Committee Name:
Senate Committee – Judiciary, Corrections and Privacy (SC–JCP)

Appointments

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Committee Hearings

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Record of Committee Proceedings

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WISCONSIN CATHOLIC CONFERENCE

TO: Members of the Senate Committee on Judiciary, Corrections and Privacy
Members of the Assembly Committee on Judiciary

FROM: Kathy Markeland, Associate Director

DATE: August 21, 2003

RE: Support for Assembly Bill 372 and Senate Bill 195

The Wisconsin Catholic Conference supports Assembly Bill 372 and Senate Bill 195, which propose a modest extension of Wisconsin law to mirror federal law and to codify in our statutes that each infant who is born and shows signs of life must be recognized in law as a human person.

For Catholics, life is present and must be respected from the moment of conception until natural death. While the Supreme Court eroded legal protection for pre-born human life in *Roe v. Wade*, the Court did not set an unlimited scope for the "privacy right" that they identified:

> "[I]t is reasonable and appropriate for a State to decide that at some point in time another interest, that of health of the mother or that of potential human life, becomes significantly involved. The woman's privacy is no longer sole and any right of privacy she possesses must be measured accordingly."

According to the Court the "right to choose" is not unlimited, and the rights of the developing human life attain increasing status as the fetus becomes more viable. A woman's *intent* to terminate her pregnancy is not sufficient to override the competing rights of the newly born infant.

Some have argued that defining "born alive" and "live birth" will tie the hands of parents and physicians struggling with health care decisions for premature or disabled infants. This bill does not require any different measures to be taken for newborns suffering debilitating health conditions at birth. The medical and ethical analysis that applies to the care for any individual at any state of their life whether newborn or elderly would continue to function as before.

Disabled or premature infants born to parents who "want" the child have advocates seeking the best care for their child. However, a child that is born alive when the intent of the mother was to terminate is without an advocate. This law could make a difference in the lives of these children.

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An additional concern is the current "market" for fetal tissues and body parts. While it may sound too offensive to contemplate, the demand for healthy fetal organs and tissues for research and medical treatments encourages the delivery of fresh, intact tissues. It is not a long leap from partial birth abortion to the full birthing - either accidentally or intentionally - of a premature infant to insure the value of the organs and tissues destined to be harvested and sold.

The pressure to devalue pre-born human life is real. It is a pressure we should resist.

We look to the day when all human life at all stages will be afforded the inherent rights granted by the Creator. This bill is one step to protect against the further erosion of our society's concern for our most vulnerable members.

In 2002, the federal "Born-Alive Infants Protection Act" passed with bipartisan support. AB 372 and SB 195 bring Wisconsin laws in line with the federal regulations on this issue and we therefore urge your support.

Lutheran Office for Public Policy in Wisconsin

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JOINT COMMITTEE HEARING
SENATE JUDICIARY, CORRECTIONS, AND PRIVACY COMMITTEE
and
ASSEMBLY JUDICIARY COMMITTEE
Hearing on SB 195, and AB 372, Legal Rights Relating to Live Births
Thursday, August 21
Room 411 South, Wisconsin State Capitol

Dear Senator Zien and Representative Gundrum and committee members,

Thank you for accepting testimony on bills SB 195 and AB 372 which define legal rights for one born alive as a live birth. I am Rev. Sue Moline Larson, the legislative advocate for the six judicatories of the Evangelical Lutheran Church in American with 750 congregations in Wisconsin. I speak from the position affirmed and adopted by the national church in its biennial assembly in 1991 on abortion and specifically the public policy issues related to it.

The ELCA addresses concerns of importance for society that affect the ethical and moral understandings of members struggling to find congruent answers to conflictive issues in the light of sacred scripture and historic church teachings. The church does not shy away from wrestling with the most difficult and potentially divisive matters because we are called to assist our members in their personal moral and ethical struggles to reach decisions congruent with their faith. Members hold strong and diverse opinions on termination of pregnancy and the role and extent of public policy in regulating it.

The church has determined that government does have a role in formulating policy regarding abortion - policy that effectively protects prenatal life but also protects the dignity and health care needs of women seeking to make responsible choices in painfully difficult circumstances. It is a formidable challenge because society is divided on the issue, and because many women, especially low-income women and women of color, are so under-represented in legislative and judicial processes. The church affirms exerting every effort to see that the needs of those most directly affected, both the woman and the life in the womb, are protected. Therefore, laws enacted must preserve and enhance life while also avoiding unduly encumbering or endangering the lives of women.

Because the ELCA believes that the life of the woman and the life in the womb must be respected by law, the church opposes laws that deny access to safe and affordable services for morally justifiable abortions, or laws that are primarily intended to harass those contemplating an abortion. Those laws affect women whose lives or health are threatened, women whose pregnancy results from rape or incest, women whose fetuses have lethal abnormalities incompatible with life, or women whose pregnancies are terminated after the fetus is determined to be viable when the mother's life is threatened or abnormalities indicate that the newborn will not survive after the birth. If a pregnancy must be interrupted after the point of viability outside of the womb, every reasonable

effort should be made to support the life unless it is medically determined that it can not live. Because abortion should be an option of last resort and not the answer to unwanted pregnancies, prevention of unintended pregnancies is crucial. Sexuality education, community pregnancy prevention programs and parenting preparation classes in school, availability of contraceptives, and research and development of new and safe forms of contraception are key components in doing so.

The church painfully recognizes that there can be sound reasons for ending a pregnancy. Tragically, many women choose abortion as a desperate attempt to survive in a hostile and unsupportive environment. For that reason, public officials share with the faith community the responsibility to provide for the education and welfare of women and children. Health care, employment, and housing are all factors that potential parents must consider. Without sufficient income support for family needs, the vocation of parenthood is undermined by untenable pressures, financial stress and despair.

Your role then as legislators is not only to protect unborn life by seeking to create an legal determination of its humanity, but to work to provide an environment in which children can be safely received. Defining a legal identity will not assure an infant's place in the community where it can be fed, sheltered, nurtured and sustained. Congruency in concerns for the newly born must include a safety net that promotes fair wages, affordable health care and housing, and that acknowledges and vigorously challenges racism and discrimination towards young, low-income minority women.

The time is long overdue for those who work tirelessly and righteously to save the unborn to attend to the real world realities of life into which infants are born. Clergy, especially those serve economically challenged communities, minister to parents who are committed to their infants, but have little understanding or resources to safely raise them. Our churches continue to advocate for assistance programs that build a foundation for families to positively anticipate their child's birth - in-home mentoring, expansion of family resource centers, health care for the uninsured, dignity in work, and affordable housing. Those who strategize with legislators to take over the decision-making of whether a pregnancy is carried to term must also commit to absolutely indispensable components of family stability and security.

