

# Abortion Laws: A Report From the States

All the publicity given Congress's recent actions on abortion has overshadowed the issue at the state level since the November elections. With most legislative sessions now over, it's clear that state abortion regulations received favorable treatment in 1995.

In its 1992 decision in *Planned Parenthood v. Casey*, the Supreme Court reaffirmed the legalization of abortion on demand. But, for the first time since *Roe v. Wade*, the court also upheld state laws on "informed consent," requiring abortion providers to give women detailed information about abortion risks and alternatives

## Rule of Law

By Clarke D. Forsythe

and fetal development—legislation supported by 70% to 80% of the public. Now, in the wake of *Casey*, the 1995 sessions have brought an increase in these and other abortion regulations.

This year Louisiana, Indiana and Montana enacted informed-consent laws. The Missouri House and Senate—both controlled by Democrats—passed an informed-consent law only to have it vetoed by Democratic Gov. Mel Carnahan. Similar legislation passed the Rhode Island Senate, an Alabama Senate committee, and a North Carolina House committee. Ten states now have *Casey*-type informed-consent laws (Indiana, Louisiana, Michigan, Mississippi, Montana, North Dakota, Ohio, Pennsylvania, South Dakota, Utah.)

This year, several states also enacted legislation requiring parental notice or consent before a minor daughter's abortion. Delaware, Illinois, Montana and Tennessee enacted parental-involvement laws. Similar legislation passed the Oregon Senate, the North Carolina House and

Senate, the Iowa House and Senate, an Alaska Senate committee, a Texas Senate committee, and the Washington House (the first pro-life bill to pass any Washington chamber in years).

Given the evidence from Minnesota that adolescent pregnancy and birth rates fell significantly while the state's parental-notice law was in effect between 1981 and 1986, states have compelling reasons to enact these laws. At least 38 states now have parental-notice or consent laws.

The dynamics of federalism are evident as well. In Ohio, the House and Senate passed legislation banning the D&X method, or "partial-birth" abortions. Gov. George Voinovich is expected to sign the legislation into law. Based on the Ohio experience, the U.S. House Judiciary Committee last month voted for a federal ban on partial-birth abortions.

This year, too, states have passed legislation regulating abortion clinics. Despite the familiar mantra of pro-abortion groups that abortions should be "safe and legal," some are now pushing for non-physicians to perform abortions. In April, Montana joined 46 other states by passing legislation requiring that only licensed doctors can do abortions.

States also have begun to pay attention to the possible link between abortion and breast cancer. A number of studies have suggested an increased risk of breast cancer when a woman has an abortion before her first birth. The Washington House passed a bill requiring doctors to disclose information about the breast-cancer link to women seeking abortions and ordering the state department of health to compile and summarize research on this possible connection.

In addition, several states have acted to increase legal protection for the unborn child outside the abortion context, as for example in vehicular homicides, an area not addressed by *Roe*. South Dakota passed legislation treating the killing of an

unborn child as homicide at any stage of pregnancy. Kansas also passed a bill heightening the penalties for killing an unborn child. Georgia passed a similar bill. Virtually every state treats the killing of an unborn child (except for abortion) as homicide at any stage of pregnancy if the child dies outside the womb. In addition, 24 states treat the killing of an unborn child (except for abortion) as homicide even if the child is stillborn.

Much of the increased regulation of abortion practice can be attributed to the 1994 elections, which produced pro-life ma-

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ajorities that overthrew pro-abortion obstacles. In April, the Missouri House overruled Speaker Bob Griffin to report out a pro-life bill, handing him one of his worst defeats in his 15 years as speaker.

In Pennsylvania, the House passed a budget that prevents state funds from being used to "promote, refer for, or perform abortions, or engage in abortion counseling." Pro-life legislation moved further along in the Rhode Island, Washington and New York legislatures than at any time in the past decade. In June, North Carolina reduced the state fund for abortions from \$1.2 million to \$50,000. New Mexico's Gov. Gary Johnson cut Medicaid funds for abortions in April. And in the first abortion legislation to pass the state in years, Texas passed a requirement that abortion clinics make public whether they are properly licensed.

Why this surge in state regulations on abortions? First, as a 1990 Gallup poll

showed, 77% of Americans understand that abortion is at least the taking of human life (28%), if not murder itself (49%). Second, legislators are learning that abortion practices are almost invariably substandard and different from all other types of medical practices.

Many abortions are done on a cash basis. Most counseling is provided in groups by nonphysicians. A woman rarely meets the doctor who is going to perform her abortion until she is gowned and in the stirrups. The average abortion takes eight minutes. The pro-abortion lobby's slogan that "abortion should be between a woman and her physician" is a myth. Virtually no personal physician will perform abortions.

Since January, Alabama has leveled 17 public health violations against an abortion clinic where a doctor worked for more than three months without a license. Mississippi revoked the medical license of Dr. Thomas Tucker, who faces three suits for botched abortions. Pennsylvania suspended the license of Dr. Vikram Kaji, whose license was previously suspended in New Jersey for sexual misconduct with patients. The California Medical Board revoked the medical license of Dr. Leo Kenneally because of the deaths of two women from abortion and serious injuries to five others. In May, Pennsylvania officials ordered clinics to stop giving counseling via telephone recordings.

Since *Roe v. Wade*, the Supreme Court has overlooked the realities of abortion practice, preferring instead to rely on abstractions like a "right to choose." But a growing number of state legislatures do see the reality of abortion practice and an increasing number will do so in the years to come.

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