the first underscored comma insert "the possible"

Page 13, line 8, after "abortion" insert "compliance"

Page 13, line 8, after "physician" insert "within twenty-four hours"

Page 13, line 9, after "~~thirty~~" insert "ten business"

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Page 13, line 10, after "All" insert "abortion data and"

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Page 13, line 10, overstrike "providing"

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Page 14, line 12, remove the overstrike over "G"

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Page 14, line 13, remove the overstrike over "~~negligently,~~"

Page 14, line 13, remove "intentionally"

Page 16, line 20, after "diagnosable" insert "intrauterine"

Page 16, line 24, remove "or"

Page 16, line 24, after "abortion" insert "; or treat a woman for an ectopic pregnancy"

Page 17, line 5, replace "July" with "September"

Renumber accordingly

2011 TESTIMONY

HB 1297

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1297

Page 4, line 15, replace "the" with "an"

Page 4, line 15, remove "of her pregnancy without first determining"

Page 4, line 16, remove "postfertilization age"

Page 4, line 16, after "the" insert "twenty-four-hour"

Page 4, line 16, remove "necessary to determine"

Page 4, line 17, remove "postfertilization age"

Page 4, line 22, after "10." insert "\"Physician\" means an individual who is licensed to practice medicine or osteopathy under chapter 43-17 or a physician who practices in the armed services of the United States or in the employ of the United States.

11."

Page 4, line 22, overstrike "the judgment of the"

Page 4, line 23, overstrike "attending physician" and insert immediately thereafter "reasonable medical judgment"

Page 4, line 25, replace "11." with "12."

Page 4, line 28, replace "12." with "13."

Page 4, line 29, replace "13." with "14."

Page 13, line 25, replace "board" with "state department of health"

Renumber accordingly

#2
Rep. Grande

1. Prior to the abortion:

- a. Was the woman told the name of the physician who will perform the abortion?
(14-02.1-02(6)(a)(1))
- b. Was the woman told that the the abortion will terminate the life of a whole,
separate, unique, living human being? (14-02.1-02(6) (a)(2))
- c. Was the woman told the particular medical risks associated with the particular
abortion procedure to be employed including, when medically accurate, the risks
of infection, hemorrhage, danger to subsequent pregnancies, and infertility?
(14-02.1-02(6) (a)(3))
- d. Was the woman told the probable gestational age of the unborn child at the time
the abortion is to be performed? (14-02.1-02(6) (a)(4))
- e. Was the woman told the medical risks associated with carrying her child to term?
(14-02.1-02(6) (a)(5))
- f. Was this information told to the woman by either the physician who is to perform
the abortion, a referring physician, or the physician's agent? (14-02.1-02(6)(a))

2. At least twenty-four hours before the abortion, was the woman informed:




- a. That medical assistance benefits may be available for prenatal care, childbirth,
and neonatal care? (14-02.1-02(6)(b)(1))
- b. That the father is liable to assist in the support of her child, even in instances in
which the father has offered to pay for the abortion? (14-02.1-02(6)(b)(2))
- c. That she has the right to review the printed materials described in section
14-02.1-02.1? (14-02.1-02(6)(b)(3))
 - i. That the materials have been provided by the state of North Dakota?
(14-02.1-02(6)(b)(3))
 - ii. That they describe the unborn child and list agencies that offer alternatives to
abortion? (14-02.1-02(6)(b)(3))
- d. Was this information provided by the physician to perform the abortion or the
physician's agent? (14-02.1-02(6)(b))

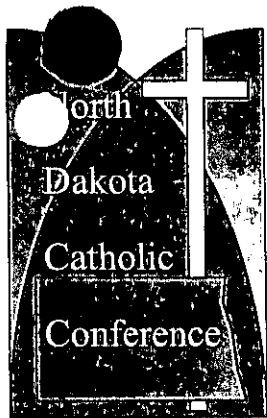
3. Did the woman certify in writing, prior to the abortion, that she received the information described above? (14-02.1-02(6)(c))
4. Prior to the abortion, did the physician who is to perform the abortion or the physician's agent receive a copy of the written certification? (14-02.1-02(6)(c))
5. Did physician who performed the abortion certify in writing the marital status and age of the woman based on proof of age offered by the woman? (14-02.1-03(1))
6. If the woman is a unmarried minor,
 - a. Did the attending physician
 - i. Certify in writing either:
 1. That both parents of the minor requesting the abortion have been provided by with the information provided for in section 14-02.1-02 at least twenty-four hours prior to the minor's consent to the performance of abortion; (14-02.1-03(1)) or
 2. The physician has caused the materials of section 14-02.1-02 to be posted by certified mail to each of the parents of the minor separately to the last-known addresses at least forty-eight hours prior to the minor's consent to the performance of abortion? (14-02.1-03(1))
 - ii. secure the written consent of the minor woman and both parents, if living, or the surviving parent if one parent is deceased, or the custodial parent if the parents are separated or divorced, or the legal guardian or guardians if the minor is subject to guardianship? (14-02.1-03.1(1)(a)) OR
 - b. Did the physician performing the abortion receive a copy of court order authorizing the abortion without notifying the minor's parents? (14-02.1-03.1(1)(b))
7. Did the facility display a sign, in the area where the woman gave her consent, stating:

NOTICE: No one can force you to have an abortion. It is against the law for a spouse, a boyfriend, a parent, a friend, a medical care provider, or any other person to in any way force you to have an abortion. (14-02.1-03.4)

8. Was the abortion performed by a physician licensed to practice medicine in the state of North Dakota at the time of the abortion? (14-02.1-04(1))
9. If the abortion was performed the unborn child reached viability, was the abortion performed in a hospital? (14-02.1-04(2))
10. Was the woman offered the opportunity to receive and view at the abortion facility or another facility an active ultrasound of her fetus? (14-02.1-04(4))
 - i. Was that offer and opportunity made at least twenty-four hours before the abortion? (14-02.1-04(4))
 - ii. Was the ultrasound offered of a quality consistent with standard medical practice in the community, contain the dimensions of the fetus, and accurately portray the presence of external members and internal organs, including the heartbeat, if present or viewable, of the fetus? (14-02.1-04(4))
 - iii. Was the auscultation of the fetal heart tone of a quality consistent with standard medical practice in the community? (14-02.1-04(4))
 - iv. Did the abortion facility document the woman's response to the offer, including the date and time of the offer? (14-02.1-04(4))
 - v. Did the abortion facility obtain the woman's signature indicating her response to the offer? (14-02.1-04(4))
11. Does the abortion facility keep the following records:
 - a. admission and discharge notes? (14-02.1-07(1)(a))
 - b. histories? (14-02.1-07(1)(a))
 - c. results of tests and examinations? (14-02.1-07(1)(a))
 - d. nurses' worksheets? (14-02.1-07(1)(a))
 - e. social service records? (14-02.1-07(1)(a))
 - f. progress notes? (14-02.1-07(1)(a))
 - g. all written certifications required by law? (14-02.1-07(1)(a))
 - h. constructive notice forms? (14-02.1-07(1)(a))

- i. consent forms? (14-02.1-07(1)(a))
 - j. court orders? (14-02.1-07(1)(a))
 - k. abortion reports? (14-02.1-07(1)(a))
 - l. complication reports? (14-02.1-07(1)(a))
12. Are these records kept for at least seven years? (14-02.1-07(1)(a))
13. Does the abortion facility keep:
- a. A record of the number of women who availed themselves of the opportunity to receive and view an ultrasound image of their fetuses? (14-02.1-07(1)(a))
 - b. A record of the number who did not? (14-02.1-07(1)(a))
 - c. A record of the number who, to the best of the reporting abortion facility's information and belief, went on to obtain the abortion? (14-02.1-07(1)(a))
14. Has the attending physician signed an abortion report for each abortion that includes all data called for in the United States standard report of induced termination of pregnancy as recommended by the national center for health statistics? (14-02.1-07(2)(a))
- a. Was that report submitted to the Department of Health within thirty days of the abortion? (14-02.1-07(2)(b))
15. Has the physician signed each complication report? (14-02.1-07(2)(b))
- a. Was that report submitted to the Department of Health within thirty days of the post-abortion care? (14-02.1-07(2)(b))
16. Was a copy of each abortion report made part of the medical record of the patient? (14-02.1-07(2)(c))
17. Has the physician who performed the abortion disposed of the fetus in a manner prescribed by law? (14-02.1-09)

- 
18. Has the physician ensured that the fetal remains are not transferred, sold, distributed, given away for use in animal or human research, experimentation, or study? (14-02.2-02)
 19. Did the hospital or abortion facility allow a physician, nurse, hospital employee, or any other person to opt out of participating in the abortion without reprisal or discrimination? (23-16-14)
 20. Was the procedure used to perform the abortion not prohibited by chapter 14-02.6 (partial-birth abortion)? (chp. 14-02.6)
- 
- 



*Representing the Diocese of Fargo
and the Diocese of Bismarck*

Christopher T. Dodson
Executive Director and
General Counsel

#3

To: House Human Services Committee
From: Christopher T. Dodson, Executive Director
Subject: House Bill 1297: Abortion Enforcement Enhancement
Date: January 31, 2011

The North Dakota Catholic Conference supports House Bill 1297 and requests your **Do Pass** recommendation.¹

House Bill 1297 is an abortion enforcement enhancement bill. This legislative body has led the nation in enacting legislation to protect unborn life to the greatest extent possible and in protecting the health and well-being of women considering abortions. The backbone of these laws is the Abortion Control Act (N.D.C.C. chapter 14-02) and related sections of the North Dakota Century Code. These provisions, however, are only effective to the extent they are periodically revisited to ensure that they are up-to-date, clarified, and strengthened. House Bill 1297 does this. It addresses several questions, issues, and developments that have arisen through the years and, as such, updates, strengthens, and clarifies existing laws.

Updates

The most significant update provided by HB 1297 concerns the use of abortion-inducing drugs. The growing use of abortion-inducing drugs requires changes in statutory language - for example, abortions are no longer all "surgical" - and new provisions to protect women from what can be a very dangerous drug regimen.²

Pages nine and ten of the bill contain most of the provisions concerning abortion-inducing drugs. These provisions ensure that only a physician may prescribe or provide the abortion drug and that provision must be in the manner authorized by the federal Food and Drug Administration and in accordance with the manufacturer's instructions.

¹ The conference's support is contingent upon adoption of the clean-up amendments offered by the bill's sponsor. This testimony addresses the bill as if the amendments were adopted.

² See attachment entitled "Dangers of Abortion-Inducing Drugs and Need for Regulation"

These sections also require that the physician providing the drug be present when it is administered. This requirement protects the woman and mitigates against black market use of the drug. To further protect the woman's health, the bill requires that the physician providing the abortion-inducing drug arrange to have another physician available to handle emergencies. This is particularly important in our state since none of the physicians who perform abortions is a state resident. Finally, any adverse reactions to the drug regimen must be reported to the state Department of Health and the Food and Drug Administration.

Another update HB 1297 makes to existing law concerns the materials from the state Department of Health³ to provide women with information regarding the health consequences of abortion, the development of the unborn child, her legal rights, alternatives to abortion, and agencies and services available to help pregnant women and children. HB 1297 updates these materials to reflect advancements in science, medicine, and the law. Some of these materials have not been updated since 1997.

Strengthens

House Bill 1297 strengthens enforcement of the state's laws by improving the abortion report an abortion provider must complete for each abortion performed. North Dakota does not license medical clinics and does not have a cadre of inspectors always on hand to ensure compliance with laws and regulations. In many respects, the only tool available to enforcement agencies to ensure compliance with the state's abortion laws is the abortion report form. The current abortion report form, however, checks for the existence of only a few of the requirements for a legal abortion. The form, for example, does not indicate whether the parents of a minor were notified or if a judicial bypass was granted. It does not indicate whether all the requirements of the informed consent provisions were met and whether woman received the printed materials on alternatives to abortions. Current law requires about fifty conditions for a legal abortion, but we have no method of ensuring that those conditions were met.

³ HB 1297, like the current law directs the Department of Health to prepare these materials, but some of the materials are actually prepared by the Department of Human Services.