The purpose of the law and the role of those who make it is to provide for the general welfare of all in society. Justice for the unborn is far more than a legal definition. It extends from pre-natal care and counseling before birth - especially for young women under eighteen - to services and support available for raising a child in the years that follow. Life-sustaining assistance is crucial in being truly supportive of life. Without it, legal rights have little purpose other than to find new ways to criminalize women in the most vulnerable times of their lives.

I encourage you to reconsider these bills and to further the legal rights of women to health, housing, prenatal care and counseling, and to families for the time to be with their children and to raise them with adequate incomes in addition to their love and care. The legal rights defined in SB 195 and AB 372 will not provide those human rights, and for that reason, I regretfully register and speak in opposition to them and urge you to do the same. Thank you.

Mary Lazich

Wisconsin State Senator
Senate District 28

Senate Committee on Judiciary, Corrections, and Privacy
And
Assembly Committee on Judiciary
Testimony
Senate Bill 195 and Assembly Bill 372
August 21, 2003

Good morning Chairmen and Committee members. Thank you for your attention to Senate Bill 195 and Assembly Bill 372 the Born Alive Infant Protection Act. The bills allow infants that are born alive equal protection under Wisconsin state law.

It is reasonable that all infants that are born-alive should be entitled to equal protection under the law. However, this principle seems to be disregarded at the time babies are born alive as a result of an abortion. In many cases the babies are left to die without comfort and care. Later today you will hear testimony from Jill Stanek who witnessed numerous babies left to die without regard for human life and without basic care and comfort.

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Several health care professionals that testified in support of the Federal Born Alive Bill witnessed babies that were born alive and left to die on counters and in waste bins. We must not allow any more needless deaths of living babies. As you will hear later, some of these babies lived more than two hours after they were born and were left to die without medical attention or human care.

Currently there is not a Wisconsin Statute or regulation that defines born alive for either a normal delivery or an abortion. Senate Bill 195 and Assembly Bill 372 define a baby as born alive at the time the baby has one vital sign after the complete expulsion or extraction from his or her mother. Under the bills before you today, all infants who are born alive, as a result of normal birthing procedures or abortion are assured legal protection under Wisconsin state law. If a baby is not dead, and is left to die after he or she is born alive, that act should be considered a homicide regardless whether the baby is born through normal birthing procedures or after an abortion.

This Legislation is not a discussion of Roe v. Wade. This legislation is a discussion of whether a baby living outside a mother's womb may be left to die. Once an abortion procedure is completed and the baby is completely removed from a mother's body, abortion is not the issue. In most cases a baby is already dead at the time he or she is

removed from a woman's body during an abortion; however, in some instances the baby survives and is born alive. The Roe v. Wade decision does not have bearing on this legislation because this legislation is about a living human.

The federal government enacted their version of the Born-Alive Infant Protection Act in 2002 and it was signed into law on August 5, 2003. The law applies to federal facilities. Wisconsin hospitals are not regulated by the federal law unless they are a federal hospital or health care clinic.

I urge the members of the committees to act promptly and support the Born Alive Infant Protection Act before more babies are left to die without medical attention or human comfort. It does not make sense that Wisconsin would allow neglect of human babies resulting in death.

Thank you for your attention and consideration of Senate Bill 195 and Assembly Bill 372. Together we can stop this atrocity to living human babies.

State of Wisconsin
Department of Health and Family Services

Jim Doyle, Governor
Helene Nelson, Secretary

August 21, 2003

To: Members of the Senate Judiciary, Corrections and Privacy Committee
Members of the Assembly Judiciary Committee

From: Gary Radloff
DHFS Legislative Liaison

Re: Senate Bill 195 and Assembly Bill 372, relating to live birth or circumstances of being born alive

The Department Health and Family Services opposes SB 195 and AB 372 because of the following concerns:

- While it is true that there is no statutory definition of live birth, there is an administrative rule definition that has been used consistently since at least 1993. That definition is well-known within the state's medical community.

- The proposed legislation conflicts with the current definition of a live birth specified in Administrative Rule HFS 135.01 (21) in one important area. The "**a**" breath portion of AB 372 is not consistent with the current administrative rule definition (see link to the Administrative Rule below). This inconsistency between state law and administrative rule will lead to confusion in interpretation of signs of life.

- Medical Doctors are already **very** reluctant to use the current guidelines for ruling a pre-20 week gestational age infant as live born. Adherence to a law that establishes a single breath as a sign of life will be even more difficult to enforce (see attached document for information provided to hospitals on this issue).

- If passed, this law would place documentation of the event into a public record file.

- The current Administrative Rule definition is based on national model law and is used by federal agencies like the IRS to determine eligibility for tax deductions, etc.

- If this is enforced, it will undoubtedly result in the reporting of a higher infant mortality rate for the state of Wisconsin.

Background:

While there is no statutory definition for live birth, ss. 69.02 (2), 250.04 (7) and 157.01, Wis. Stats., provide that the department (DHFS) shall promulgate rules to assist in administering laws on filing birth and death certificates, fetal death reports, abortion reports and for actions concerning the disposition of the dead (both for live born persons and fetal remains).

Accordingly, HFS 135 was rewritten in February 1993. In that Administrative Rule, stillbirth is defined (live birth being the opposite). That rule is used on a daily basis to determine the filing of appropriate vital records and for disposing of human remains. A link to that rule is provided below.

http://www.legis.state.wi.us/rsb/code/hfs/hfs135.pdf

AB 372 seeks to establish **a** breath as evidence of life. HFS 135.01 (21) is based on National Health Statistics (NCHS) model law, which has been updated to assist in the interpretation of "signs of life". NCHS guidelines enhanced the interpretation of "respiration" and "heartbeat" to mean "**true respiration" (not fleeting gasps)** and **"true heartbeat" (not transient ischemic beats)**. We have not updated the language in HFS 135.01 (21) to reflect the enhanced definitions. However, we have provided hospitals with the National Center for Health Statistics recommended interpretation of "breath" and "heartbeat".

I have attached the chapter of the Vital Records Hospital Handbook that covers the reporting of fetal deaths. The enhanced definitions of breath and heartbeat are contained in that chapter (see page 5 of the attached document).

If enforced, this definition would result in many more 16-19 week gestational age deliveries being record as neonatal deaths. That would elevate our infant mortality rate, which is already comparatively high.

