

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Mike O'Neal at 3:30 P.M. on February 8, 2007 in Room 313-S of the Capitol.

All members were present except:

Kay Wolf- excused  
Paul Davis- excused

Committee staff present:

Jerry Ann Donaldson, Kansas Legislative Research  
Athena Andaya, Kansas Legislative Research  
Jill Wolters, Office of Revisor of Statutes  
Duston Slinkard, Office of Revisor of Statutes  
Cindy O'Neal, Committee Assistant

**HB 2006 - crimes against an unborn child**

Chairman O'Neal provided the committee with memo regarding the Kansas Supreme Court's opinion in the case of **Nold v. Binyon**, 272 Kan.87 (2001). (Attachment 1) The case at issue was a medical malpractice action that questioned what duty, if any, was owed by health care providers to the unborn child of a mother who intended to carry her baby to term. The court concluded that: "We hold, as a matter of law, that a physician who has a doctor-patient relationship with a pregnant woman who intends to carry her fetus to term and deliver a healthy baby also has a doctor-patient relationship with the fetus."

Also provided by the Chairman was a copy of **Commonwealth of Pennsylvania v. Bullock**, in which the court unanimously upheld the constitutionality of an act that makes it a criminal offense for anyone, other than the pregnant woman or her doctors who engage in good faith medical practices or performing an abortion, to kill an unborn child. The court stated that viability outside the womb was not required for people to understand what would constitute killing a fetus. The statute's protection was intended to extend to a fetus, not to "define the concept of personhood or establish when a life begins and ends." (Attachment 2)

The Court went on to further explain that: "Today it is understood that a mother and her unborn child are separate and distinct entities, and that medicine is generally able to prove the *corpus delicti* of the homicide of an unborn child. It is also clear that by defining unborn child to include all stages of gestation, the General Assembly intended to eliminate any viability requirement."

While the Court stated that "People are free to differ or abstain on the profound philosophical and moral questions of whether an embryo is a human being, or on whether or at what stage the embryo or fetus is ensouled or acquires 'personhood'. These questions are entirely irrelevant to criminal liability under the statute. It only requires proof that, whatever the entity within the mother's womb is called, it had life and, because of the act or acts of the defendant, it no longer does."

Chairman O'Neal explained that the Courts have determined that it not necessary to define "conception. He made motion to strike, on page 1, lines 17 & 18 and in line 19 strike the language after "living" to the end of the sentence and replace it with "individual organism of the species homo sapiens, in utero, at any stage of gestation from fertilization to birth." (Attachment 3) Representative Kinzer seconded the motion. The motion carried.

Representative Colloton made the motion to limit the bill to homicide as defined in the current criminal code. Representative Crow seconded the motion. The motion carried.

Representative Colloton made the motion to include: attempted homicide, aggravated battery & battery. Representative Crow seconded the motion. The motion carried.

Staff suggested that the committee add "solicitation & conspiracy" to be covered under homicides. Representative Colloton made the motion to include the revisor's suggestion. Representative Kinzer seconded the motion. The motion carried.

Representaive Kuether made the motion to table **HB 2006** because she didn't understand what she had voted

CONTINUATION SHEET

MINUTES OF THE House Judiciary Committee at 3:30 P.M. on February 8, 2007 in Room 313-S of the Capitol.

on and wanted to see a copy of the approved amendments. Representative Roth seconded the motion. The motion carried 9-7. Representative Kinzer requested he be recorded as voting no.

The committee meeting adjourned at 4:30 p.m. The next meeting was scheduled for February 12, 2007.