House Bill 1297 strengthens the enforcement provisions by requiring the Department of Health to revise the abortion report form so that it confirms compliance with all the relevant provisions of North Dakota law. In addition, the bill requires the Department of Health to report to the Legislative Management on the process and information gathered. Remaining on the subject of printed materials, HB 1297 strengthens existing law by ensuring that the woman actually receives the materials before consenting to an abortion.

House Bill 1297 also strengthens the parental notification provisions. Under existing law, each parent of a minor seeking an abortion must be notified at least twenty-four hours in advance of the abortion. Under certain conditions a court can grant the minor a “bypass” that exempts her and the abortion physician from the notification requirements. However, the current law provides no standard for determining the existence of the facts necessary to justify a judicial bypass. House Bill 1297 corrects this problem by requiring that the facts be established by clear and convincing evidence.

House Bill 1297 also strengthens existing law by:

- Making the determination of what constitutes a “medical emergency” less subjective;
- Ensures that the woman considering an abortion receive the printed materials prepared by the Department of Health; and
- Shortening the time required to submit the abortion report to the Department of Health.

Clarifies and Cleans-Up

House Bill 1297 clarifies provisions of existing law and eliminates inconsistencies in language and provisions.

One clarification concerns the definition of “physician.” Chapter 14-02.1 uses both “physician” and “licensed physician,” but defines only “licensed physician.” House Bill 1297 defines “physician” as always meaning a licensed physician and replaces any use of “licensed physician” in the chapter with “physician.”

Some might think that this change implies that an unlicensed physician can perform abortions. The opposite is true. The placement of the word “licensed” before the word “physician” makes it a qualifier and, as such, implies that there is more than one type of physician. For purposes of the law, however, there is only one type of physician - one who is, by definition, licensed. Therefore, the correct way of making it clear that only licensed physicians can perform abortions is to define “physician” as always meaning a duly licensed physician and eliminating any qualifiers before the word “physician” in the chapter. This is what HB 1297, with the sponsor’s correcting amendments, does.

House Bill 1297 also clarifies that, legally, “selective reductions” or “pregnancy reductions” are abortions and subject to the law’s provisions. Although this is existing law, there are some abortion advocates who argue that such procedures are not abortions because, technically, a pregnancy is not terminated, even if one of the unborn children is destroyed *in utero*. This change makes the scope of the definition of abortion clearer.

House Bill 1297 cleans up inconsistent use of terms to refer to the unborn child. This change is not a matter of rhetoric, but makes sense legally. The law currently uses “unborn child,” “fetus,” and “embryo” to refer to what, for purposes of the law, is the same organism. Outside of the legal context, however, these terms can have different meanings. House Bill 1297 cleans up this inconsistency by using the one uniform term of “unborn child.”

House Bill 1297 also:

- Clarifies that judicial bypass hearings are to be heard in the county of the minor’s residence;
- Clarifies that the courts may release statistical information about the use of judicial bypasses;
- Clarifies that the information in the abortion reports, other than personal identifying information, can be released to the public;
- Clarifies that, between childbirth and abortion, it is the policy of the state to give preference, encouragement, and support to childbirth and that all state agencies and public schools are expected to adhere to this policy;
- Eliminates inconsistencies in the penalty for the killing of children born alive; and

- Makes the definition of “abortion” consistent across Century Code chapters.

Mr. Chairman, this testimony summarizes how House Bill 1297 updates, strengthens, and clarifies our state’s laws concerning protection of unborn children and women considering abortions. As always, if the committee has questions about specific provisions of the bill, we are available to help.

We respectfully request a **Do Pass** recommendation to help ensure that North Dakota continues to be a leader when it comes to building a culture of life.

Dangers of Abortion-Inducing Drugs and Need for Regulation

Because RU-486 is virtually unregulated in the majority of states, abortion providers have been misusing it for years.

For example, the Food and Drug Administration (FDA) tested and approved the RU-486 regimen to be used only in the first 49 days following a woman's last menstrual period (LMP), at a clinic or medical facility and under the supervision of a physician, and in the following manner:

Day One: Mifeprex Administration: Three 200 mg tablets of Mifeprex are taken in a single oral dose

Day Three: Misoprostol Administration: Two 200 mcg tablets of misoprostol are taken orally

Day 14: Post-Treatment Examination: The patient must return to confirm that a complete termination has occurred. If not, surgical termination is recommended to manage medical abortion treatment failures.¹

However, abortion providers readily admit² that it provides RU-486 to women up to 63 days LMP and provides women with just a single oral dose of mifepristone, followed by a single dose of misoprostol, which it directs women to administer vaginally instead of orally. Some abortion providers even allow and direct women to take the drugs at home and in the absence physician oversight. Finally, no follow-up care is ensured.

Abortion providers in Iowa have begun using "telemed" services to provide RU-486 (i.e. a "telemed" abortion). Rather than meet with the woman personally, abortion provider Susan Haskell and Planned Parenthood of the Heartland have been consulting with patients over Skype or other teleconferencing systems. Under this scheme, Haskell briefly addresses abortion patients from a teleconferencing hook-up from her office in Des Moines. After explaining the medical abortion process, a button is pushed and an electronic drawer opens that contains the drugs. There is no examination, no physician-patient relationship, and no patient follow-up; but it does allow Haskell the opportunity to provide abortions to more women without ever having to meet with the women in person.

Women are not informed that "[n]early all of the women who receive Mifeprex and misoprostol will report adverse reactions, and many can be expected to report more than one such reaction."³ These adverse reactions include bleeding more heavily than during a heavy menstrual period; abdominal pain and uterine cramping; nausea; vomiting; diarrhea; pelvic pain; fainting; headaches; dizziness; and asthenia (weakness or lack of energy).⁴

In fact, by May of 2006, the FDA acknowledged a total of 1070 adverse event reports related to the use of RU-486.⁵ These adverse events included 6 deaths, 9 life-threatening incidents, 232 hospitalizations, 116 blood transfusions, and 88 cases of infection.⁶ Since that time, there have been hundreds of additional

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adverse events reported, as well as additional deaths in the United States.⁷ A European drug manufacturer has publicly stated that 29 women have died worldwide after using RU-486.⁸

Even when administered according to the approved FDA protocol, RU-486 can have devastating consequences for women. No ultrasound is required under this protocol, despite the fact that an ultrasound is necessary to determine the gestational age of the pregnancy and whether the pregnancy is ectopic. In fact, RU-486 is particularly dangerous because its side effects are confusingly similar to the symptoms of an ectopic pregnancy. Failing to properly diagnose an ectopic pregnancy can lead to a rupture of the fallopian tube, causing bleeding, severe pain, and even death.

⁷ *Id.* at 32.

⁸ See, e.g., APM Health Europe, *Italy questions safety of Exelgyn's abortion pill, approval still not granted* (June 23, 2009), available at <http://www.apmhe.com/story.php?mots=MIFEPRISTONE&searchScope=1&searchType=0&numero=L15579> (last visited August 23, 2010).

North Dakota Family Alliance

A Trusted Voice Impacting Our Legacy

Tom D. Freier, EXECUTIVE DIRECTOR

House Human Services Committee

January 31, 2011

HB 1297

Mr. Chairman and members of the House Human Services Committee, I am Tom Freier with the North Dakota Family Alliance, and am here to offer support for HB 1297.

I wish to primarily address Section 3 of the bill titled the 'Abortion report form'. It takes steps to improve upon the current enforcement provisions in the Abortion Control Act in regard to compliance at an abortion facility performing abortions in North Dakota. It provides for an abortion report form including checklists to confirm compliance, and if found to be non-compliant would be subject to the chapters and sections listed section 3.

The purpose of this section is to provide some comfort level that the many laws put in place over the past years dealing with abortion—are being complied with. With all due respect to the coalition team, which I was part of, I believe this language does not go far enough and will not produce the desired level of comfort in regard to compliance.

Even though a signed document containing a checklist provides a serious, legal incentive for the abortion provider, it does not answer the question of whether the provisions in the Abortion Control Act are being complied with. North Dakotans are a trusting people, but verification is necessary to reinforce that trust. We trust when we buy a gallon of gas, it is a gallon, but by the same token we know the PSC will do onsite testing and measurements to verify. We know that the ND State Electrical Board will do onsite visits to verify currently licensed electricians are doing the work.

Should we not expect that same comfort level of knowing that the laws dealing with abortion are being complied with? Most know the horrific details of the abortion facility in Philadelphia, now commonly referred to as the "House of Horrors". While no one would infer those kind of actions are taking place in our state, how would we know?

Closer to home, we know the details of an abortionist performing abortions at the state's only abortion facility, without a license. This offense carries with it a Class B felony penalty for a very good reason, this procedure poses a high risk for women, and for their protection should be confident of a licensed physician performing the abortion. This episode carries with it a 'black mark' reflecting how it was handled, and begs for clear legislative direction.

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So the question is what can be done? What can be done to prevent a physician from performing abortions without a license? How can we feel comfortable that the Abortion Control Act provisions are being complied with? I am not an attorney. I am a simple person. *(emphasis)*. As a starting point, I would suggest enlisting the Attorney General and every other entity at our disposal, to provide options to determine verifiable means of compliance.

Very few of the people of North Dakota are lawyers, and even fewer are legislators, and as such fail to see the challenge of securing this desired compliance. But in a common sense sort of way they would expect laws to be enforced and compliance to be verifiable. If you were to tell the people of this state that you were uncertain whether the bills this legislature passed during this session would be enforced or held in compliance—what kind of reaction would you expect?

Mr. Chairman, I trust we are up to the challenge.

Mr. Chairman, and members of the committee, I look forward to working with you and others to resolve this issue, and pass a good strong bill.



TESTIMONY on HB 1297
January 31, 2011

Chairman Weisz and Members of the House Education Committee:

My name is Connie M. Hildebrand and I represent AAUW-ND.
I appear in opposition to HB 1297.

AAUW's public policy position on Reproductive Rights, available through our Public Policy and Governmental Relations Department, and dated July, 2009 includes the statement:

AAUW supports the right of every woman to safe, accessible, affordable, and comprehensive family planning and reproductive health services. This position stems from AAUW's 2009-2011 Public Policy Program, which advocates, "choice in the determination of one's reproductive life, as well as increased access to health care and family planning services."

The lack of comprehensive support for reproductive health has resulted in dire outcomes for American women. Half of all pregnancies in the United States are unintended. Of a total of three million unintended pregnancies annually, almost half end in abortion. Why? At least partially, because contraceptive access & funding has been denied to women - by the very persons or groups who oppose abortion. At least partially, because multiple insurance companies do not cover birth control prescriptions, but do cover Viagra - for male erectile dysfunction. Does this make sense to you?

There is no point in directing any specific comments to individual aspects of this sixteen page bill. It would only delay further comment at this hearing, and the bill cannot be amended to our satisfaction.

AAUW stands in full support of a woman's right to choose.

We request a committee vote of Do Not Pass on HB 1297.

#6



Planned Parenthood®

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Testimony on HB 1297

North Dakota House Human Services Committee

January 31st, 2011

Chairman Weisz, members of the Human Services committee, thank you for the opportunity to present testimony in opposition of House Bill 1297. My name is Amy Jacobson and I am the North Dakota Public Affairs Manager for Planned Parenthood MN, ND,SD.

For nearly 100 years, Planned Parenthood has been the leading provider and protector of reproductive health in our region. Each year, 64,000 people turn to our regional Planned Parenthood as their local provider of confidential, affordable health care services and comprehensive sexuality education. We support women and men of all ages to make responsible choices and plan their futures. We do not provide abortion services but do serve as advocates for women.

Planned Parenthood believes women and families know their circumstances best and need to be able to make personal medical decisions, often very difficult ones, without government interference. Our families are too important to put them at risk. For these reasons we oppose the existing laws set forth in Section 14-02.1-02 and why I am here today to oppose the new restrictions being proposed in House Bill 1297. I sincerely appreciate this opportunity to be heard on this very important issue.

Section 6. New law regarding medication abortion

House Bill 1297 would ban many safe, legal, early first trimester abortions from being performed in North Dakota, violating women's constitutional rights and putting some women's health at risk. The bill would force physicians to follow an outdated protocol for medication abortion, instead of allowing them to practice medicine according to the best standards available and as approved by the best medical associations in the country, including ACOG- The American Congress of Obstetricians and Gynecologists. For some women, this would deny them an option of an abortion using medications alone that has been proven safe and effective, and instead, would force them to have surgery.


