

Proponent Testimony for SCR1613 and HCR5019 – The *Value Them Both* Constitutional Amendment for Life

Joint Senate Judiciary and House Federal and State Committee

Doctor Lisa Gilbert, MD, FAAFP

January 21, 2020

Dear Chairman Barker, Vice-Chair Wilborn and Members of the Joint Committee,

My name is Dr. Lisa Gilbert. I am a family medicine physician at Ascension Via Christi and core faculty at the University of Kansas – Wichita Family Medicine Residency Program. I would like to thank you for the opportunity to express my support for the *Value Them Both* Constitutional Amendment and explain why it is critical that the legislature pass this Amendment on to Kansas voters.

During my 10 years in practice, I have cared for people of all ages, including infants, children, teenagers and many pregnant patients. During my three years in rural Western Kansas, I served a large patient population in Lakin, including obstetrical care, and was also responsible for nearly all prenatal care at Genesis Health, the only FQHC in the region. We provided medical services for patients with and without insurance, and from all backgrounds. I also served as medical director for ABC Pregnancy, a crisis pregnancy center in Garden City, which provided a great deal of free material resources, pregnancy tests, ultrasounds, counseling, parenting classes, finance classes, and other support for women with unexpected pregnancies. Now that I have returned to Wichita, I continue to serve the community, including care for the underserved and marginalized, and continue prenatal and obstetrical care. I strive to uphold the invaluable dignity of each patient by providing careful attention to her medical and social needs, informed consent and respect for autonomy.

Over the years, some of my patients have been pregnant teenagers. One patient was only 15 and presented for her first prenatal visit at nearly eight months pregnant. Her delay in seeking medical guidance was due to her fear of telling her parents about her pregnancy, which she had been “hiding” by wearing large sweatshirts. I gently counseled her about the importance of telling her parents and we were able to facilitate a meeting in the office, where she wanted to have that conversation privately. As I reentered the room, I witnessed her parents’ overwhelming support for both her and the unborn baby, and her profound relief. Being pregnant as an adolescent is never an ideal situation. Once families are made aware, however, I have found that their love and support far outweigh the initial shock and sometimes disappointment. Parents can then help their daughter process and navigate the challenging decisions ahead of her.

Informed Consent in Adolescents

One of the core principles of ethical medical practice is autonomy, which upholds human dignity through the process of obtaining informed consent. Informed consent requires disclosure of risks, benefits, and alternatives to any plan of care, in language the patient can understand. It is vital that patients can freely choose between options without pressure or duress, and with sufficient knowledge to make the best decision in their own circumstances.

There are certainly known risks to terminating a pregnancy, and minors deserve to know this information to make important decisions, especially in language they can understand. Health literacy in teenagers is notoriously low, and many do not know what questions to ask. As a result, they often get their information from peers, social media and other questionable resources.¹ Furthermore, the ability to understand and rationally evaluate risks are still developing in their adolescent brains.²

While information should be tailored to adolescents for informed consent, parental involvement is also important to help guide the teen to the best decision. The American Association of Pediatrics Policy Statement on Informed Consent in Decision Making in Pediatric Practice affirms this: “Parents generally are better situated than others to understand the unique needs of their children and to make appropriate, caring decisions regarding their children’s health care.” They further indicate that “Parents should generally be recognized as the appropriate ethical and legal surrogate medical decision-makers for their children and adolescents. This recognition affirms parents’ intimate understanding of their children’s interests and respects the importance of family autonomy.”³ It is clear that parents must be actively involved in their children’s important health decisions in order to best support them.