DHFS Vital Records office is relatively strict on this issue because of the legal significance of the status of the infant. The family is allowed to take a tax deduction for a live born child, regardless of the length of the life. They will also have a permanent record of their child's existence (birth and death records). In contrast, fetal death reports are destroyed soon after we get them and we never issue copies.

Attachments

Chapter HFS 135

HUMAN CORPSES AND STILLBIRTHS

Note: Chapter HSS 135 as it existed on January 31, 1993, was repealed and a new chapter HSS 135 was created effective February 1, 1993.

Note: Chapter HSS 135 was renumbered chapter HFS 135 under s. 13.93 (2m) (b) 1., Stats. and corrections made under s. 13.93 (2m) (b) 6 and 7, Stats.

HFS 135.01 Purpose and authority. This chapter and ch. HFS 136 regulate the preparation, transportation and disposition of human corpses and stillbirths for purposes of protecting the health of the public and properly registering deaths. The chapter is promulgated under the authority of ss. 69.02 (2), 250.04 (7) and 157.01, Stats., to interpret and contribute to the implementation of ss. 69.01 to 69.12, 69.18, 250.04 (1), 157.01 and 979.10, Stats. Nothing in this chapter shall prevent a member of the immediate family from preparing the corpse of a family member for burial, except as provided in s. HFS 135.05 (1) (b), or from conducting the funeral of a deceased family member.

History: Cr. Register, January, 1993, No. 445, eff. 2–1–93; corrections made under s. 13.93 (2m) (b) 7., Stats., Register, August, 1995, No. 476.

HFS 135.02 Definitions. In this chapter:

(1) "Common carrier" has the meaning prescribed for "common motor carrier" in s. 194.01 (1), Stats., and in addition includes a vehicle using rails, air or water to transport persons or property.

(2) "Cremation permit" has the meaning prescribed for a release to cremate in sub. (18).

(3) "Death certificate" means the form prescribed and supplied by the department which contains such items of information as the department judges necessary to identify the decedent and to certify the cause or causes of death.

(4) "Department" means the Wisconsin department of health and family services.

(5) "Disinterment permit" means the form prescribed by the coroner or medical examiner to authorize removal of a human corpse from a grave or tomb and which contains items of information that are necessary to identify the deceased, the date and place of death, the current place of interment, the intended place of interment, the name of the person requesting the disinterment and the name of the person in charge of the disinterment.

(6) "Disposition" means, in reference to a human corpse or stillbirth, burial, entombment in a mausoleum or separate vault, temporary storage, cremation or donation for scientific research or teaching use.

(7) "Embalming" has the meaning designated in s. HFS 136.02 (1).

(8) "Fetal death report" means the form prescribed and supplied by the department for reporting a stillbirth resulting from miscarriage, of gestational age 20 weeks or more or having a birthweight of 350 grams or more.

(9) "Final disposition" means, in reference to a human corpse or stillbirth, burial, entombment in a mausoleum or separate vault, cremation, delivery to a university or school under s. 157.02 (3), Stats., or delivery to a medical or dental school anatomy department under s. 157.06, Stats.

Note: For cremation after burial, entombment or donation, a cremation permit must be obtained under s. HFS 135.06 (3) (a).

(10) "Funeral director" means a person who is licensed under s. 445.04, Stats., to prepare human corpses for burial or other disposition, or to direct and supervise the burial or other disposition of human corpses.

(11) "Gestational age" means, in reference to stillbirths, the age of a fetus expressed in weeks, dating from the first day of the mother's last normal menses to the date of delivery.

(12) "Immediate family" means, in order of decisionmaking priority, spouse, adult children, parents, adult brothers and sisters, grandparents, and adult grandchildren of the decedent.

(13) "Interment" means, in reference to a human corpse, burial or entombment in a mausoleum or separate vault.

(14) "Local health officer" has the meaning prescribed in s. 250.01 (5), Stats.

(15) "Local registrar" means the county register of deeds or the city health officer in a city which has been approved by the state registrar under s. 69.04 (1), Stats., as a registration district.

(16) "Notice of removal" means the form prescribed and supplied by the department or reproduced from the form prescribed and supplied by the department for notifying and recording the removal of a human corpse from a hospital or nursing home by a funeral director, member of the immediate family or other authorized person.

(17) "Registered apprentice funeral director" means a person who is issued a certificate of apprenticeship under s. 445.095 (1), Stats., to be employed as an apprentice to a funeral director.

(18) "Release to cremate" means the form supplied by the county coroner or medical examiner which provides written permission required under s. 979.10 (1), Stats., for cremation of a human corpse and which contains information necessary to identify the deceased, the date and place of death, a description of the cause and manner of death, the name of the person requesting the cremation, the name of the funeral director or person acting in place of the funeral director and the date and time the release takes effect, and which specifies that no authorization is given to override the wishes of the next of kin.

(19) "Release to embalm" means the form supplied by the county coroner or medical examiner which provides written permission required under s. 979.01 (4), Stats., for embalming a human corpse in the case of a death subject to investigation under s. 979.01, Stats., and which contains information necessary to identify the deceased, the date and place of death, the name of the funeral director or person acting in place of the funeral director and which specifies that no authorization is given to override the wishes of the next of kin.

(20) "Report for final disposition" means the form prescribed and supplied by the department or reproduced from the form prescribed and supplied by the department for the purpose of recording the facts of a death and reporting those facts to the coroner or medical examiner of jurisdiction under s. 69.18 (3), Stats., and to the local registrar in the registration district in which death was pronounced. This form serves as the official "burial transit permit" for transporting a human corpse out of state or by common carrier.

(21) "Stillbirth" means a fetus born dead, irrespective of the duration of pregnancy, with death indicated by the fact that after expulsion or extraction from the woman, the fetus does not breathe or show any other evidence of life such as beating of the heart, pulsation of the umbilical cord or definite movement of the voluntary muscles.

State Definitions and Reporting Requirements

For Live Births, Fetal Deaths, and Induced Terminations of Pregnancy

1997 Revision

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
Centers for Disease Control and Prevention
National Center for Health Statistics

Hyattsville, Maryland
October 1997

DHHS Publication No. (PHS) 98-1119

Current definitions of live birth in the United States

The 1992 Revision of the Model State Vital Statistics Act and Regulations (1) recommends the following definition of live birth. This definition is based on the definition promulgated by the World Health Organization in 1950 and revised in 1988 by a working group formed by the American Academy of Pediatrics and the American College of Obstetricians and Gynecologists (2). The revision added clarifiers to help determine what should be considered a live birth:

> "Live Birth" means the complete expulsion or extraction from its mother of a product of human conception, irrespective of the duration of pregnancy, which, after such expulsion or extraction, breathes, or shows any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles, whether or not the umbilical cord has been cut or the placenta is attached. Heartbeats are to be distinguished from transient cardiac contractions; respirations are to be distinguished from fleeting respiratory efforts or gasps.