The result is to deny women in North Dakota access to what is standard medical practice nationwide – and what they and their physician believe is the best abortion procedure for them.

The provision requiring physicians to follow an outdated medical protocol and barring some women from having medical abortions at all, would violate the constitutional rights of women in North Dakota. Only two other states enacted similar laws and both were challenged in court. A similar law was enacted in Ohio in 2004 and it is still tied up in the courts. The state of Ohio has already spent untold resources on that litigation – North Dakota might be forced to do the same. *See Planned Parenthood Cincinnati Region v. Taft*, 444 F.3d 502 (6th Cir. 2006), 531 F.3d 406 (6th Cir. 2008); 331 Fed.Appx. 387 (6th Cir. 2009), *remand pending*, Case No. 1-04-cv-00493-SJD (S.D. OH 2011). In 2008, Oklahoma enacted the same type of provision, in an omnibus bill that struck down as violating the state constitution's single subject rule. When the Oklahoma legislature reconsidered this issue, it backed down and did not enact the same unconstitutional provisions that are still tied up in court in Ohio.

House Bill 1297 is unconstitutional and if enacted, could end up in protracted litigation. By denying some women access to medication abortion all together and forcing others to follow a regimen that their physician does not deem most medically appropriate, HB 1297 would deny women of the rights guaranteed to them by the Fourteenth Amendment to the U.S. Constitution (as well as the North Dakota Constitution). Women choose medication abortion instead of having a surgical procedure for very deeply-held and personal reasons, such as victims of rape or sexual assault who choose a procedure using medications alone rather than having an invasive surgical procedure, and this bill would take that choice away from them, in violation of their constitutional rights.

Section 5 Amendment. Subsections 2 and 3 of 14-02.1-03.1.


In North Dakota, minors must get consent from both their parents before they are permitted to seek abortions. However, the Supreme Court has clearly held that each minor seeking an abortion must have a way to bypass a parental involvement requirement if she needs it – the minor must be able to go to court to ask a judge, expeditiously and confidentially, for permission to seek an abortion without her parents' involvement. *See Bellotti v. Baird*, 443 U.S. 622, 643-44 (1979). While most often, parents know when their daughters are facing an unintended pregnancy, some young women have good reason to fear psychological and physical abuse, and may rightly be concerned that telling their parents about a pregnancy or abortion would precipitate a violent family crisis. Accessible, confidential, judicial bypass is essential to protect



minors who live in abusive homes or otherwise are unable to communicate with their parents.

This bill would change North Dakota's judicial bypass system, making it more difficult for minors to access confidential bypass proceedings: the bill would force a minor seeking a judicial bypass to go to a family court in her own county – even if the county's population is only a few thousand, even if she knows the county court's staff, and even though some county family courts only hear cases once a week or less. These changes would make it impossible for some minors to access confidential, expeditious hearings – which is unconstitutional and dangerous.

Abortion may make many of us uncomfortable, but one thing we can all agree on is that a woman's medical safety is crucial. Even if we wouldn't make the same decision, we need to remember that each family must decide for themselves what is best for their unique circumstances.



In at 2010 poll conducted by Lake Research Partners 78% of North Dakotans agreed *"Lawmakers should focus on preventing the need for abortion"*. HB 1297 does nothing to reduce unintended pregnancy; half of all unintended pregnancies end in abortion. Additionally, it is an unconstitutional law which will force a drawn out legal battle and a long, emotional fight over abortion that will continue to divide our state for years to come. For these reasons I urge a Do Not Pass recommendation on HB 1297.

#7

**House Human Services Committee
HB 1297
January 31, 2011**

Chairman Weisz and members of the committee, my name is Renee Stromme. I am Executive Director of the North Dakota Women's Network. We are a membership organization working to improve the lives of North Dakota women. It is the position of the North Dakota Women's Network that reproductive choices for women must be ensured.

In 2005, the Institute for Women's Policy Research released a report on the status of women in North Dakota. It discusses many issues related to women. However, on the issue of reproductive rights, North Dakota received an F in the report because our laws do not provide the level of support most beneficial to respecting women's reproductive choices, including coverage for contraceptives and access to reproductive health services. This bill will be a step backward for the rights of women.

North Dakota has long been a state that respects choice and independence. As well, we are a state with a long history of respecting women – we were among the first to create policies allowing for property ownership by women and were one of the first states to extend the right to vote to women. We respect the right to choose a profession, choose to work outside the home, or choose to start a business. It is a North Dakota tradition. I urge you to maintain that tradition with a do-not-pass recommendation on House Bill 1297.

Thank you for allowing my testimony.

Renee Stromme
Executive Director
North Dakota Women's Network
222 N 4th Street, Suite 215
Bismarck, ND
701-223-6985
renee@ndwomen.org

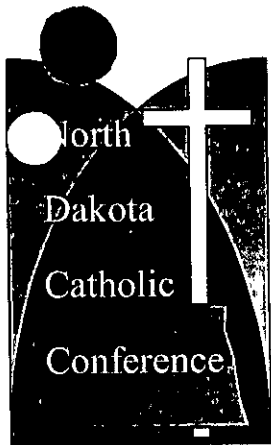
#1
PROPOSED AMENDMENTS TO HB 1297

Page 8, line 29: replace "Proceedings" with "All proceedings"

Page 9, line 2: after "section." insert "A court may change the venue of proceedings under this section to another county only upon a finding that a transfer is required in the best interests of the minor."

Page 9, line 3: remove "in the juvenile court of the minor's residence"

Renumber accordingly



*Representing the Diocese of Fargo
and the Diocese of Bismarck*

Christopher T. Dodson
Executive Director and
General Counsel

1

To: Senate Human Services Committee
From: Christopher T. Dodson, Executive Director
Subject: House Bill 1297: Abortion Enforcement Enhancement
Date: March 14, 2011

The North Dakota Catholic Conference supports House Bill 1297 and requests your **Do Pass** recommendation.

House Bill 1297 is an abortion enforcement enhancement bill. This legislative body has led the nation in enacting legislation to protect unborn life to the greatest extent possible and in protecting the health and well-being of women considering abortions. The backbone of these laws is the Abortion Control Act (N.D.C.C. chapter 14-02) and related sections of the North Dakota Century Code. These provisions, however, are only effective to the extent they are periodically revisited to ensure that they are up-to-date, clarified, and strengthened. House Bill 1297 does this. It addresses several questions, issues, and developments that have arisen through the years and, as such, updates, strengthens, and clarifies existing laws.

Updates

The most significant update provided by HB 1297 concerns the use of abortion-inducing drugs. The use of abortion-inducing drugs requires changes in statutory language - for example, abortions are no longer all "surgical" - and new provisions to protect women from what can be a very dangerous drug regimen.¹

Pages ten and eleven of the bill contain most of the provisions concerning abortion-inducing drugs. These provisions ensure that only a physician may prescribe or provide the abortion drug and that provision must be in the manner authorized by the federal Food and Drug Administration and in accordance with the manufacturer's instructions.

¹ See attachment entitled "Dangers of Abortion-Inducing Drugs and Need for Regulation"

These sections also require that the physician providing the drug be present when it is administered. This requirement protects the woman and mitigates against black market use of the drug. To further protect the woman's health, the bill requires that the physician providing the abortion-inducing drug arrange to have another physician available to handle emergencies. This is particularly important in our state since none of the physicians who perform abortions is a state resident. Finally, any adverse reactions to the drug regimen must be reported to the state Department of Health and the Food and Drug Administration.

Another update HB 1297 makes to existing law concerns the materials from the state Department of Health² to provide women with information regarding the health consequences of abortion, the development of the unborn child, her legal rights, alternatives to abortion, and agencies and services available to help pregnant women and children. HB 1297 updates these materials to reflect advancements in science, medicine, and the law. Some of these materials have not been updated since 1997. HB 1297 also strengthens existing law by ensuring that the woman receives the materials before consenting to an abortion.

Strengthens

House Bill 1297 strengthens enforcement of the state's laws by improving the abortion report an abortion provider must complete for each abortion performed. North Dakota does not license medical clinics and does not have a cadre of inspectors always on hand to ensure compliance with laws and regulations. In many respects, the only tool available to enforcement agencies to ensure compliance with the state's abortion laws is the abortion report form. The current abortion report form, however, checks for the existence of only a few of the requirements for a legal abortion. The form, for example, does not indicate whether the parents of a minor were notified or if a judicial bypass was granted. It does not indicate whether all the requirements of the informed consent provisions were met and whether woman received the printed materials on alternatives to abortions. Current law requires about fifty conditions for a legal abortion, but we have no method of ensuring that those conditions were met.

² HB 1297, like the current law directs the Department of Health to prepare these materials, but some of the materials are actually prepared by the Department of Human Services.

House Bill 1297 strengthens the enforcement provisions by requiring the Department of Health to revise the abortion report form so that it confirms compliance with all the relevant provisions of North Dakota law. In addition, the bill requires the Department of Health to report to the Legislative Management on the process and information gathered.

House Bill 1297 also strengthens the parental consent provisions. Under existing law, an abortion cannot be performed on a minor without parental consent. Under certain conditions a court can grant the minor a “bypass” that exempts her and the abortion physician from the requirements. However, the current law provides no standard for determining the existence of the facts necessary to justify a judicial bypass. House Bill 1297 sets a standard for these proceedings by requiring that the facts be established by clear and convincing evidence.

House Bill 1297 also strengthens existing law by:

- Making the determination of what constitutes a “medical emergency” less subjective; and
- Shortening the time required to submit the abortion reports to the Department of Health.

Clarifies and Cleans-Up

House Bill 1297 clarifies provisions of existing law and eliminates inconsistencies in language and provisions.

One clarification concerns the definition of “physician.” Chapter 14-02.1 uses both “physician” and “licensed physician,” but defines only “licensed physician.” House Bill 1297 defines “physician” as always meaning a licensed physician and replaces any use of “licensed physician” in the chapter with “physician.”

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House Bill 1297 also:

- Clarifies that judicial bypass hearings are to be heard in the county of the minor’s residence unless it is not in the best interests of the minor;
- Clarifies that the courts may release statistical information about the use of judicial bypasses;
- Clarifies that the abortion compliance reports can be released to the public without any identifying information;
- Clarifies that, between childbirth and abortion, it is the policy of the state to give preference, encouragement, and support to childbirth and that all state agencies and public schools are expected to adhere to this policy;
- Eliminates inconsistencies in the penalty for the killing of children born alive; and
- Makes the definition of “abortion” consistent across Century Code chapters.

This testimony summarizes how House Bill 1297 updates, strengthens, and clarifies our state’s laws concerning protection of unborn children and women considering abortions. As always, if the committee has questions about specific provisions of the bill, we are available to help.

We respectfully request a **Do Pass** recommendation to help ensure that North Dakota continues to be a leader when it comes to building a culture of life.

Dangers of Abortion-Inducing Drugs and Need for Regulation

Because RU-486 is virtually unregulated in the majority of states, abortion providers have been misusing it for years.

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HB 1297 SENATE HEALTH AND HUMAN SERVICES COMMITTEE
March 14th, 2011

My name is Janne Myrdal and I am the State Director for Concerned Women for America, CWA, of North Dakota. CWA is the nation's largest women's public policy organizations. We are here today in support of HB1297.

HB 1297 enhances and clarifies the stated policy of the North Dakota legislature which says that **between childbirth and abortion, it is the policy of the state to give preference, encouragement and support to childbirth** and that all state agencies and public schools are expected to adhere to this policy. This proposed enhancement bill simply strengthens and clarifies the existing laws and brings the North Dakota Abortion Control Act up to date with the ever changing avenues of the abortion industry. HB1297 ensures that ND laws indeed protect the wellbeing of women as well as the intent, stated above, of North Dakota Legislature to prefer childbirth over abortion.

In the past year alone, there have been clear violations of the Abortion Control Act, putting women's health at risk in North Dakota. Last fall, it came to light that an out of state physician was performing abortions over a period of four months at the Red River abortion facility without a license to practice in North Dakota. Such blatant disregard of our State's laws cannot and should not be allowed. A section of HB1297 addresses this by strengthening the abortion report form, so that the laws written by this Legislature indeed gets the proper enforcement. After all, if the laws written in these chambers receive no enforcement, then why do we write laws at all?

