



ATTORNEY GENERAL OF MISSOURI

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October 30, 2013

Sharona Coutts
Director of Research and Investigations
RH Reality Check

Sent via email

Sunshine Request – Request received June 4, 2013 regarding copies of all documents provided, or will provide, in response to the letter, dated on or about May 7, 2013, from U.S. Representatives Bob Goodlatte and Trent Franks, which requested a range of information related to abortion in Missouri.

Dear Ms. Coutts:

We initially responded to your above sunshine request on June 4, 2013, explaining that we declined the Representatives' invitation to research the issues raised in the letter and that there were no documents responsive to your request. We have since responded to Representative Goodlatte. Enclosed is a copy of that response.

Thank you.

Sincerely,

A handwritten signature in blue ink that reads "Ronald R. Holliger".

RONALD R. HOLLIGER
General Counsel



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The Honorable Bob Goodlatte
Chairman, Committee on the Judiciary
United State House of Representatives
2138 Rayburn House Office Building
Washington, DC 20515-6216

Dear Chairman Goodlatte,

In your letter of May 7, 2013 you asked several questions seeking information regarding certain types of prosecutions related to unborn and newborn babies. As my office informally relayed to you at the time, we are not in possession of the statistical information you seek.

For example, you asked several questions seeking data relating to criminal prosecutions. Original jurisdiction for criminal prosecutions in Missouri lies with local prosecuting attorneys, unless the court appoints our office. Prosecuting attorneys are not under the direct control or supervision of the Attorney General's Office. Consequently, we are unable to provide most of the information you have requested. We may, however, be able to provide assistance with respect to your general questions about Missouri law.

Your letter asks whether prosecutors in Missouri "treat the deliberate killing of newborns, including those newborns who were delivered alive in the process of abortions, as a criminal offense." You have also asked whether Missouri has any laws "specifically to protect newborns delivered alive in the process of abortions" and whether and how such laws have changed prosecutorial practices.

The Missouri General Assembly passed the "Infant's Protection Act" in 1999. It is codified at § 565.300, RSMo. A copy of this statute is enclosed for reference.

While I cannot speak for each prosecuting attorney or how their practices may have been affected by the passage of this law, the actions you described would be a criminal offense in Missouri. Specifically, the Infant's Protection Act defines the crime of infanticide, which is a class A felony. More generally, such actions would likely also constitute the crime of either first or second degree murder in Missouri, depending upon

the actor's mental state. This office does not have access to information regarding whether or how often any prosecutions for murder have involved a newborn victim, or whether or how often the crime of infanticide has been prosecuted in this state.

To address your third inquiry, Missouri has no statute of limitations for either murder or infanticide. *See*, § 556.036, RSMo (specifying no time limitation for any class A felony).

Next, you have asked whether our office has "prosecuted any criminal cases in which a woman has died or suffered serious complications as a result of an abortion." Our office has not been appointed to prosecute any cases meeting that description, though again, we cannot speak for each local prosecuting attorney's office.

Finally, you asked about any state laws that limit abortions late in pregnancy. Missouri law provides, with certain exceptions, that "no abortion of a viable unborn child shall be performed or induced." § 188.030, RSMo. "Viable" is defined in Missouri law as "that stage of fetal development when the life of the unborn child may be continued indefinitely outside the womb by natural or artificial life supportive systems." § 188.015, RSMo. We have no log or other information regarding any prosecutions for violations of this provision, as it again is information that would more properly reside with local prosecuting attorneys.

I hope you find this information helpful.

Respectfully,

CHRIS KOSTER

Attorney General



JAMES B. FARNSWORTH

Chief of Staff

Enclosure

Missouri Revised Statutes

Chapter 565 Offenses Against the Person Section 565.300

August 28, 2013

Infant's protection act--definitions--crime of infanticide--penalty--exception--application of law.

565.300. 1. This section shall be known and may be cited as the "Infant's Protection Act".

2. As used in this section, and only in this section, the following terms shall mean:

(1) "Born", complete separation of an intact child from the mother regardless of whether the umbilical cord is cut or the placenta detached;

(2) "Living infant", a human child, born or partially born, who is alive, as determined in accordance with the usual and customary standards of medical practice and is not dead as determined pursuant to section 194.005, relating to the determination of the occurrence of death, and has not attained the age of thirty days post birth;

(3) "Partially born", partial separation of a child from the mother with the child's head intact with the torso. If vaginally delivered, a child is partially separated from the mother when the head in a cephalic presentation, or any part of the torso above the navel in a breech presentation, is outside the mother's external cervical os. If delivered abdominally, a child is partially separated from the mother when the child's head in a cephalic presentation, or any part of the torso above the navel in a breech presentation, is outside the mother's external abdominal wall.

3. A person is guilty of the crime of infanticide if such person causes the death of a living infant with the purpose to cause said death by an overt act performed when the infant is partially born or born.

4. The crime of infanticide shall be a class A felony.

5. A physician using procedures consistent with the usual and customary standards of medical practice to save the life of the mother during pregnancy or birth or to save the life of any unborn or partially born child of the same pregnancy shall not be criminally responsible under this section. In no event shall the mother be criminally responsible pursuant to this section for the acts of the physician if the physician is not held criminally responsible pursuant to this section.

6. This section shall not apply to any person who performs or attempts to perform a legal abortion if the act that causes the death is performed prior to the child being partially born, even though the death of the child occurs as a result of the abortion after the child is partially born.

7. Only that person who performs the overt act required under subsection 3 of this section shall be culpable under this section, unless a person, with the purpose of committing infanticide, does any act which is a substantial step towards the commission of the offense which results in the death of the living infant. A "substantial step" is conduct which is strongly corroborative of the firmness of the actor's purpose to complete the commission of the offense.

8. Nothing in this section shall be interpreted to exclude the defenses otherwise available to any person under the law including defenses provided pursuant to chapters 562 and 563.

(L. 1999 H.B. 427, et al.)

Effective 9-16-99

*This bill was vetoed on July 12, 1999. The veto was overridden on September 16, 1999.

(2002) Section does not contain an exception to liability for actions undertaken to preserve the life of the mother, and the culpable mens rea of the physician must begin before performing the procedure rather than during the procedure. State v. Reproductive Health Services, 97 S.W.3d 54 (Mo.App.E.D.).

(2004) Section is unconstitutional due to absence of exception to protect health of the pregnant woman, as enunciated by United States Supreme Court in Stenberg v. Carhart, 530 U.S. 914 (2000). Reproductive Health Services of Planned Parenthood v. Nixon, 325 F.Supp.2d 991 (W.D.Mo.), aff'd., 429 F.3d 803 (8th Cir.).

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