Forty-eight of the registration areas use a definition of live birth that is very similar to this definition, five areas use a shortened definition of live birth, and four registration areas have no formal definition of live birth.

Current live birth reporting requirements

All States require the reporting of a live birth regardless of length of gestation or weight.

HOSPITAL HANDBOOK

FOR

VITAL STATISTICS

PREPARED BY:

THE DEPARTMENT OF HEALTH AND SOCIAL SERVICES
Division of Health
Section of Vital Statistics
P O Box 309
Madison WI 53701-0309

DECEMBER, 1994

Call (608) 267-7812 for further information

C. Definitions

FETAL DEATH REPORT:

Administrative Rule H&SS 135.02 (8) defines "Fetal death report" as the form prescribed and supplied by the department for reporting a stillbirth resulting from miscarriage, of gestational age 20 weeks or more or having a birthweight of 350 grams or more.

BEATING OF THE HEART (for determining live birth):

This is one of the signs of a live birth. It must be diagnosed as a true heartbeat, and does not include transient cardiac contractions.

BREATHING (for determining live birth):

This is one of the signs of a live birth. It must be diagnosed as true respiration, and does not include fleeting respiratory efforts or gasps.

GESTATIONAL AGE (for fetal death reporting):

s. 69.18(1)(e), Stats. defines "Gestational Age" as the period of time (in weeks) between the first day of the last normal menses and the date of delivery (the calculated date of intrauterine demise is **not** to be used).

LIVE BIRTH:

A live birth is indicated by the fact that after separation from the mother, the fetus breathes or shows any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles.

If any of the above mentioned signs of life are present, a live birth and a death certificate must be filed REGARDLESS OF THE GESTATIONAL AGE OF THE INFANT.

STILLBIRTH (FETAL DEATH):

Administrative Rule H&SS 135.02 (21) defines "Stillbirth" as a fetus born dead, irrespective of the duration of pregnancy, with death indicated by the fact that after expulsion or extraction from the woman, the fetus does not breathe or show any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles. (2/1/93)

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NCHS Definitions

An alphabetical listing of many terms used at NCHS

A B C D E F G H I J K L M N O P Q R S T U V W X Y Z

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Rate

A rate is a measure of some event, disease, or condition in relation to a unit of **population**, along with some specification of time. The following rates are defined below

- **Birth**
- **Fertility**
- **Death**
- **Fetal death**
- **Infant mortality**
- **Neonatal mortality**
- **Postneonatal mortality**
- **Birth cohort infant mortality**
- **Perinatal mortality**
- **Maternal mortality**

Birth rate is calculated by dividing the number of live births in a population in a year by the midyear resident population. For census years, rates are based on unrounded census counts of the resident population, as of April 1. For the noncensus years of 1981-89 and 1991, rates are based on national estimates of the resident population, as of July 1, rounded to 1,000s. Population estimates for 5-year age groups are generated by summing unrounded population estimates before rounding to 1,000s. Starting in 1992 rates are based on unrounded national population estimates. Birth rates are expressed as the number of live births per 1,000 population. The rate may be restricted to births to women of specific age, race, marital status, or geographic location (specific rate), or it may be related to the entire population (**crude rate**).

Fertility rate is the total number of live births, regardless of age of mother, per 1,000 women of reproductive age, 15-44 years.

A ***death rate*** is calculated by dividing the number of deaths in a population in a year by the midyear resident

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population. For census years, rates are based on unrounded census counts of the resident population, as of April 1. For the noncensus years of 1981-89 and 1991, rates are based on national estimates of the resident population, as of July 1, rounded to 1,000s. Population estimates for 10-year age groups are generated by summing unrounded population estimates before rounding to 1,000s. Starting in 1992 rates are based on unrounded national population estimates. Rates for the Hispanic and non-Hispanic white populations in each year are based on unrounded State population estimates for States in the Hispanic reporting area. Death rates are expressed as the number of deaths per 100,000 population. The rate may be restricted to deaths in specific age, race, sex, or geographic groups or from specific causes of death (specific rate) or it may be related to the entire population (**crude rate**).

- A ***fetal death rate*** is the number of fetal deaths with stated or presumed gestation of 20 weeks or more divided by the sum of live births plus fetal deaths, stated per 1,000 live births plus fetal deaths.

- A ***late fetal death rate*** is the number of fetal deaths with stated or presumed gestation of 28 weeks or more divided by the sum of live births plus late fetal deaths, stated per 1,000 live births plus late fetal deaths.

- An ***infant mortality rate*** is based on period files calculated by dividing the number of infant deaths during a calendar year by the number of live births reported in the same year. It is expressed as the number of infant deaths per 1,000 live births.

- A ***neonatal mortality rate*** is the number of deaths of children under 28 days of age, per 1,000 live births.

- A ***postneonatal mortality rate*** is the number of deaths of children that occur between 28 days and 365 days after birth, per 1,000 live births.

- ***Birth cohort infant mortality rates*** are based on linked birth and infant death files. In contrast to period rates in which the births and infant deaths occur in the same period or calendar year, infant deaths comprising the numerator of a birth cohort rate may have occurred in the same year as, or in the year following the year of birth. The birth cohort infant mortality rate is expressed as the number of infant deaths per 1,000 live births.

- ***Perinatal mortality rate*** is the sum of late fetal deaths plus infant deaths within 7 days of birth divided by the sum of live births plus late fetal deaths, stated per 1,000 live births plus late fetal deaths. (**Perinatal** relates to the period surrounding the birth event. Rates and ratios are based on events reported in a calendar year.) **Perinatal mortality ratio** is the sum of late fetal deaths plus infant deaths within 7 days of birth divided by the number of live births, stated per 1,000 live births.

FETAL DEATH REPORTING PROCEDURES

WISCONSIN CENTER FOR HEALTH STATISTICS
SECTION OF VITAL STATISTICS
JULY, 1993

DEFINITIONS

FETAL DEATH REPORT:

Administrative Rule H&SS 135.02 (8) defines "Fetal death report" as the form prescribed and supplied by the department for reporting a stillbirth resulting from miscarriage, of gestational age 20 weeks or more or having a birthweight of 350 grams or more.