By passing HB 1297, this legislature will assure that women's health in North Dakota are duly protected from such gross malpractices as what we saw in the above case. Full and proper compliance with our State laws are at stake here as well as needed updates to strengthen the intent of North Dakota Legislature as it relates to abortion.

Out of respect for the time of this committee, CWA will refrain from further testimony on HB1297, as we defer to other excellent testimony heard here today, that covers all the aspect of HB1297.

We respectfully ask that you consider a Do Pass on HB1297.

CONCERNED WOMEN FOR AMERICA
OF NORTH DAKOTA

North Dakota Family Alliance

A Trusted Voice Impacting Our Legacy

Tom D. Freier, EXECUTIVE DIRECTOR

Senate Human Services Committee

March 14, 2011

HB 1297

3

Madam Chair and members of the Senate Human Services Committee, I am Tom Freier with the North Dakota Family Alliance, and am here to offer support for HB 1297.

We believe the bill provides positive, needed changes to the Abortion Control Act, including: placing restrictions on the use of abortion-inducing drugs, strengthens parental consent requirements, clarifies state policy against abortion, and provides new enforcement mechanisms.

These new enforcement provisions are addressed in Section 3 of the bill titled the 'Abortion report form'. It takes steps to improve upon the current enforcement provisions in the Abortion Control Act in regard to compliance at an abortion facility performing abortions in North Dakota. It provides for an abortion report form including checklists to confirm compliance, and if found to be non-compliant would be subject to the chapters and sections listed section 3.

The purpose of this section is to provide some comfort level that the many laws put in place over the past years dealing with abortion—are being complied with. As in the House testimony, I wish to publically state my concerns in regard to compliance.

Even though a signed document containing a checklist provides a serious, legal incentive for the abortion provider, it does not answer the question of whether the provisions in the Abortion Control Act are being complied with. Even with the improvements found in Section 3, we will be relying solely on documents attested to by abortion clinic employees for verification. North Dakotans are a trusting people, but verification is necessary to reinforce that trust, and should not be left to a sole entity.

Most know the horrific details of the abortion facility in Philadelphia, now commonly referred to as the "House of Horrors". While no one would infer those kinds of actions are taking place in our state—we have no way of knowing?

Closer to home, we know the details of an abortionist performing abortions at the state's only abortion facility, without a license. This offense carries with it a Class B felony penalty for a very good reason, this procedure poses a high risk for women, and for their protection should be confident of a licensed physician performing the abortion. This episode carries with it a 'black mark' reflecting how it was handled and requires stronger measures to ensure it does not happen again.

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Very few of the people of North Dakota are lawyers, and even fewer are legislators, and as such fail to see the challenge of securing this desired compliance. But in a common sense sort of way they would expect laws to be enforced and compliance to be verifiable, and for all of us to do whatever is necessary to that end.

Madam Chair, we see the merit of HB 1297 in its entirety, but also see the profound importance of Section 3, as it relates to the rest of this bill and all of the provisions in the Abortion Control Act.

Madam Chair and members of the committee, we stand in support of HB 1297.

Testimony of Tammi Kromenaker to Health & Human Services Committee, March 14th, 2011

Chairwoman Lee, members of the Health & Human Services Committee, thank you for the opportunity to present testimony in opposition of House Bill 1297. My name is Tammi Kromenaker and I am the Director of Red River Women's Clinic.

Red River Women's Clinic is the only abortion provider in the state of ND and has provided safe abortion care services to women in North Dakota for over 12 years. We are members in good standing of the National Abortion Federation and maintain the highest quality standards for our practice. Red River Women's Clinic's mission is to not only provide medically safe reproductive health services, but to also provide those services in an emotionally supportive environment.

Red River Women's Clinic provides abortion services to women from a broad range of backgrounds. Sixty percent of our patients are already mothers, with at least one child at home. These women have personal experiences and understanding of pregnancy and parenting and are making careful, considered decisions about what is best for themselves and their families.

We also provide services to women at different points in their reproductive lives. In 2010, 95% of the patients we saw were over the age of 18 and almost half were over twenty five. I believe there may be a misconception that many of our patients are minors, but in fact only 5% of our patients in 2010 were under the age of 18. And a full two thirds of those minors had parental consent from both parents. However, some of those minors were in difficult or even dangerous family circumstances and could not consult both of their parents before obtaining an abortion, and thus had to pursue judicial bypasses. Others live in single parent homes. Many of them have no relationship with their other parent, and since ND has a two parent notification law – they simply do not want to involve an absent parent in this decision, so they seek a judicial bypass, often accompanied by their custodial parent. Again, however, these situations are rare – since the first of this year, we have seen only five minors total. In addition, most of our patients get abortions very early in pregnancy.

As I've described, many women, including many mothers, in the state from all different backgrounds have sought services at the clinic at one time in their lives. Our clinic provides safe, legal services in a supportive environment.

MEDICATION ABORTION

Abortion is one of the most regulated forms of healthcare, and that is particularly true in North Dakota, as the existing ND Abortion Control Act is one of the most restrictive in the nation. The proposed changes to the ND law, however, may actually make the provision of abortion less safe for some women by requiring the clinic to follow an outdated and less safe method of medication abortion. Since 2000, when the FDA approved Mifeprex for use in the United States over 1.4 million American women have used this early method of pregnancy termination to safely end their pregnancies. Medication abortion is the preferable method for some women because of deeply held and personal reasons, such as victims of rape or sexual assault who choose a procedure using medications alone rather than having an

invasive surgical procedure. Also – there are some women for whom medication abortion is actually a safer procedure, especially for those women with certain uterine anomalies.

HB 1297 would require physicians to use an outdated protocol for medication abortion found on the FDA label, instead of the “off-label” protocol that is based on scientific, medical evidence and that is the standard medical practice nationwide. This method would deny women in ND access to the appropriate standard of care and to what they and their physician believe is the best abortion procedure for them.

The alternative, evidence-based regimen has become standard and common practice across the country and the overwhelming majority of the 1.4 million women who have had a mifepristone medication abortion have not followed the regimen that appears on the drug’s label. Indeed, the American College of Obstetricians and Gynecologists, the leading professional association of physicians who specialize in health care for women, has given its highest level of recommendation to the alternative evidence-based use of mifepristone – including at-home administration of misoprostol.

At Red River Women’s Clinic, we tell each and every woman who seeks a medication abortion that there are two regimens, and that Red River Women’s Clinic follows the alternative research based regimen. We think it is good medical practice to tell the patient the method being used, but not to force them to use an outdated method.

Moreover, the premise of HB 1297 is inconsistent with medical regulations and standards in the U.S. It is standard medical practice in the United State for physicians to prescribe FDA-approved drugs in dosages and for medical indications that were not included on the original FDA approved label for the drug – or even contemplated by the FDA when they approve the drug, particularly when supported by adequate study. For example, bipolar disorder is often treated with a medication that is approved as an anti-seizure drug. Also, certain birth control pills which are approved as contraceptives are used to treat endometriosis. Medications are often provided to children in dosages that do not appear on the labeling, and therefore, are considered “off label” use.

In fact, North Dakota has already recognized that adequate study supports using some drugs for indications/dosages that are “off label,” or are use for purposes other than those described by the FDA approval documents. The North Dakota Century code 26.1-36-06.1 actually prohibits insurers and HMOs from excluding drugs from their coverage policies “on the grounds that the drug has not been approved by the Federal Food and Drug Administration for that indication if the drug is recognized for treatment of the indication in one of the standard reference compendia or medical literature”.

Not only is the evidence-based regimen the best method, and off-label use common across the field of medicine, but the requirement in HB 1297 that medication abortion only be provided according to the FDA protocol has been enacted in only one other state, Ohio – and Ohio has been tied up in litigation over that law for over seven years. In fact, that lawsuit is still ongoing. This drawn out legal fight has gone to three different courts and required countless hours of state attorney and health department time and energy, not to mention the costs associated with each and every appeal, hearing and briefing. Moreover, the plaintiffs may be entitled to attorneys fees at the end of this protracted litigation.

I urge you to consider rejecting this proposal, which would require us to provide our patients with less than the standard of care, and to instead allow us to continue providing high quality healthcare based on scientific research and evidence that is the standard of care across the country.

REPORTING REQUIREMENTS:

HB 1297 would also impose new reporting requirements that do nothing to increase patient safety. Currently, an abortion report is filled out for each abortion performed. This report includes statistical data. Currently, the reports are required to be filed within 30 days. A new provision in HB 1297 asks that we file the abortion related reports that are used in statistical record keeping by the state, within 24 hours of the abortion being performed and then a report about any complications within 30 days. This twenty four hour requirement for abortion reports is unnecessary and would not improve patient safety.

We would ask the same, appropriate process of filing any reports required by HB 1297 be filed within 30 days, as has been the practice for the last 20 years.

HB 1297 would also impose new reporting requirements for those adverse events associated with Mifeprex, and would require us to report different kinds of adverse events to the FDA through the MedWatch System. Medication abortion is a very safe method of abortion and rarely causes complications or adverse events of any kind— since 2007 when we began offering medication abortion, we have had five adverse events in total, and four of those were incomplete abortions that were addressed at the patient's follow up appointment. I want to make sure that the committee is aware that reporting of any adverse events that occur as a result of medication abortion is already addressed through well established guidelines put in place by the FDA and by Danco, the manufacturer of mifepristone. Currently, the FDA requires that Danco, the company who manufactures Mifeprex, to report all adverse events to the FDA. Further, the FDA requires that all prescribers of Mifeprex report any adverse events to Danco. This is an extra burden that the FDA required of Danco when they approved Mifeprex for use in the United States. In fact, unlike any other drug on the market today, any prescriber of Mifeprex must follow a Prescriber Agreement, which includes a number of different requirements including this adverse event reporting. Danco is regularly audited by the FDA for compliance with this requirement. If North Dakota were to add a duplicative reporting requirement about adverse events to the existing FDA rules, there could well be confusion at the FDA in addition to the extra burden on the physician. The FDA would receive two reports about the same event and this could lead to a paper chase at the FDA level. Moreover, the way that adverse events are defined by the FDA and defined in this bill are different, potentially leading to more confusion. The FDA is the best entity to establish and enforce compliance with adverse events reporting requirements, and to add this requirement could lead to the FDA receiving skewed information. We would ask that this requirement be removed from HB 1297 and let the appropriate process established by the FDA remain in place.

HB 1297 also makes changes to the requirements related to state-mandated information and counseling materials that are available to pregnant women. These materials show women the services available to them if they choose to continue their pregnancy. They clearly outline for each county what services she

has to support her if continuing the pregnancy is the best outcome for her. Every single woman is offered the state printed materials as part of the existing 24 hour informed consent. At Red River Clinic, we offer each woman the opportunity to have this information, and we offer to provide it to her in a variety of means: If the woman chooses to view the booklets, she can access them on our website, view them at our clinic, or call a toll-free # to get her own copies mailed to her. The current law allows women to choose whether they want or need to review this information – we believe it is good practice to offer women information, but not to require that they take information they do not want. In fact, two years ago when this legislature approved an ultrasound bill, they specifically said they wanted women to have the opportunity to receive and view an ultrasound, but not to make it mandatory. This is good practice, and respects the individual rights of women to either accept or refuse certain information. We would ask that women continue to be offered the information, but that if they choose not to receive the booklets, they still have that option. We have made the links to the booklets available on our website for a couple of years now, and we have them readily available at the clinic for anyone wishing to view them. It should not be the practice of government to force information on anyone if they choose not to receive it from the government.

I appreciate you giving me the opportunity to testify today and I would be happy to take any questions from the committee.



**Testimony to the North Dakota Senate Human Services Committee
March 14th, 2011**

Chairwoman Lee, members of the Human Services committee, thank you for the opportunity to present testimony in opposition of House Bill 1297. My name is Amy Jacobson and I am the North Dakota Public Affairs Manager for Planned Parenthood MN, ND,SD.

For nearly 100 years, Planned Parenthood has been the leading provider and protector of reproductive health in our region. Each year, 64,000 people turn to our regional Planned Parenthood as their local provider of confidential, affordable health care services and comprehensive sexuality education. We support women and men of all ages to make responsible choices and plan their futures.

