

Judge Blocks Law to Report Sex Under 16

By JODI RUDOREN

A federal judge ruled yesterday that Kansas law did not require health care workers to report to the authorities sexual activity by people under age 16, invalidating a 2003 opinion by the state's attorney general.

The judge, J. Thomas Marten of Federal District Court in Wichita, said the reporting of consensual sex among similarly aged teenagers would deter young people from seeking medical care and overwhelm the state authorities.

The ruling blocks the attorney general's advisory opinion from guiding the enforcement of Kansas' law requiring the reporting of abuse that causes injury. The opinion suggested that any pregnancy, sexually transmitted disease or request for contraception fell under the law.

The decision by Judge Marten came in a class-action lawsuit on behalf of doctors, nurses, therapists and sex educators. It was the second legal setback in as many months for the attorney general, Phill Kline, and his efforts to restrict abortions in the state.

The Kansas Supreme Court on Feb. 3 limited Mr. Kline's investigation into two abortion clinics by stripping the medical records he had requested of patients' identifying information.

In yesterday's decision, Judge Marten said Mr. Kline's opinion improperly conflated illegal sexual activity — intercourse, oral sex and lewd touching by anyone under 16 are prohibited in Kansas — with abuse.

"The opinion wrongly redefines the common understanding of both state agencies and mandatory reporters by denoting all sexual activity to be 'inherently injurious,'" wrote Judge Marten, who was appointed by President Bill Clinton. "The attorney general's overexpansive interpretation of the reporting statute not only fails to serve the public interest, it actually serves to undermine it."

Simon Heller, a lawyer for the Center for Reproductive Rights, an advocacy group that filed the suit, said the ruling could have broad national implications because it was the first to assure adolescents constitutional protection for private communication with health care workers.

Another lawyer for the group, Bonnie Scott Jones, said in a statement, "States cannot be allowed to simply pull up a chair in every doctor's office in the state and listen in on teenagers seeking health services."

Mr. Kline, a Republican, was unavailable for an interview. A three-paragraph statement that he sent by e-mail to reporters largely ignored the substance of the judge's ruling, instead claiming success for defending the constitutionality of the reporting statute, which was not a central question in the lawsuit.

"I have always maintained, and continue to maintain, that the rape of a child harms a child," he said. "When the Kansas Legislature wrote this statute, they unquestionably had the protection of children in mind."

But Judge Marten said that Mr. Kline's advisory opinion was "contrary to a plain reading" of state law.