BEATING OF THE HEART (for determining live birth):

This is one of the signs of a live birth. It must be diagnosed as a true heartbeat, and does not include transient cardiac contractions.

BREATHING (for determining live birth):

This is one of the signs of a live birth. It must be diagnosed as true respiration, and does not include fleeting respiratory efforts or gasps.

GESTATIONAL AGE (for fetal death reporting):

s. 69.18(1)(e), Stats. defines "Gestational Age" as the period of time (in weeks) between the first day of the last normal menses and the date of delivery (the calculated date of intrauterine demise is **not** to be used).

LIVE BIRTH:

A live birth is indicated by the fact that after separation from the mother, the fetus breathes or shows any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles.

If any of the above mentioned signs of life are present, a live birth and a death certificate must be filed REGARDLESS OF THE GESTATIONAL AGE OF THE INFANT.

STILLBIRTH (FETAL DEATH):

Administrative Rule H&SS 135.02 (21) defines "Stillbirth" as a fetus born dead, irrespective of the duration of pregnancy, with death indicated by the fact that after expulsion or extraction from the woman, the fetus does not breathe or show any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles. (2/1/93)

FETAL DEATH REPORTING REQUIREMENTS (S. 69.18, STATS.)

All fetal deaths THAT ARE NOT DUE TO INDUCED ABORTIONS with gestational age of **twenty weeks or more, or with birth weight of 350 grams or more** are to be reported to the Center for Health Statistics on the form provided by that office. The hospital of delivery shall complete the Fetal Death Report and send it to the local registrar within five days after delivery of the fetus.

IMPORTANCE OF ACCURATE RECORDING

The definitions listed are based on Federal definitions. The reporting of these deaths not only affects statistical files, but also impacts legal situations. Therefore, reporting of these events must be consistent and must follow the federal guidelines.

1. According to the IRS, a person giving birth to a live infant under the above definition, may claim that child as a dependent for that year (if the person would otherwise be qualified to claim a dependent). The tax status is not affected by the fact that the infant may only have lived for a few moments.

2. In a case of intentional injury to the mother, the status of live birth vs fetal death will greatly affect filing of homicide charges.

3. Insurance policy claims may depend upon the status of the delivery.

4. The availability of the record (for future legal and personal uses) depends upon the status of the delivery. A birth certificate and death certificate are permanently filed, fetal death reports are destroyed when all statistical data has been abstracted from them.

FETAL DEATH DISPOSITION REQUIREMENTS (S. 69.18, STATS.)

1. The hospital may ask for a Notice of Removal to be completed. A copy should not be sent to the local registrar.

2. No Report for Final Disposition is required unless the fetus is being transferred out of state or unless the cemetery sexton needs a copy for the cemetery records. A copy should not be sent to the local registrar.

3. No cremation permit is required.

4. The hospital or funeral home may dispose of the remains providing they have written authorization from the parent(s).

If you have questions, please call Jane Kraus at (608) 267-7814 or Peggy Peterson at (608) 267-7812.

Thank you.

Hogan, John

From: Mary Klaver [mklaver@wrtl.org]
Sent: Monday, August 25, 2003 5:30 PM
Subject: WI Right to Life memo on SB 195, Born Alive legislation
Importance: High

Wisconsin Right to Life
10625 W. North Avenue, Milwaukee, WI 53226
414-778-5780 or toll free: 877-855-5007

To: Members of the Senate Committee on Judiciary, Corrections and Privacy
From: Susan Armacost, Legislative Director
Mary Klaver, Legislative Legal Counsel
Re: Refuting DHFS arguments in opposition to SB 195 and AB 372

Attached you will find our comprehensive response to the misleading claims made by the Department of Health and Family Services at the joint public hearing on August 21, 2003 on SB 195 and AB 372, the Born Alive Infant Protection Act. If you have any questions regarding this, please contact us.

Wisconsin Right to Life urges you to support SB 195, to vote to recommend passage and to reject all amendments to this important legislation. Thank you.

August 25, 2003

To: Members of the Senate Committee on Judiciary, Corrections and Privacy

From: Susan Armacost, Legislative Director, Wisconsin Right to Life
Mary Klaver, Legislative Legal Counsel, Wisconsin Right to Life

Re: Refuting DHFS arguments in opposition to SB 195 and AB 372

At the August 21, 2003 joint public hearing on SB 195 and AB 372, the Born Alive Infant Protection Act, the Department of Health and Family Services testified in opposition to this legislation. There were numerous inaccuracies in the department's testimony.

Inaccuracy #1: DHFS falsely claims there is an "administrative rule definition" of "live birth".

Reality: There is no statutory or administrative rule definition of "live birth" in Wisconsin.

DHFS refers to Administrative Rule HFS 135.01 (21). But this is an administrative rule definition of "stillbirth" which is defined as follows:

> "Stillbirth" means a fetus born dead, irrespective of the duration of pregnancy, with death indicated by the fact that after expulsion or extraction from the woman, the fetus does not breathe or show any other evidence of life such as beating of the heart, pulsation of the umbilical cord or definite movement of the voluntary muscles."

Inaccuracy #2: DHFS claims the legislation conflicts with the "administrative rule definition" in HFS 135.01 (21).

Reality: There is no conflict between the definitions of "born alive" and "live birth" in the legislation and the definition of "stillbirth" in HFS 135.01 (21).

First of all, the definition in HFS 135.01 (21) is a definition of "stillbirth", not "live birth" as the department falsely claimed at the hearing. Even so, the definition of "live birth" in SB 195 and AB 372, which reads as follows, is consistent with the definition of "stillbirth", especially with respect to the signs of life:

> "Live birth" means the complete expulsion or extraction from his or her mother, of a human being, at any stage of development, who, after the expulsion or extraction, breathes or has a beating heart, pulsation of the umbilical cord, or definite movement of voluntary muscles, regardless of whether the umbilical cord has been cut, and regardless of whether the expulsion or extraction occurs as a

result of natural or induced labor, a cesarean section, or an abortion, as defined in s. 253.10 (2) (a)."

Since both the definition of "live birth" in the legislation and the definition of "stillbirth" in the administrative code use the term "breathe" there obviously is no inconsistency with the use of the term "breathe".