Planned Parenthood believes women and families know their circumstances best and need to be able to make personal medical decisions, often very difficult ones, without government interference. Our families are too important to put them at risk. For these reasons we oppose the existing laws set forth in Section 14-02.1 and why I am here today to oppose the new restrictions being proposed in House Bill 1297. I sincerely appreciate this opportunity to be heard on this very important issue.

The reality is that unintended pregnancies do occur. For women who experience one, access to safe, legal abortion is imperative. Despite polarized opposition to the choice of abortion, public health data shows that medically safe, legal abortion has a profound impact on American women and their families. Abortion may make many of us uncomfortable, but one thing we can all agree on is that a woman's medical safety is crucial. Even if we wouldn't make the same decision, we need to remember that each family must decide for themselves what is best for their unique circumstances.

In at 2010 poll conducted by Lake Research Partners 78% of North Dakotans agreed "*Lawmakers should focus on preventing the need for abortion*". HB 1297 does nothing to reduce unintended pregnancy. Policies to increase access to family planning and medically accurate sexuality education are the key to reducing abortion rates. In 2008, contraceptive services provided at Title X-supported centers in North Dakota helped women avoid 2,900 unintended pregnancies, which would have resulted in 1,300 births

and 1,200 abortions.ⁱ Only by focusing on preventing unintended pregnancy will the need for abortion in North Dakota be reduced.

For these reasons I urge a Do Not Pass recommendation on HB 1297.

ⁱ Frost JJ, Henshaw SK and Sonfield A, *Contraceptive Needs and Services, National and State Data, 2008 Update*, New York:Guttmacher Institute, 2010.



TESTIMONY on HB 1297
March 14, 2011

AAUW

Chairperson Lee and Members of the Senate Human Services Committee:

My name is Connie M. Hildebrand and I represent AAUW-ND.
I appear in opposition to HB 1297.

AAUW's public policy position on Reproductive Rights, available through our Public Policy and Governmental Relations Department, and dated July, 2009 includes the statement:

AAUW supports the right of every woman to safe, accessible, affordable, and comprehensive family planning and reproductive health services. This position stems from AAUW's 2009-2011 Public Policy Program, which advocates, "choice in the determination of one's reproductive life, as well as increased access to health care and family planning services."

The lack of comprehensive support for reproductive health has resulted in dire outcomes for American women. Half of all pregnancies in the United States are unintended pregnancies. Of a total of three million unintended pregnancies annually, almost half end in abortion. Why? At least partially, because contraceptive access & funding has been denied to women - by the very persons or groups who oppose abortion. At least partially, because multiple insurance companies do not cover birth control prescriptions - but, by the way, do cover prescriptions for Viagra. Does this make sense to you?

There is no point in my directing any specific comments to individual aspects of this seventeen-page bill. It would only delay further comment at this hearing, and the bill cannot be amended to AAUW-ND's satisfaction.

AAUW stands in full support of a woman's right to choose.

We request a committee vote of Do Not Pass on HB 1297.

#7

Senate Human Services Committee

HB 1297

March, 14th 2011

Chair Lee and members of the Senate Human Services Committee. My ^{name} ~~name~~ is Becca Sorgert and I am a North Dakota resident from District 44 in Fargo. Thank you for opportunity to speak against House Bill 1297.

Doctors practice medicine according to the best medical standards available and as approved by the best medical associations in the country, including American ^{College} ~~Congress~~ of Obstetricians and Gynecologists. This bill would take patient care out of the hands of doctors and place it in the hands of legislators.

This bill does not prevent unintended pregnancies, instead makes medication abortion a longer, more expensive process that is not necessary.

As an alternative to this bill, we need to have bills sponsored to prevent unintended pregnancies in the first place.

This alternative would be more logical to lower the need of abortions, improve the lives of North Dakota women and their health.

I urge a do not pass recommendation on House Bill 1297. Thank you.

March 16, 2011

Senate Human Services Committee

North Dakota Senate

House Bill 1297

Dear Madam Chair Lee and Members of the Human Services Committee:

This written testimony is being provided at Madam Chair Lee's request following my testimony at the Human Services Committee meeting on March 14, 2011. I am writing to urge you to issue a do not pass recommendation to House Bill 1297. The proposed amendments are vague, poorly drafted, impede the rights of minors seeking an abortion, and will have unintended consequences to a woman facing an ectopic pregnancy. I am a practicing attorney in Fargo and a resident of District 46.

Amendment 5

As proposed, amendment 5 of House Bill 1297 adds unwarranted additional barriers to a minor seeking a judicial bypass when one or both of her parents are unavailable or unwilling to provide their consent to her having an abortion. The Amendment proposes to add language to N.D.C.C. § 14-2.1-03(2) that would allow the court to change venue "only upon a finding that the transfer is required in the best interests of the minor."

A change of venue can be a necessary step for minors seeking an abortion two primary reasons. First, the minor may seek a change of venue because she knows or is related to a court administrator or judge so she seeks a change of venue in order to preserve her confidentiality. A change of venue may also be sought to accommodate the court's schedule. In many rural counties, hearings are only held one week per month when the judge is sitting in that county. Currently, the Abortion Control Act requires that the hearing be held within 48-hours of the application of the minor. The North Dakota Rules of Civil Procedure and the North Dakota Century Code presently provide a sufficient framework for what a judge should consider when deciding on a change of venue.

The "best interest of the minor" standard is incompatible with determining change of venue. The standard of "best interests of a minor" is found in Title 14 as the standard used in determining parental rights and responsibilities for purposes of child custody. Some of the factors listed for the best interest and welfare of the child are:

- The love, affection, and other emotional ties existing between the parents and child and the ability of each parent to provide the child with nurture, love, affection, and guidance.
- The ability of each parent to assure that the child receives adequate food, clothing, shelter, medical care, and a safe environment.
- The child's developmental needs and the ability of each parent to meet those needs, both in the present and in the future.

The remaining 10 factors can be found at N.D.C.C. § 14-09-06.2. The “best interest” factors are clearly inappropriate for determining whether a change of venue is warranted for a minor seeking a judicial bypass for an abortion.

Lastly, requiring a change of venue to be in the best interest of the minor may necessitate a hearing in order for a judge to make that determination. It would at least require a minor to submit an affidavit stating why it was in her best interest to change the venue of the hearing. The requirement of finding the best interest of the child will unnecessarily delay proceedings creating an undue burden on a minor and unreasonably risk her right to confidentiality.

The other proposed addition to N.D.C.C. § 14-2.1-03(2) increases the burden of proof required to determine whether or not the minor is sufficiently mature and well informed of the nature and consequences of having an abortion and choosing intelligently among the alternatives. Christopher Dodson’s testimony on behalf of the North Dakota Catholic Conference was inaccurate when he testified that the current law provides no standard for determining the existence of facts necessary to justify a judicial bypass. When no standard of proof is delineated, the default standard of proof is a preponderance of evidence, which is the most common standard of proof in civil actions. The standard of clear and convincing evidence is a higher standard of proof that is reserved cases when more evidence is needed to meet the burden of proof.

Establishing custody over a child where one parent has been convicted of domestic violence is an example of when the clear and convincing standard is applied. If one parent has committed domestic violence, a presumption arises that it is in the best interest of the child to be in the custody of the other parent. This presumption can only be rebutted by clear and convincing evidence that the perpetrator of the domestic violence serve as the custodial parent. Obviously, the higher standard of proof is warranted to prevent further violence to the child. The preponderance of evidence standard is appropriate for a judge evaluating whether or not a minor is sufficiently mature and well informed regarding having an abortion and choosing among the alternatives.

The proposed amendment to N.D.C.C. § 14-2.1-03(3) risks the confidentiality of a minor seeking an abortion. Subsection 3 presently requires records made in connection within the judicial bypass section to be kept confidential. The amendment proposes language that would make that statistical information available regarding applications and their disposition. However, because of the rural nature of our state, many of our counties have few residents, and the identification of statistical information could reveal the identity of the young woman making the application, thus making Subsection 3 inherently contradictory.

If passed, the proposed changes in Amendment 5 to the Abortion Control Act will impose dangerous delays on a minor’s ability to access to the courts, demand a higher burden of proof in showing she is sufficiently mature and well informed regarding having an abortion, and endanger her right to anonymity.

Amendment 6

Amendment 6 to the Abortion Control Act would create a new subsection regarding abortion-inducing drugs. This section may inadvertently apply to doctors that are terminating an ectopic pregnancy. Terminating an ectopic pregnancy would not fit into the proposed definition of abortion if the fetus was

not “dead.” Methotrexate is often used off-label to terminate an ectopic pregnancy.¹ This drug is actually labeled for the treatment of psoriasis and is also used to treat cancer. It would be extremely unfortunate if this bill required obstetricians caring for patients with a planned pregnancy that ends up being ectopic to comply with the requirements of Section 6. This Amendment provides unnecessary state interference into the standard of care that physicians provide.

This new section would also require a physician that provides an abortion inducing drug to enter into a signed contract with another physician that agrees to handle emergencies associated with the use of the drug. This section is vague and unnecessary. The statute does not specify where the emergency doctor is located. The physician prescribing the pill will certainly be in Fargo, but a woman may ingest the pill that causes the abortion in her own community. A physician in Fargo will not be of assistance to a woman in western North Dakota. Further, the Tammy Kromenaker, director of the Red River Women’s Clinic, testified that patients who use this method of abortion are required to ingest the pill within 50 miles of an emergency room.

Lastly, the contract must be made available on demand to the patient, the department of health, and the criminal justice agency. Abortion providers are routinely harassed, intimidated, discriminated against, and even killed. Dr. George Tiller, an abortion provider from Kansas, was assassinated during the Sunday service at his church in May of 2009. It will be very difficult to find physicians willing to associate themselves with abortion and risk the harassment and threats of that association.

Amendment 11

Amendment 11 creates a new subsection to N.D.C.C. § 14-2.3-01 requiring that all publications produced by State Agencies to give a preference to normal childbirth, and prohibits the state from funding any program that does not give a preference to normal childbirth. This new section is vague as to which agencies it applies. Furthermore, it is not inappropriate for state bureaucrats with no medical training or experience to be given the power to decide which materials are more appropriate for patient use. That power should rest in the hands of the practicing doctor who provides the material accompanied with sound medical advice to his/her patients.

Most people who consider themselves pro-life still agree that abortion should be an option in the case of rape and incest. Imagine a college-age victim surviving a rape attack only to find out she was impregnated by her attacker. When considering terminating her pregnancy, she receives information that states North Dakota encourages her and would prefer it if she carried her pregnancy to term. By requiring this information in printed materials, the State of North Dakota would appear to be condoning the crime against the woman. This type of material is insulting to women that are in extremely difficult and painful situations. Women facing an unplanned pregnancy for any reason should not be subjected to materials give a preference to normal childbirth. It is not the State’s position to judge a woman for considering an abortion when the State has no idea why that particular woman is considering terminating her pregnancy.

¹ Lipscomb GH, et al. (2002). Oral methotrexate for treatment of ectopic pregnancy. American Journal of Obstetrics and Gynecology, 186(6): 1192–1195; American Society of Reproductive Medicine (2008). Technical bulletin: Medical treatment of ectopic pregnancy. Fertility and Sterility, 90(Suppl 3): S206–S212.

I urge a do not pass recommendation on these vague and poorly drafted amendments to the Abortion Control Act. This bill will certainly result in litigation at the expense of the citizens of North Dakota. Please feel free to contact me with any additional questions.

Respectfully submitted,

Katrina A. Turman Lang

Attorney at Law

**NORTH DAKOTA COUNCIL ON ABUSED WOMEN'S SERVICES
COALITION AGAINST SEXUAL ASSAULT IN NORTH DAKOTA**

#9

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Testimony on HB 1297
Senate Human Services Committee
March 14, 2011

Chair Lee and Members of the Committee:

My name is Janelle Moos. I am speaking this morning on behalf of the North Dakota Council on Abused Women's Services in opposition to HB 1297.

Our Coalition is a membership based organization that consists of 21 local domestic violence and rape crisis centers located throughout the state that provide services to domestic violence, sexual assault, and stalking victims in all 53 counties and the reservations in North Dakota. Last year alone, these centers provided services to nearly 900 victims of sexual assault.

Although our Coalition does not have a policy position on abortion, we are united in our concern for victims of sexual assault and incest. HB 1297, from our perspective, would ban all abortion, even for rape and incest victims and would also ban access to emergency contraceptives for victims of rape and incest. We aren't here today to debate the issue of abortion itself; so we will limit our testimony to the specific exclusion of these exemptions for rape and incest survivors in HB 1297.