Medical Risks

Informed consent requires discussing openly the risks and benefits of all medical procedures. Regarding abortions, we have little data in the US because we do not keep national databases of patients who have abortions or their outcomes and complications. However, recent large studies in Finland showed that the complication rate has increased from 4.2% in 2008 to 8.2% in 2015. Complications included bleeding (15%), incomplete expulsion of tissue (10%) and infection (2%). About 13% of first trimester medication-induced abortions later required a surgical abortion procedure with a vacuum to remove the remaining tissue.⁴ The official NHS website in the UK tells the public that about 1 in 10 women will develop infection, 1 in 20 will have pregnancy material left behind in the uterus that may need to be removed, 1 in 100 experience damage to the cervix and as many as 1 in 250 have uterine damage after a surgical abortion.⁵

¹ <https://www.tandfonline.com/doi/full/10.1080/15398280802121406>

² [ncbi.nlm.nih.gov/pmc/articles/PMC3621648/](https://pubmed.ncbi.nlm.nih.gov/pmc/articles/PMC3621648/)

³ <https://pediatrics.aappublications.org/content/138/2/e20161484>

⁴ <https://bmcwomenshealth.biomedcentral.com/articles/10.1186/s12905-018-0645-6>

⁵ <https://www.nhs.uk/conditions/abortion/risks/>

Canadian data, while incomplete, suggests that about 1% of women will have complications.⁶ Whether the rate of abortion complication is 1% , 8.2% or 10%, parents need to know why their daughters are experiencing severe or unusual abdominal pain or related complications in order to best care for them. They need to know what to look for in terms of infection or excessive bleeding during their daughters' recovery. Parents also need to be able to inform her medical team about her recent abortion as this may guide their decisions about surgical management.

Mental Health

I also see in my practice many teens struggling with depression and anxiety, but abortion exacerbates mental health challenges. Large studies from Sweden (>800 women) have reported that many women experience significant depression and anxiety leading up to abortion. Of even greater interest, 50-60% of women experience some subsequent emotional distress, with 16% experiencing serious distress.⁷ Even a large study that rejected the hypothesis that abortion itself causes depression concluded, "Still, both sides agree that (a) abortion is consistently associated with elevated rates of mental illness compared to women without a history of abortion; (b) the abortion experience directly contributes to mental health problems for at least some women; and (c) there are risk factors, such as pre-existing mental illness, that identify women at greatest risk of mental health problems after an abortion."⁸ This article then describes other social risk factors for depression after abortion. These factors include women who feel pressured to terminate a pregnancy, perceive opposition by family or friends, perceive lack of social support, experience feelings of stigma or need for secrecy, use avoidance or denial as coping strategies, or experience low self-esteem or low perceived control over their lives. Many of these are risk factors are present in adolescents seeking abortions, especially if they imagine they will experience opposition, lack of support, or pressure by a boyfriend to terminate the pregnancy.

The American Psychological Association (APA) states that regardless of whether depression is a direct or indirect cause of abortion, "women's varied experiences of abortion be recognized, validated, and understood."⁹ However, these experiences cannot be effectively addressed and supported if their closest mentors and protectors in their lives are unaware of this occurring. Teens are already at risk of depression and anxiety. Given this, both the adolescents themselves and their parents need to know of possible increased mental health risks associated with abortion. Furthermore, parents need to be aware of their daughters' abortions in order to intervene early with treatment during the post-abortion period.

Conclusion

⁶ <https://abortionincanada.ca/stats/abortion-complication-rates/>

⁷ <https://www.ncbi.nlm.nih.gov/pubmed/9720837>

⁸ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6207970/>

⁹ <https://www.apa.org/pubs/journals/features/amp-64-9-863.pdf>

Regardless of whether a teenage girl chooses to abort, give up for adoption, or raise the child, she clearly deserves to know the possible outcome and to have adequate resources to make a free and informed decision. She needs to know in language she can understand all the benefits and risks of this medical intervention. Personalized care and social support are always needed from her family. Inclusion of a parent or guardian in the decision-making process allows them to best support their daughter—physically, emotionally, mentally—throughout one of the most important, challenging, and life-altering decisions she will ever make.

For these reasons, I urge you to support the Value Them Both bill and protect and support Kansan minors. Thank you for this opportunity and for all your work for the people of Kansas.

Sincerely,

Lisa Gilbert, MD, FAAFP

65-6704. Abortion upon minor; required information and counseling.

(a) Before the performance of an abortion upon a minor, a counselor shall provide pregnancy information and counseling in a manner that can be understood by the minor and allows opportunity for the minor's questions to be addressed. A parent or guardian, or a person 21 or more years of age who is not associated with the abortion provider and who has a personal interest in the minor's well-being, shall accompany the minor and be involved in the minor's decision-making process regarding whether to have an abortion.