DHFS erroneously asserts that the phrase "taking a breath" which is used in the companion definition of "born alive" in the legislation is inconsistent with the term "breathe". The term "born alive" was separately drafted by LRB because it is a *different form of grammar* than "live birth", thus requiring a different grammatical form for the words used in the definition. Specifically, the definition of "born alive" uses the phrase "taking a breath" instead of the term "breathes". Using the phrase "taking a breath" does not result in a different meaning. However, using the term "breathing" in the definition of "born alive" would change the meaning since "breathing" connotes continuously taking breaths.

Inaccuracy #3: DHFS claims that establishing a "single breath" as a sign of life will be difficult to enforce.

Reality: Taking a breath is not only a clear sign of life it is also only one among several.

Either the infant takes a breath or not. What could be clearer? No current definition of live birth requires continuous breathing.

An infant who is capable of taking a single breath will probably also have another sign of life such as a beating heart, pulsation of the umbilical cord, or definite movement of voluntary muscles.

Inaccuracy #4: DHFS falsely claims the current "administrative rule definition" is "based on national model law and is used by federal agencies like the IRS to determine eligibility for tax deductions, etc.".

Reality: The so-called model law proposed by the Centers for Disease Control is rarely used. The IRS defers to the definition adopted by the state.

Forty-one states and the District of Columbia have codified the definition of "live birth" for purposes of state law, either by statute or regulation. The essential elements of these definitions include (1) complete expulsion or extraction of an infant from his or her mother, irrespective of the duration of pregnancy, and (2) any evidence of life. Most definitions specify the evidence of life to include whether or not the infant breathes, has a beating heart, pulsation of the umbilical cord, or definite movement of voluntary muscles. The definition used by the World Health Organization contains all of these elements.

The so-called "national model law" from the Centers for Disease Control is a minority position that has only been adopted by 5 out of 41 states that have defined "live birth" by statute or regulation (Alabama, Arkansas, Delaware, Iowa and Montana). This definition adds the following sentence: "Heartbeats are to be distinguished from transient cardiac contractions; respirations are to be distinguished from fleeting respiratory efforts or gasps." The department refers to this as "true respiration" and "true heartbeat". Actually, this makes the definition less clear. How many gasps does an infant have to take before the department would recognize that they are coming from a living infant? It is difficult to imagine how a dead infant could even gasp at all.

The true national model for the definition of "born alive" and "live birth" is the law upon which SB 195 and AB 372 is based -- the **federal Born-Alive Infants Protection Act of 2002** which can be found at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107_cong_public_laws&docid=f:publ207.107.pdf.

The Internal Revenue Service bases its determinations of live birth on state law, not the CDC model definition. In 1973, the IRS held that parents may claim a dependency exemption for a "child born alive during the taxable year, even though the child lived only momentarily." The IRS stated, "For the purposes of this Revenue Ruling, a child shall be considered to have lived where applicable state or local law treats the child as having been born alive, and where such treatment is evidenced by an official document, such as a birth certificate." (*See* Rev. Rul. 73-156, I. R. B. 1973-14, 5.)

Inaccuracy #5: DHFS gives the false impression that it does not use the definition of "live birth" set forth in SB 195 and AB 372.

DHFS uses a definition of "live birth" in major publications dealing with live birth statistics that is essentially the same as the one set forth in SB 195 and AB 372, and not like the CDC model law.

The definition of "live birth" currently used by the Wisconsin Department of Health and Family Services in Wisconsin Births and Infants Deaths, 2001, published in November 2002, on page 7, which can be found at http://www.dhfs.state.wi.us/births/pdf/01births.pdf, is as follows:

> "A live birth is the complete expulsion or extraction of an infant from its mother, regardless of the duration of pregnancy, after which the infant breathes or shows any other evidence of life, such as beating of the heart, pulsation of the umbilical cord or definite movement of voluntary muscles."

The definition of "live birth" currently used by the Wisconsin Department of Health and Family Services in Wisconsin Public Health Profiles, 2001, published in May 2003, on page 5, which can be found at http://www.dhfs.state.wi.us/localdata/pdf/01pub_hlth/t_notes.pdf, is substantially the same and reads as follows:

"A live birth is the complete expulsion or extraction of an infant from its mother, irrespective of the duration of pregnancy, which after such separation breathes or shows any other evidence of life, such as beating of the heart, pulsation of the umbilical cord or definite movement of voluntary muscles."

Other issues

DHFS claims, "If passed, this law would place documentation of the event into a public record file." Response: Well, yes, that is the point. If there is a live birth, it should be recorded on a birth certificate. Even if the infant only lives for a short time, then a death certificate should be issued.

DHFS claims, "If this is enforced, it will undoubtedly result in the reporting of a higher infant mortality rate for the state of Wisconsin." Response: What is wrong with accurate reporting?

DHFS claims, "If enforced, this definition would result in many more 16-19 week gestational age deliveries being record (sic) as neonatal deaths. That would elevate our infant mortality rate, which is already comparatively high." Response: There would only be a record of a neonatal death if (1) the infant is born alive, and (2) the infant dies. There would only be an elevation in our infant mortality rate if previous live births have not been recorded. Is the department suggesting that Wisconsin should intentionally not report live births so that our infant mortality statistics will look better?

Viability. There was some discussion between the DHFS Legislative Liaison and Representative Hebl regarding using viability as criteria. This is a totally inappropriate criterion to use to define live birth. Viability is determined after a live birth as a result of a medical assessment to determine if the infant can be saved. Live birth needs to be determined first.

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Testimony of

Marianne Linane

Executive Director of the

National Association of Pro-life Nurses

on

AB 372/~~SB 195~~ SB 195

Born Alive Infant Protection Act

Thursday, August 21, 2003

before the

Assembly Committee on Judiciary
Rep. Mark Gundrum, Chairperson

and

Senate Committee on Judiciary, Corrections and Privacy
Sen. David Zien, Chairperson

Good morning. My name is Marianne Linane. I have been a nurse since 1963. Most of my experience is in intensive care nursing, but I did obstetric nursing for four years early in my career. I currently serve as the Executive Director of the National Association of Pro-life Nurses, an organization representing nurses in every state of the nation.

I am here today to speak in behalf of the Wisconsin Born Alive Infant Protection Act, AB 372/SB 195. Since most of the aspects I wish to address would be a reinforcement of issues already discussed and because I have not worked in obstetrics since 1967, my remarks will not address those concerns and will be brief. They center around the effect that providing two different treatment modalities for the premature baby has on the nurses in attendance.

As others have surely pointed out, medical advances in the care of the very premature have led to remarkable saves of these babies and they go on to become healthy, productive individuals. Those nurses in attendance pride themselves in the ability they have because of these technological advances allowing them to save lives. It is unreasonable to ask them to stand by and do nothing but to watch the demise of babies who could otherwise be saved.