A female sexual assault victim's number one concern is pregnancy, followed closely by sexually transmitted diseases. The risk of pregnancy from a sexual assault is 2 to 5%. In the U. S., an estimated 25,000 women become pregnant from sexual assault every year (Stewart, & Trussell, 2000). National recommendations from the American Medical Association, Sexual Assault Nurse Examiners, American College of Emergency Physicians, International Association of Forensic Nurses, and American College of Obstetricians and Gynecologists all state that providing FDA approved emergency contraception in cases of sexual assault is the standard of care.

Women choose medication abortion instead of having a surgical procedure for very deeply-held and personal reasons, such as victims of rape or sexual assault who choose a procedure using medications alone rather than having an invasive surgical procedure, and this bill would take that choice away from them, in violation of their constitutional rights.

I am not here today to tell you that all survivors should or even want to have abortions; however, we believe that since we cannot fully understand the path that brought them to us we cannot make that very difficult decision for them. This is about allowing a person who has had all decision making powers taken away from them as a result of the assault to make a very important and personal decision about their health, their family, and their future. This bill all but eliminates that option.

I urge you to oppose HB 1297.

Thank You.

Senate Human Services Committee
HB 1297
March 14, 2011

Chairman Lee and members of the committee, my name is Renee Stromme. I am Executive Director of the North Dakota Women's Network. We are a membership organization working to improve the lives of North Dakota women. It is the position of the North Dakota Women's Network that reproductive choices for women must be ensured.

In 2005, the Institute for Women's Policy Research released a report on the status of women in North Dakota. It discusses many issues related to women. However, on the issue of reproductive rights, North Dakota received an F in the report because our laws do not provide the level of support most beneficial to respecting women's reproductive choices, including coverage for contraceptives and access to reproductive health services. This bill will be a step backward for the rights of women.

North Dakota has long been a state that respects choice and independence. As well, we are a state with a long history of respecting women – we were among the first to create policies allowing for property ownership by women and were one of the first states to extend the right to vote to women. We respect the right to choose a profession, choose to work outside the home, or choose to start a business. It is a North Dakota tradition. I urge you to maintain that tradition with a do-not-pass recommendation on House Bill 1297.

Thank you for allowing my testimony.

Renee Stromme
Executive Director
North Dakota Women's Network
222 N 4th Street, Suite 215
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From: Janelle Moos [mailto:jmoos@ndcaws.org]

Sent: Monday, March 14, 2011 3:39 PM

To: Lee, Judy E.; Uglem, Gerald P.; Berry, Spencer D.; Dever, Dick D.; Mathern, Tim

Subject: HB 1297 Follow-up

Senator Berry and Committee Members,

As noted in the follow-up testimony by Tammi from the Red River Women's Clinic, if HB 1297 passes as is, the clinic would have to follow FDA guidelines for dosage requirements for the non-surgical abortion procedure. The cost to provide access to the "abortion inducing drug" would be prohibitive for many victims of rape and incest due to the costs that Tammi spoke about.

Obviously, our concern goes beyond the cost for victims of rape and incest. We obviously believe that the less invasive, non-surgical procedure should be available to victims of rape and incest. By not making this non-surgical procedure available and accessible to victims it could cause further stress and trauma to the victim if they had to go through the surgical procedure. Women choose medication abortion instead of having a surgical procedure for very deeply-held and personal reasons, such as victims of rape or sexual assault who choose a procedure using medications alone rather than having an invasive surgical procedure, and this bill would take that choice away from them.

Janelle

Janelle Moos | Executive Director | ND Council on Abused Women's Services

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March 25, 2011

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PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1297

- Page 1, line 1, replace "two" with "one"
- Page 1, line 1, replace "sections" with "section"
- Page 1, line 2, remove "an abortion report form and"
- Page 1, line 3, replace the first comma with "and"
- Page 1, line 3, replace "and 14-02.1-03, subsections 2 and" with "subsection"
- Page 1, line 4, remove "14-02.1-04, 14-02.1-07, 14-02.1-08,"
- Page 1, line 6, remove "to provide a penalty;"
- Page 1, line 17, replace "unborn children" with "fetuses"
- Page 1, line 19, replace "unborn child" with "fetus"
- Page 1, line 21, replace "unborn child" with "fetus"
- Page 1, line 22, replace "unborn child" with "fetus"
- Page 2, remove lines 4 through 10
- Page 2, line 11, replace "5." with "4."
- Page 2, line 13, replace "6." with "5."
- Page 2, line 16, replace "7." with "6."
- Page 2, line 19, replace "8." with "7."
- Page 2, line 30, overstrike "unborn child" and insert immediately thereafter "fetus"
- Page 3, line 11, replace "unborn child" with "fetus"
- Page 4, line 10, remove the overstrike over "8."
- Page 4, line 10, remove "9."
- Page 4, line 21, remove the overstrike over "9."
- Page 4, line 21, remove "10."
- Page 4, line 24, replace "11." with "10."
- Page 4, line 24, overstrike "unborn child" and insert immediately thereafter "fetus"
- Page 4, line 26, overstrike "unborn child" and insert immediately thereafter "fetus"
- Page 4, line 28, replace "12." with "11."
- Page 4, remove line 31
- Page 5, line 1, replace "14." with "12."
- Page 5, line 1, remove the overstrike over "a-fetus"

Page 5, line 1, remove "an unborn child"

Page 6, line 4, remove the overstrike over "fetus"

Page 6, line 4, remove "unborn child"

Page 6, line 7, remove the overstrike over "fetus"

Page 6, line 7, remove "unborn child"

Page 6, line 8, remove the overstrike over "a-fetus"

Page 6, line 8, remove "an unborn child"

Page 6, line 15, replace "unborn child's" with "fetus's"

Page 6, line 17, remove the overstrike over "fetus"

Page 6, line 17, remove "unborn child"

Page 6, remove lines 27 through 31

Page 7, remove lines 1 and 2

Page 7, remove lines 8 through 31

Page 8, remove lines 1 through 29

Page 8, line 30, replace "Subsections 2 and" with "Subsection"

Page 8, line 31, replace "are" with "is"

Page 9, remove lines 1 through 26

Page 10, line 4, remove "1."

Page 10, remove lines 8 through 30

Page 11, remove lines 1 through 31

Page 12, remove lines 1 through 31

Page 13, remove lines 1 through 31

Page 14, remove lines 1 through 21

Page 14, line 24, remove the overstrike over "fetus"

Page 14, line 24, remove "unborn child"

Page 14, line 26, remove the overstrike over "fetus"

Page 14, line 26, remove "unborn child"

Page 14, line 28, remove the overstrike over "fetus"

Page 14, line 28, remove "unborn child"

Page 15, line 20, replace "unborn children" with "fetuses"

Page 16, line 20, remove "unborn"

Page 16, line 21, replace "children" with "fetuses"

Page 16, line 22, replace "unborn child" with "fetus"

Page 16, line 23, replace "unborn child" with "fetus"

Page 16, line 24, replace "unborn child" with "fetus"

Renumber accordingly

Christopher Dodson.

3-28-11

#13

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL 1297

Page 13, line 8, after "physician" insert "within twenty-four hours"

Page 13, line 9, replace "twenty-four hours" with "ten business days"

Renumber accordingly



REPORT OF INDUCED TERMINATION OF PREGNANCY

NORTH DAKOTA DEPARTMENT OF HEALTH

DIVISION OF VITAL RECORDS

SFN 8161 (Rev. 1-2011)

#14

1. Facility Name (if not clinic or hospital, list address)		2. City of Pregnancy Termination		3. County of Pregnancy Termination	
4. Patient's ID Number		5. Age Last Birthday		6. Married? <input type="checkbox"/> Yes <input type="checkbox"/> No	
7. Date of Pregnancy Termination (Mo, Day, Year)		8a. Residence-State		8b. County	
8c. City, Town, or Location		8d. Inside City Limits? <input type="checkbox"/> Yes <input type="checkbox"/> No		8e. ZIP Code	
9. Ancestry (e.g. Cuban, Mexican, Puerto Rican, English, German, Norwegian, etc.) Specify:		10. Race <input type="checkbox"/> American Indian <input type="checkbox"/> White <input type="checkbox"/> Black <input type="checkbox"/> Other (specify): _____			

11. EDUCATION (Specify only highest grade completed)

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

12. Date of Last Normal Menses Began (Mo, Day, Year)	13. Clinical Estimate of Gestation (Weeks)
--	--

14. PREVIOUS PREGNANCIES (Complete each section)

Live Births		Other Terminations	
14a. Number Now Living <input type="checkbox"/> None	14c. Spontaneous <input type="checkbox"/> None	15. After the ultrasound option was offered, did the individual choose to have an ultrasound? <input type="checkbox"/> Yes <input type="checkbox"/> No	
Number Now Dead <input type="checkbox"/> None	14d. Induced (do not include this termination) <input type="checkbox"/> None		

16. TERMINATION PROCEDURES

	15a. Procedure that terminated pregnancy (check ONLY ONE)	15b. Additional procedures used for this termination, if any (check ALL that apply)
Suction Curettage		
Sharp Curettage		
Dilation and Evacuation (D&E)		
Intra-Uterine Saline Instillation		
Intra-Uterine Postaglandin Instillation		
Hysterotomy		
Hysterectomy		
Medical (Nonsurgical), Specify Medication(s):		
Other (Specify):		

17. Complications of Pregnancy Termination (Check all that apply)

<input type="checkbox"/> None	<input type="checkbox"/> Infection	<input type="checkbox"/> Cervical Laceration	<input type="checkbox"/> Other (specify): _____
<input type="checkbox"/> Hemorrhage	<input type="checkbox"/> Uterine Perforation	<input type="checkbox"/> Retained Products	

18. Name of Attending Physician (Type/Print)	19. Name of Person Completing Report (Type/Print)
Signature of Attending Physician	Date

DISTRIBUTION: White-Vital Records

Yellow-Your copy

#15



[Home](#) > [Safety](#) > [MedWatch The FDA Safety Information and Adverse Event Reporting Program](#) > [Reporting Serious Problems to FDA](#)

Safety

What is a Serious Adverse Event?

An adverse event is any undesirable experience associated with the use of a medical product in a patient. The event is serious and should be reported to FDA when the patient outcome is:

Death

Report if you suspect that the death was an outcome of the adverse event, and include the date if known.

Life-threatening

Report if suspected that the patient was at substantial risk of dying at the time of the adverse event, or use or continued use of the device or other medical product might have resulted in the death of the patient.

Hospitalization (initial or prolonged)

Report if admission to the hospital or prolongation of hospitalization was a result of the adverse event. Emergency room visits that do not result in admission to the hospital should be evaluated for one of the other serious outcomes (e.g., life-threatening; required intervention to prevent permanent impairment or damage; other serious medically important event).

Disability or Permanent Damage

Report if the adverse event resulted in a substantial disruption of a person's ability to conduct normal life functions, i.e., the adverse event resulted in a significant, persistent or permanent change, impairment, damage or disruption in the patient's body function/structure, physical activities and/or quality of life.

Congenital Anomaly/Birth Defect

Report if you suspect that exposure to a medical product prior to conception or during pregnancy may have resulted in an adverse outcome in the child.

Required Intervention to Prevent Permanent Impairment or Damage (Devices)

Report if you believe that medical or surgical intervention was necessary to preclude permanent impairment of a body function, or prevent permanent damage to a body structure, either situation suspected to be due to the use of a medical product.