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Such information and counseling shall include:

- (1) The alternatives available to the minor, including abortion, adoption and other alternatives to abortion;
- (2) an explanation that the minor may change a decision to have an abortion at any time before the abortion is performed or may decide to have an abortion at any time while an abortion may be legally performed;
- (3) make available to the minor information on agencies available to assist the minor and agencies from which birth control information is available;
- (4) discussion of the possibility of involving the minor's parent or parents, other adult family members or guardian in the minor's decision-making; and
- (5) information regarding the provisions of K.S.A. 65-6705 and the minor's rights under such provisions.

(b) After the performance of an abortion on a minor, a counselor shall provide counseling to assist the minor in adjusting to any post-abortion problems that the minor may have.

(c) After the counselor provides information and counseling to a minor as required by this section, the counselor shall have the minor sign and date a statement setting forth the requirements of subsections (a) and (b) and declaring that the minor has received information and counseling in accordance with those requirements.

(d) The counselor shall also sign and date the statement and shall include the counselor's business address and business telephone number. The counselor shall keep a copy for the minor's medical record and shall give the form to the minor or, if the minor requests and if the counselor is not the attending physician, transmit the statement to the minor's attending physician. Such medical record shall be maintained as otherwise provided by law.

(e) The provision by a counselor of written materials which contain information and counseling meeting the requirements of subsections (a) and (b) and which is signed by the minor shall be presumed to be evidence of compliance with the requirements of this section.

(f) The requirements of subsection (a) shall not apply when, in the best medical judgment of the attending physician based on the facts of the case, an emergency exists that threatens the health, safety or well-being of the minor as to require an abortion. A physician who does not comply with the requirements of this section by reason of this exception shall state in the medical record of the abortion the medical indications on which the physician's judgment was based.

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History

(a) Except in the case of a medical emergency or as otherwise provided in this section, no person shall perform an abortion upon an unemancipated minor, unless the person first obtains the notarized written consent of the minor and both parents or the legal guardian of the minor.

(1) If the minor's parents are divorced or otherwise unmarried and living separate and apart, then the written consent of the parent with primary custody, care and control of such minor shall be sufficient.

(2) If the minor's parents are married and one parent is not available to the person performing the abortion in a reasonable time and manner, then the written consent of the parent who is available shall be sufficient.

(3) If the minor's pregnancy was caused by sexual intercourse with the minor's natural father, adoptive father, stepfather or legal guardian, then the written consent of the minor's mother shall be sufficient. Notice of such circumstances shall be reported to the proper authorities as provided in K.S.A. 2012 Supp. 38-2223, and amendments thereto.

(b) After receiving counseling as provided by subsection (a) of K.S.A. 65-6704, and amendments thereto, the minor may object to the written consent requirement set forth in subsection (a). If the minor so objects, the minor may petition, on her own behalf or by an adult of her choice, the district court of any county of this state for a waiver of the written consent requirement. If the minor so desires, the counselor who counseled the minor as required by K.S.A. 65-6704, and amendments thereto, shall notify the court and the court shall ensure that the minor or the adult petitioning on the minor's behalf is given assistance in preparing and filing the petition. The minor may participate in proceedings in the court on the minor's own behalf or through the adult petitioning on the minor's behalf. The court shall provide a court-appointed counsel to represent the minor at no cost to the minor.

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

(d) Consent shall be waived if the court finds by clear and convincing evidence that either:

1. The minor is mature and well-informed enough to make the abortion decision on her own; or
2. the consent of the individuals specified in subsection (a) would not be in the best interest of the minor.

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

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

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

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

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

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

(h) The supreme court shall promulgate any rules it finds are necessary to ensure that proceedings under this act are handled in an expeditious and anonymous manner.

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

U) (1) No consent shall be required under this section if in the best medical judgment of the attending physician based on the facts of the case, an emergency exists that threatens the health, safety or well-being of the minor as to require an abortion.