We as a society rely on the nursing profession to provide compassionate care to us and our loved ones in time of need. Traditionally, those who enter the nursing profession do so with the altruistic motive of helping fellow human beings in this time of need. To ask nurses to behave in such a neglectful manner is to ask them to act in a schizophrenic manner in order to regard some human beings as those who are to be treated and some as those who are not. Ultimately, such behavior will affect a nurse's attitude toward those who are being treated and that care will be compromised. If not that one, why this one? Is this really what we want of those who we would ask to treat us with compassion and dignity?

And, as has also probably already been stated, a woman's "right" to an abortion given to us compliments of the United States Supreme Court, only gives the woman a right to terminate her pregnancy. It does not give her the right to a dead baby. Once the baby has been delivered, the pregnancy is terminated. As for babies who are born alive after an abortion, they should be afforded all the rights of any other person born in this country and be cared for in the same manner. To do otherwise is discriminatory.

I can imagine that those opposed to this measure will do so because the mother of this baby thinks, for some reason, that she does not want this baby. That, however, does not mean that no one wants this baby. Of the nearly two million applications for adoption each year, the vast majority are unsuccessful in getting a child. The average adoption waiting period for an American baby is 10 years. Perhaps not the mother of this baby, but SOME deserving couple does want this child and would pay any medical expenses necessary to have the child survive.

I am here to ask this committee to vote to support AB 372/SB 195 and allow this legislation to go on to go on to a full legislative vote for passage. Thank you.

WISCONSIN RIGHT TO LIFE
35 Years
advocating Life without limits
1968 - 2003
State Affiliate of the
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Testimony of

Susan Armacost,
Legislative Director
Wisconsin Right to Life

In support of the
Born Alive Infant Protection Act
AB 372 - Senate Bill 195

before the
Senate Judiciary, Corrections and Privacy Committee
and
the Assembly Judiciary Committee

August 21, 2003

Good morning. I am Susan Armacost, Legislative Director for Wisconsin Right to Life. I am here in support of the *Born Alive Infant Protection Act (AB 372/ SB 195).* We want to thank Sen. Zien and Rep. Gundrum for holding a joint hearing on this important bill.

When people first hear about this legislation, some of the questions that immediately come to mind are "Aren"t all babies who are born alive already protected under law?" and "Are living aborted babies in Wisconsin treated as less than human and left to die?" Both are legitimate questions and need to be addressed.

Most certainly, it has been a long accepted legal principle that babies who are born alive, regardless of their stage of development, are persons who are entitled to the full protection of the law. But sadly, when it comes to living babies who have survived abortion, that principle is more and more being called into question.

In 2000, the U. S. Supreme Court in *Stenberg v. Carhart* struck down a Nebraska law that prohibited the hideous partial-birth abortion procedure. The procedure involves an abortionist delivering an unborn child's body, leaving only the head in the womb. The abortionist then punctures the baby's head with scissors and then suctions out the baby's brains. The dead baby is then completely removed from the woman's body. The public was shocked that a baby could be killed when the baby's location was just inches from being completely born alive.

The *Carhart* decision has ramifications far beyond the partial-birth abortion issue That are relevant to our discussion today. The Court considered the location of the baby during a partial-birth abortion is of no legal consequence.. Implicit in the Court's decision was the notion that whether the child receives the protection of the law would be dependent upon whether or not the mother wants him or her and not where the baby was located.

But even before the *Carhart* decision, Wisconsin's own Senator, Russ Feingold

articulated that very same pernicious notion on the floor of the U. S. Senate during a debate on the partial-birth abortion ban bill in 1996. Senator Feingold had been speaking against banning partial birth abortion when Sen. Rick Santorum, the author of the ban, asked Sen. Feingold what he thought should happen to a baby if the baby's head accidentally slipped completely out of the mother's body. Senator Feingold replied that it should still be up to the woman and her doctor whether to kill the baby. In other words, a completely born, living baby should be killed if the mother so chose. Exactly what the *Carhart* court implied.

Later in 2000, the U. S. Court of Appeals for the Third Circuit struck down New Jersey's partial-birth abortion law in their decision, *Planned Parenthood of Central New Jersey v. Farmer.* That court concluded that a child's status under the law, regardless of the child's location, is dependent upon whether mother intends to abort the child or to give birth.

These two court decisions demonstrate that the legal landscape for living aborted babies is hostile indeed. What those courts have said is that once a child is marked for abortion, it makes no difference whether the child has survived the abortion. The "right" to abortion is getting dangerously close to meaning a right to a dead baby no matter where the child is killed.

In spite of the false claims of the radical pro-abortion lobby, the *Roe v. Wade* decision that legalized abortion throughout the entire nine months of pregnancy for any reason, **does not apply to babies who have survived abortion and are born alive.** *Roe v. Wade* gave women the "right" to terminate a pregnancy. Once the abortion has taken place and the baby is completely removed from the mother's body, the pregnancy has been terminated. *Roe v. Wade* did <u>not</u> grant a right to a dead baby in spite of what Russ Feingold and the radical pro-abortion lobby believes.

The legal and moral confusion regarding the legal status of abortion survivors that flows from these horrendous ideas has been well illustrated for you by Jill Stanek and what she witnessed at Christ Hospital in Illinois. That same confusion was seen two years ago in Cincinnati, Ohio when a young woman went to the clinic of abortionist Martin Haskell, one of the "inventors" of the partial-birth abortion procedure. Haskell performed the first step of the partial-birth abortion procedure, dilating the woman's cervix. She was told to return the next day. But she began to experience severe pain and went to the emergency room of Bethesda North Medical Center where she gave birth to a baby girl estimated to be about 22 weeks gestation. The physician put the baby in a specimen dish that was to be taken to the lab. The lab technician, Shelly Lowe, was shocked when she saw the baby gasping for air. Ms. Lowe named the child "Baby Hope" and held the baby until she died. "I wanted her to feel that she was wanted," said Ms. Lowe.

Baby Hope lived for 3 hours without an incubator, without any medical care and breathing room air but no physician bothered to assess her condition. While it is impossible to know whether an assessment would have made a difference, the utter lack any assessment along with the physician's placement of a breathing baby in a specimen dish causes one to wonder whether a baby in a similar condition who was wanted by her mother would have received the same treatment.

The coroner who investigated this incident condemned the actions of the doctor and said the baby deserved all the dignity, respect and value that our society places on human life.