Other Serious (Important Medical Events)

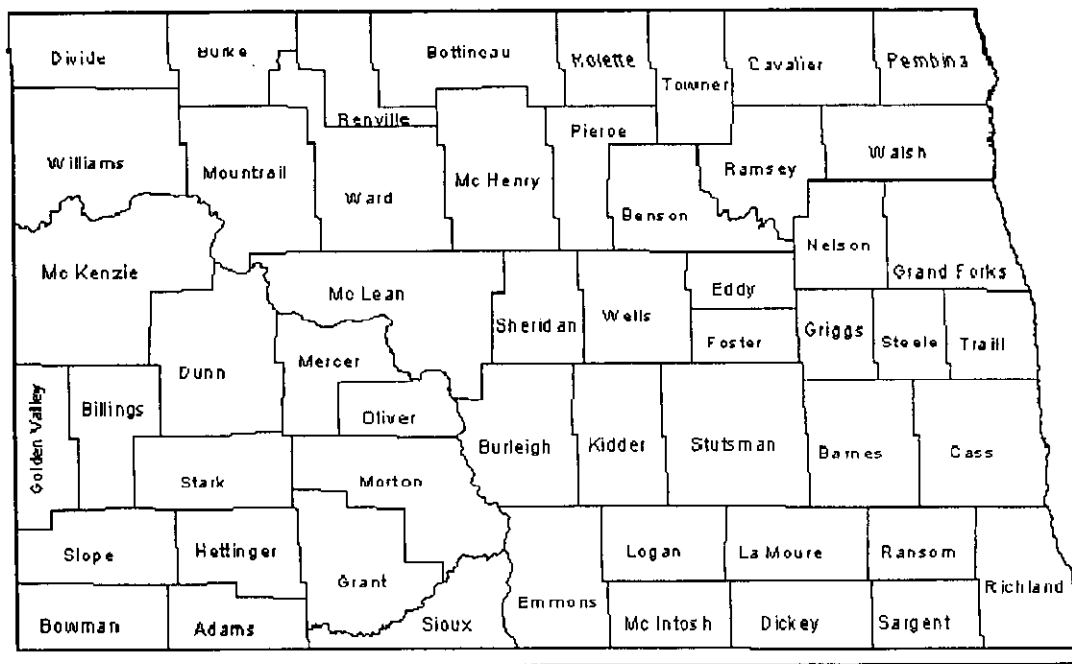
Report when the event does not fit the other outcomes, but the event may jeopardize the patient and may require medical or surgical intervention (treatment) to prevent one of the other outcomes. Examples include allergic brochospasm (a serious problem with breathing) requiring treatment in an emergency room, serious blood dyscrasias (blood disorders) or seizures/convulsions that do not result in hospitalization. The development of drug dependence or drug abuse would also be examples of important medical events.

Contact Us

- **Report a Serious Problem**
- 1-800-332-1088

#16

NORTH DAKOTA OCCURRENCE INDUCED TERMINATION OF PREGNANCY DATA 2009



NORTH DAKOTA
DEPARTMENT of HEALTH

Division of Vital Records

Direct Comments or Questions to:
Carmell Barth
(701) 328-2303
vitalrec@state.nd.us

MISSION STATEMENT
NORTH DAKOTA
STATE DEPARTMENT OF HEALTH

We, as public employees, are dedicated to the goal of assuring that North Dakota is a healthy place to live and to the belief that each person should have an equal opportunity to enjoy good health. To accomplish this mission, we are committed to the promotion of healthy lifestyles, protection and enhancement of the environment, and provision of quality health care services for the people of North Dakota.

Promoting A Healthier Tomorrow

NORTH DAKOTA OCCURRENCE
INDUCED TERMINATION OF PREGNANCY
DATA

It should be understood that all data, concerning induced termination of pregnancy reported by the North Dakota Department of Health, Division of Vital Records, is based on events that occur within North Dakota only. North Dakota participates in a Vital Events Exchange Agreement with the rest of the United States and Canada to exchange information on vital events. North Dakota birth and death events occurring out of state are reported back to the Division of Vital Records on a regular basis. Induced termination of pregnancy is not included in this agreement.

Because no complete number of resident events is available, no rates are calculated. If the reader is interested in ratios, based on the number of live births or pregnancies, he should contact the Division of Vital Records at the contact information listed on the cover of this report.

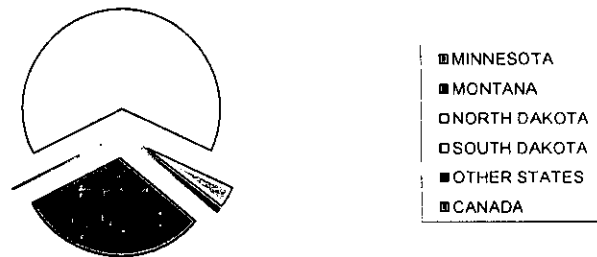
To insure confidentiality of the individual, cross tabulation of this sensitive data set is limited. If requesting further data, no values that occur less than five times are reported.

**ND OCCURRENCE INDUCED TERMINATION OF PREGNANCY
2009**

INDUCED TERMINATION OF PREGNANCY BY STATE OF RESIDENCE

STATE OF RESIDENCE	NUMBER OF EVENTS
MINNESOTA	404
MONTANA	2
NORTH DAKOTA	831
SOUTH DAKOTA	45
OTHER STATES	6
CANADA	2
OCCURRENCE TOTAL	1290

**NORTH DAKOTA OCCURRENCE INDUCED TERMINATION OF
PREGNANCY BY STATE OF RESIDENCE, 2009**



**INDUCED TERMINATION OF PREGNANCY
BY GOVERNOR'S PLANNING REGION OF RESIDENCE**

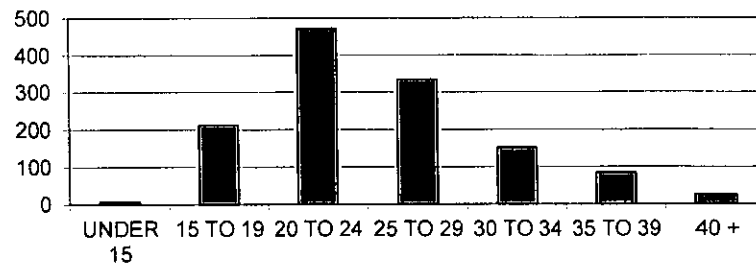
REGION	NUMBER OF EVENTS
OUT OF STATE	459
I	35
II	111
III	48
IV	120
V	307
VI	43
VII	142
VIII	25
OCCURRENCE TOTAL	1290

**ND OCCURRENCE INDUCED TERMINATION OF PREGNANCY
2009**

INDUCED TERMINATION OF PREGNANCY BY AGE OF WOMAN

AGE GROUP	NUMBER OF EVENTS
UNDER 15	7
15 TO 19	212
20 TO 24	473
25 TO 29	334
30 TO 34	153
35 TO 39	85
40 +	26
OCCURRENCE TOTAL	1290

**NORTH DAKOTA OCCURRENCE INDUCED TERMINATION OF
PREGNANCY BY AGE GROUP, 2009**



INDUCED TERMINATION OF PREGNANCY BY LEVEL OF EDUCATION

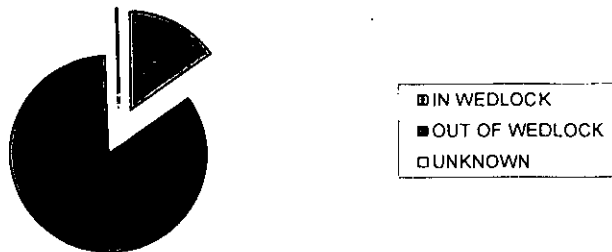
LEVEL OF EDUCATION	NUMBER OF EVENTS
LESS THAN HIGH SCHOOL DIPLOMA	199
HIGH SCHOOL DIPLOMA	339
SOME COLLEGE	525
FOUR YEAR COLLEGE DEGREE	188
GRADUATE LEVEL COLLEGE	32
NOT STATED	7
OCCURRENCE TOTAL	1290

**ND OCCURRENCE INDUCED TERMINATION OF PREGNANCY
2009**

INDUCED TERMINATION OF PREGNANCY BY WEDLOCK STATUS

WEDLOCK STATUS	NUMBER OF EVENTS
IN WEDLOCK	198
OUT OF WEDLOCK	1087
UNKNOWN	5
OCCURRENCE TOTAL	1290

**NORTH DAKOTA OCCURRENCE INDUCED TERMINATION OF
PREGNANCY BY WEDLOCK STATUS, 2009**



INDUCED TERMINATION OF PREGNANCY BY NUMBER OF LIVING CHILDREN

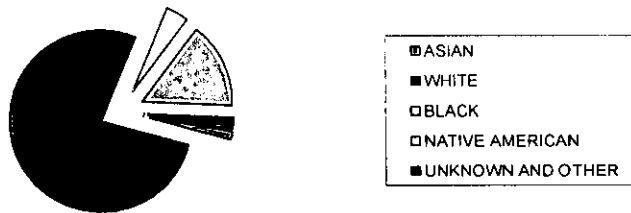
NUMBER OF LIVING CHILDREN	NUMBER OF EVENTS
NONE	516
ONE	321
TWO	251
THREE	131
FOUR	50
FIVE OR MORE	21
OCCURRENCE TOTAL	1290

**ND OCCURRENCE INDUCED TERMINATION OF PREGNANCY
2009**

INDUCED TERMINATION OF PREGNANCY BY RACE

RACE	NUMBER OF EVENTS
ASIAN	18
WHITE	996
BLACK	53
NATIVE AMERICAN	196
UNKNOWN AND OTHER	27
OCCURRENCE TOTAL	1290

**NORTH DAKOTA OCCURRENCE INDUCED TERMINATION OF
PREGNANCY BY RACE OF WOMAN, 2009**



**INDUCED TERMINATION OF PREGNANCY
BY NUMBER OF PREVIOUS INDUCED TERMINATIONS**

NUMBER OF PREVIOUS INDUCED TERMINATIONS	NUMBER OF EVENTS
NONE	887
ONE	262
TWO	90
THREE	33
FOUR OR MORE	18
OCCURRENCE TOTAL	1290

ND OCCURRENCE INDUCED TERMINATION OF PREGNANCY
2009

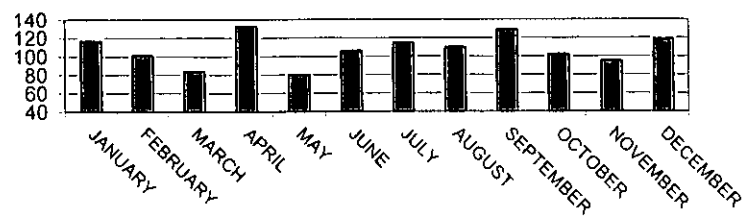
INDUCED TERMINATION OF PREGNANCY BY WEEKS GESTATION

WEEKS GESTATION	NUMBER OF EVENTS
FIVE OR LESS	173
SIX	240
SEVEN	277
EIGHT	162
NINE	121
TEN	72
ELEVEN	84
TWELVE	72
THIRTEEN	54
FOURTEEN	21
FIFTEEN	12
SIXTEEN OR MORE	2
 OCCURRENCE TOTAL	 1290

INDUCED TERMINATION OF PREGNANCY BY MONTH OF TERMINATION

MONTH OF TERMINATION	NUMBER OF EVENTS
JANUARY	117
FEBRUARY	101
MARCH	84
APRIL	133
MAY	80
JUNE	106
JULY	115
AUGUST	110
SEPTEMBER	129
OCTOBER	102
NOVEMBER	95
DECEMBER	118
 OCCURRENCE TOTAL	 1290

NORTH DAKOTA OCCURRENCE INDUCED TERMINATION OF
PREGNANCY BY MONTH OF OCCURRENCE, 2009



17

BURDENS OF PROOF

Burden of Proof

In a legal action, one party typically has the burden or duty to affirmatively prove a fact or facts in dispute. That is called the "burden of proof." To what degree the party has to establish a fact or facts varies depending on the type of action.

Preponderance of the evidence (civil actions)

"Preponderance of the evidence" simply means the greater weight of the evidence indicates that the fact [sought to be proved] is more likely true than not true. A plaintiff in the typical civil action must meet this burden of proof.

Clear and convincing evidence (civil actions)

In some types of actions, such as involuntary treatment or termination of parental rights, the burden of proof is "clear and convincing evidence." This means the jury or judge must have a firm belief or conviction that the allegations are true. "Clear and convincing evidence" is an intermediate standard of proof, requiring less certainty than "beyond a reasonable doubt," but more certainty than "a preponderance of the evidence."

Beyond a reasonable doubt (criminal actions)

In criminal actions the government must establish each element of the offense "beyond a reasonable doubt." This means the jury or judge must be fully satisfied or entirely convinced the individual committed the alleged crime. The N.D. Supreme Court has said: "Proof beyond a reasonable doubt is proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it in the most important of his own affairs."