(2) A physician acting pursuant to this subsection shall state in the medical record of the abortion the medical indications on which the physician's judgment was based. The medical basis for the determination shall also be reported by the physician as part of the written report made by the physician to the secretary of health and environment under K.S.A. 65-445, and amendments thereto.

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

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

(m) Prior to conducting proceedings under this section, the court may require the minor to participate in an evaluation session with a psychiatrist, licensed psychologist or licensed clinical social worker. Such evaluation session shall be for the purpose of developing trustworthy and reliable expert opinion concerning the minor's sufficiency of knowledge, insight, judgment and maturity with regard to her abortion decision in order to aid the court in its decision and to make the state's resources available to the court for this purpose. Persons conducting such sessions may employ the information and materials referred to in K.S.A. 65-6708 et seq., and amendments

thereto, in examining how well the minor is informed about pregnancy, fetal development, abortion risks and consequences and abortion alternatives, and should also endeavor to verify that the minor is seeking an abortion of her own free will and is not acting under intimidation, threats, abuse, undue pressure or extortion by any other persons. The results of such evaluation shall be reported to the court by the most expeditious means, commensurate with security and confidentiality, to assure receipt by the court prior to or at the proceedings initiated pursuant to this section.

(n) In determining if a minor is mature and well-enough informed to make the abortion decision without parental consent, the court shall take into account the minor's experience level, perspective and judgment. In assessing the minor's experience level, the court shall consider, along with any other relevant factors, the minor's age, experience working outside the home, living away from home, traveling on her own, handling personal finances and making other significant decisions. In assessing the minor's perspective, the court shall consider, along with any other relevant factors, what steps the minor has taken to explore her options and the extent to which she considered and weighed the potential consequences of each option. In assessing the minor's judgment, the court shall consider, along with any other relevant factors, her conduct since learning of her pregnancy and her intellectual ability to understand her options and to make informed decisions.

(o) The judicial record of any court proceedings initiated pursuant to this section shall upon final determination by the court be compiled by the court. One copy of the judicial record shall be given to the minor or an adult chosen by the minor to bring the initial petition under this section. A second copy of the judicial record shall be sent by the court to the abortion provider who performed or will perform the abortion for inclusion in the minor's medical records and shall be maintained by the abortion provider for at least 10 years.

(p) The chief judge of each judicial district shall send annual reports to the department of health and environment disclosing in a nonidentifying manner:

- (1) The number of minors seeking a bypass of the parental consent requirements through court proceedings under this section;
- (2) the number of petitions granted;
- (3) the reasons for granting such petitions;
- (4) any subsequent actions taken to protect the minor from domestic or predator abuse;
- (5) each minor's state of residence, age and disability status; and
- (6) the gestational age of the unborn child if the petition is granted.

(q)

(1) A custodial parent or legal guardian of the minor may pursue civil remedies against individuals, including the physician and abortion clinic staff, who violate the rights of parents, legal guardian or the minor as set forth in this section.

(2) Such relief shall include:

- (A) Money damages for all injuries, psychological and physical, occasioned by the violation of this section;
- (B) the cost of any subsequent medical treatment such minor might require because of the abortion performed without parental consent or knowledge, or without a court order, in violation of this section;

(C) statutory damages equal to three times the cost of the abortion; and

(D) reasonable attorney fees.

(r) In the course of a judicial hearing to waive parental consent, if the court has reason to suspect that a minor has been injured as a result of physical, mental or emotional abuse or neglect or sexual abuse, the court shall report the matter promptly as provided in subsection (c) of K.S.A. 2012

Supp. 38-2223, and amendments thereto. In the course of reporting suspected child abuse or neglect

to the appropriate state authorities, nothing in this section shall abridge or otherwise modify the anonymity or confidentiality provisions of the judicial waiver proceeding as specified in this section.

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

History: L. 1992, ch. 183, § 5; L. 1993, ch. 291, § 241; L. 2011, ch. 44, § 5; July 1.

<http://www.ksrevisor.org/statutes/chapters/ch65/0650670005k.html>

65-6707. Same; severability clause. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

History: L. 1992, ch. 183, § 8; July 1.

<http://>