Do similar incidences occur in Wisconsin? We can't say. But we do know that we would never have known about the atrocities at Christ Hospital if Jill Stanek had not had the courage to step forward. And we would not have known about "Baby Hope"

in Cincinnati if Ms. Lowe had not had the courage to step forward.

In 1982 Wisconsin would not have known about 3 aborted babies who were born alive, two at UW Hospital and one at the former Madison General Hospital, had it not been for an extremely courageous individual who stepped forward. That individual placed an anonymous call to Wisconsin Right to Life and another anonymous call to the media. The situation created a firestorm throughout the state and became national news. All three babies eventually died. While the babies received medical care, it is not known whether that medical care would have been provided had there not been such intense media scrutiny. Since that time, no one has stepped forward in our state to report incidences of babies surviving abortion. That does not mean that babies have not survived abortion in our state since 1982. It only means that if there have been such incidences, no one has stepped forward.

The *Born Alive Infant Protection Act* explicitly states that the bill has no application in debates over the legal rights of unborn children. Also, the bill does not create a standard of care to be used for any given abortion survivor. The bill simply states that every infant born alive after an abortion has the same legal status and legal rights under Wisconsin law as an infant born alive after a normal delivery resulting from a natural or Induced labor or a cesarean section.

The *Born Alive Infant Protection Act* will draw a bright line between abortion and infanticide. The legal status of a baby who is born alive should not be dependant on the child's gestational age or whether the child's birth occurred as a result of a natural or induced labor, cesarean section, or induced abortion. And that child's legal status and legal rights should most certainly not be based on whether the child's mother wants him or her.

Wisconsin Right to Life urges you to recommend passage of AB 372 and SB 195.

Thank you.

WISCONSIN RIGHT TO LIFE
Life without limits
State Affiliate of the
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LEGISLATIVE ANALYSIS

2003 - 2004 LEGISLATIVE SESSION

BORN ALIVE INFANT PROTECTION ACT
(Assembly Bill 372 and Senate Bill 195)

PURPOSE OF BILL

The purpose of this bill is to clarify that every infant born alive after an abortion has the same legal status and legal rights under Wisconsin law as an infant born alive after a normal delivery resulting from a natural or induced labor or a cesarean section.

WHY THIS BILL IS NECESSARY

LEGAL PROTECTION NEEDED. It is a well-settled principle that born-alive infants are entitled to the full protection of the law. However, when it comes to babies born alive after abortion, this legal principle is often completely disregarded. Some babies who are born alive after abortion, and who might even have a chance to survive with proper medical care, are left alone to die without even the most basic comfort care. And in some cases, these tiny abortion survivors are actually killed outright.

Congressional testimony of health care professionals at hearings for the federal Born-Alive Infants Protection Act of 2002 cited numerous grisly incidents of babies who were born alive after an abortion and brought to a "soiled utility room" where the babies would remain until they died. No efforts were made to even determine if any of the babies could have survived with appropriate medical assistance. One nurse described an aborted baby who was left to die on a counter in a hospital utility room. The baby was accidentally thrown in the garbage and later found by hospital personnel. Another nurse described a 23-week-old infant who was born alive after an abortion who showed signs of thriving. That baby received no medical or comfort care and died 2 ½ hours later. There were numerous other similarly horrible accounts described at the hearing.

This discriminatory treatment of babies who survive abortion stems from the corrupting influence of the seemingly limitless "right" to an abortion. In the June 2000 *Stenberg v. Carhart* decision, the U.S. Supreme Court expanded the so-called right to abortion created in *Roe v. Wade* to cover partial-birth abortion, in which the baby is only inches from complete *live birth* when he or she is killed. While the *Roe v. Wade* decision did tragically give women the "right" to "terminate a pregnancy" throughout the entire nine months of pregnancy for any reason, *Roe* did **not** guarantee a dead baby.

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In spite of the false claims of the radical pro-abortion lobby, once an aborted baby is completely removed from a woman's body, the *Roe* decision that legalized abortion throughout the entire nine months of pregnancy for any reason no longer applies. Once the abortion has taken place and the baby is completely removed from the mother's body, the pregnancy has been terminated. In most cases, the baby is already dead when he or she is removed from the mother's body due to the horrific nature of abortion procedures. But in some cases, there are babies who survive abortion and are born alive. The *Roe* decision has no bearing on these situations because the pregnancy has already been terminated.

DEFINITION NEEDED. Most states have statutes or regulations that expressly define "live birth". Although Wisconsin statutes frequently use the terms "live birth" and "born alive", there is no Wisconsin statute or regulation that defines "live birth" or "born alive" – for either a normal delivery or an abortion. Because of this definitional void, a Wisconsin appeals court resorted to using the determination of death statute (s. 146.71) for guidance. In the 1989 *State v. Cornelius* decision, the court declared, "If one is not dead he is indeed alive." This bill would provide a positive, straightforward definition of "live birth' and "born alive".

HOW THIS BILL WOULD WORK

AB 372 and SB 195 would codify the traditional principles of "live birth" that are already found in the laws of most states – complete expulsion from the mother, accompanied by heartbeat, respiration or definite movement of voluntary muscles – and apply them to infants born alive after an abortion to the same extent as infants born after a normal delivery.

The bill defines an infant as "born alive" if he or she displays one of the specified vital signs after the complete expulsion or extraction from his or her mother. Since *Roe v. Wade* dealt only with the constitutional status of the *unborn* child, there is nothing in *Roe* to support a claim that infants who are *born alive* following an abortion may be considered anything less than full legal persons, regardless of their stage of lung development.

The bill explicitly states that it does not "affirm, deny, expand, or contract any legal status or legal right applicable to a human being at any point prior to being born alive." This rule of construction ensures that this bill can have no application in either direction in debates over the legal rights of *unborn* children.

Under this bill, all infants who are born alive after an abortion would have full legal rights under Wisconsin law. For example, they would be fully protected by Wisconsin's homicide and child abandonment laws.

FEDERAL BORN-ALIVE INFANTS PROTECTION ACT OF 2002

The federal Born-Alive Infants Protection Act of 2002 was signed into law on August 5, 2002 after passing the U.S. House on March 12, 2002, by a voice vote, and clearing the U.S. Senate on July 18 by unanimous consent. However, this law only applies to federal statutes and regulations. AB 372 and SB 195 deal with the same issue in a similar manner as this federal law and apply the same principle to Wisconsin's statutes and regulations.

Wisconsin Right to Life urges you to support the Born Alive Infant Protection Act.