CHAPTER 12.1-32 PENALTIES AND SENTENCING

12.1-32-01. Classification of offenses - Penalties. Offenses are divided into seven classes, which are denominated and subject to maximum penalties, as follows:

1. Class AA felony, for which a maximum penalty of life imprisonment without parole may be imposed. The court must designate whether the life imprisonment sentence imposed is with or without an opportunity for parole. Notwithstanding the provisions of section 12-59-05, a person found guilty of a class AA felony and who receives a sentence of life imprisonment with parole, shall not be eligible to have that person's sentence considered by the parole board for thirty years, less sentence reduction earned for good conduct, after that person's admission to the penitentiary.
2. Class A felony, for which a maximum penalty of twenty years' imprisonment, a fine of ten thousand dollars, or both, may be imposed.
3. Class B felony, for which a maximum penalty of ten years' imprisonment, a fine of ten thousand dollars, or both, may be imposed.
4. Class C felony, for which a maximum penalty of five years' imprisonment, a fine of five thousand dollars, or both, may be imposed.
5. Class A misdemeanor, for which a maximum penalty of one year's imprisonment, a fine of two thousand dollars, or both, may be imposed.
6. Class B misdemeanor, for which a maximum penalty of thirty days' imprisonment, a fine of one thousand dollars, or both, may be imposed.
7. Infraction, for which a maximum fine of five hundred dollars may be imposed. Any person convicted of an infraction who has, within one year prior to commission of the infraction of which the person was convicted, been previously convicted of an offense classified as an infraction may be sentenced as though convicted of a class B misdemeanor. If the prosecution contends that the infraction is punishable as a class B misdemeanor, the complaint shall specify that the offense is a misdemeanor.

This section shall not be construed to forbid sentencing under section 12.1-32-09, relating to extended sentences.

12.1-32-01.1. Organizational fines. Any organization, as defined in section 12.1-03-04, shall, upon conviction, be subject to a maximum fine in accordance with the following classification:

1. For a class A felony, a maximum fine of fifty thousand dollars.
2. For a class B felony, a maximum fine of thirty-five thousand dollars.
3. For a class C felony, a maximum fine of twenty-five thousand dollars.
4. For a class A misdemeanor, a maximum fine of fifteen thousand dollars.
5. For a class B misdemeanor, a maximum fine of ten thousand dollars.

Nothing in this section shall be construed as preventing the imposition of the sanction provided for in section 12.1-32-03, nor as preventing the prosecution of agents of the organization under section 12.1-03-03.

#18

From: Richter, Vonette J.
Sent: Monday, March 28, 2011 10:58 AM
To: Lee, Judy E.
Subject: info on fetal stages of development

Senator Lee,

Here is a link to the Merck Manual, which provides information on the stages of fetal development:
<http://www.merckmanuals.com/home/sec22/ch257/ch257c.html>

In a nutshell, here are the stages:

Zygote – from fertilization until the fertilized egg enters the uterus (3-5 days after fertilization)

Blastocyst - between 5 and 8 days after fertilization, the blastocyst attaches to the wall of the uterus (called implantation)

Embryo - about 10-12 days after fertilization, the blastocyst becomes an embryo

Fetus - at the end of the 8th week after fertilization, the embryo is considered a fetus.

Vonette Richter
Counsel
Legislative Council
600 E. Blvd. Ave.
Bismarck, ND 58505
(701)328-2916
vrichter@nd.gov

4-5-11

#19

Comparison Research for HB 1297

Minnesota law is similar to ND law regarding abortions in that reporting is required as is consent for minors, with the exception of a judicial bypass. The specific requirements for reporting differ in the period of time allowed for the reporting to be submitted. The judicial bypass allowed by MN statute is similar to that of ND with the exception of the evidence standard. HB 1297 uses a clear and convincing evidence standard whereas MN does not have a specific standard codified. MN law makes it a felony to have an abortion outside of the legal gestational requirements.

North Dakota's already has outlawed abortion pursuant to NDCC 12.1-31-12, however there is a contingency clause, which the committee could decide to remove. There would not be any implications in regard to the interstate commerce clause on adults or minors.

MN Law-Chapter 145

"Viable" means able to live outside the womb even though artificial aid may be required. During the second half of its gestation period a fetus shall be considered potentially "viable."

REPORTING

(a) Within 90 days of July 1, 1998, the commissioner shall prepare a reporting form for use by physicians or facilities performing abortions. A copy of this section shall be attached to the form. A physician or facility performing an abortion shall obtain a form from the commissioner.

(b) The form shall require the following information:

(1) the number of abortions performed by the physician in the previous calendar year, reported by month;

(2) the method used for each abortion;

(3) the approximate gestational age expressed in one of the following increments:

(i) less than nine weeks; (ii) nine to ten weeks; (iii) 11 to 12 weeks; (iv) 13 to 15 weeks; (v) 16 to 20 weeks; (vi) 21 to 24 weeks; (vii) 25 to 30 weeks; (viii) 31 to 36 weeks; or (ix) 37 weeks to term;

(4) the age of the woman at the time the abortion was performed;

(5) the specific reason for the abortion, including, but not limited to, the following:

(i) the pregnancy was a result of rape; (ii) the pregnancy was a result of incest; (iii) economic reasons; (iv) the woman does not want children at this time; (v) the woman's emotional health is at stake; (vi) the woman's physical health is at stake; (vii) the woman will suffer substantial and irreversible impairment of a major bodily function if the pregnancy continues; (viii) the pregnancy resulted in fetal anomalies; or (ix) unknown or the woman refused to answer;

(6) the number of prior induced abortions;

(7) the number of prior spontaneous abortions;

(8) whether the abortion was paid for by:

(i) private coverage; (ii) public assistance health coverage; or (iii) self-pay;

(9) whether coverage was under:

(i) a fee-for-service plan; (ii) a capitated private plan; or (iii) other;

(10) complications, if any, for each abortion and for the aftermath of each abortion. Space for a description of any complications shall be available on the form; and

(11) the medical specialty of the physician performing the abortion.

Subd. 2. Submission.

A physician performing an abortion or a facility at which an abortion is performed shall complete and submit the form to the commissioner no later than April 1 for abortions performed in the previous calendar year. The annual report to the commissioner shall include the methods used to dispose of fetal tissue and remains.

Additional reporting.

Nothing in this section shall be construed to preclude the voluntary or required submission of other reports or forms regarding abortions.

(a) Within 90 days of July 1, 1998, the commissioner shall prepare an abortion complication reporting form for all physicians licensed and practicing in the state. A copy of this section shall be attached to the form.

(b) The Board of Medical Practice shall ensure that the abortion complication reporting form is distributed:

(1) to all physicians licensed to practice in the state, within 120 days after July 1, 1998, and by December 1 of each subsequent year; and

(2) to a physician who is newly licensed to practice in the state, at the same time as official notification to the physician that the physician is so licensed.

Required reporting.

A physician licensed and practicing in the state who knowingly encounters an illness or injury that, in the physician's medical judgment, is related to an induced abortion or the facility where the illness or injury is encountered shall complete and submit an abortion complication reporting form to the commissioner.

Submission.

A physician or facility required to submit an abortion complication reporting form to the commissioner shall do so as soon as practicable after the encounter with the abortion-related illness or injury.

Additional reporting.

Nothing in this section shall be construed to preclude the voluntary or required submission of other reports or forms regarding abortion complications.

The commissioner of human services shall report to the commissioner by April 1 each year the following information regarding abortions paid for with state funds and performed out of state in the previous calendar year:

- (1) the total number of abortions performed out of state and partially or fully paid for with state funds through the medical assistance, general assistance medical care, or MinnesotaCare program, or any other program;
- (2) the total amount of state funds used to pay for the abortions and expenses incidental to the abortions; and
- (3) the gestational age at the time of abortion.

MN Stat. 144.343(6)--Notification concerning abortion--MINORS.

Notwithstanding the provisions of section 13.02, subdivision 8, no abortion operation shall be performed upon an unemancipated minor or upon a woman for whom a guardian has been appointed pursuant to sections 524.5-101 to 524.5-502 because of a finding of incapacity, until at least 48 hours after written notice of the pending operation has been delivered in the manner specified in subdivisions 2 to 4.

(a) The notice shall be addressed to the parent at the usual place of abode of the parent and delivered personally to the parent by the physician or an agent.

(b) In lieu of the delivery required by clause (a), notice shall be made by certified mail addressed to the parent at the usual place of abode of the parent with return receipt requested and restricted delivery to the addressee which means postal employee can only deliver the mail to the authorized addressee. Time of delivery shall be deemed to occur at 12 o'clock noon on the next day on which regular mail delivery takes place, subsequent to mailing.

parent, abortion; definitions.

For purposes of this section, "parent" means both parents of the pregnant woman if they are both living, one parent of the pregnant woman if only one is living or if the second one cannot be located through reasonably diligent effort, or the guardian or conservator if the pregnant woman has one.

For purposes of this section, "abortion" means the use of any means to terminate the pregnancy of a woman known to be pregnant with knowledge that the termination with those means will, with reasonable likelihood, cause the death of the fetus and "fetus" means any individual human organism from fertilization until birth.

Judicial Bypass

(c)(i) If such a pregnant woman elects not to allow the notification of one or both of her parents or guardian or conservator, any judge of a court of competent jurisdiction shall, upon petition, or motion, and after an appropriate hearing, authorize a physician to perform the abortion if said judge determines that the pregnant woman is mature and capable of giving informed consent to the proposed abortion. If said judge determines that the pregnant woman is not mature, or if the pregnant woman does not claim to be mature, the judge shall determine whether the performance of an abortion upon her without notification of her parents, guardian, or conservator would be in her best interests and shall authorize a physician to perform the abortion without such notification if said judge concludes that the pregnant woman's best interests would be served thereby.

(ii) Such a pregnant woman may participate in proceedings in the court on her own behalf, and the court may appoint a guardian ad litem for her. The court shall, however, advise her that she has a right to court appointed counsel, and shall, upon her request, provide her with such counsel.

(iii) Proceedings in the court under this section shall be confidential and shall be given such precedence over other pending matters so that the court may reach a decision promptly and without delay so as to serve the best interests of the pregnant woman. A judge of the court who conducts proceedings under this section shall make in writing specific factual findings and legal conclusions supporting the decision and shall order a record of the evidence to be maintained including the judge's own findings and conclusions.

(iv) An expedited confidential appeal shall be available to any such pregnant woman for whom the court denies an order authorizing an abortion without notification. An order authorizing an abortion without notification shall not be subject to appeal. No filing fees shall be required of any such pregnant woman at either the trial or the appellate level. Access to the trial court for the purposes of such a petition or motion, and access to the appellate courts for purposes of making an appeal from denial of the same, shall be afforded such a pregnant woman 24 hours a day, seven days a week.

April 5, 2011

21

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1297

Page 1, line 21, remove the second "or"

Page 1, line 22, after "abortion" insert "; or

c. Treat a woman for an ectopic pregnancy"

Page 2, line 31, remove the overstrike over "and"

Page 3, line 1, remove "; and"

Page 3, remove line 2

Page 3, line 3, remove "the decision of whether to undergo the abortion"

Page 6, line 31, after the first underscored comma insert "the possible"

Page 13, line 8, after "abortion" insert "compliance"

Page 13, line 8, after "physician" insert "within twenty-four hours"

Page 13, line 9, after "thirty" insert "ten business"

Page 13, line 9, remove the overstrike over "-days"

Page 13, line 9, remove "twenty-four hours"

Page 13, line 10, after "All" insert "abortion data and"

Page 13, line 10, after the second "the" insert "attending"

Page 13, line 10, overstrike "providing"

Page 13, line 11, overstrike "the post-abortion care"

Page 13, line 12, overstrike "post-abortion care" and insert immediately thereafter "abortion"

Page 13, line 16, replace "twenty-four hours" with "thirty days"

Page 14, line 12, remove the overstrike over "G"

Page 14, line 12, remove "AA"

Page 14, line 12, remove the overstrike over "knowingly, or"

Page 14, line 13, remove the overstrike over "negligently,"

Page 14, line 13, remove "intentionally"

Page 16, line 24, remove "or"

Page 16, line 24, after "abortion" insert "; or treat a woman for an ectopic pregnancy"

Page 17, line 5, replace "July" with "September"

Renumber accordingly