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June 6, 2013

Ms. Sharona Coutts
Director of Research and Investigations
RH Reality Check
sharona@rhrealitycheck.org

Dear Ms. Coutts:

This letter is in response to your public records request of June 5, 2013, in which you ask for a copy of all documents provided in response to the letter of May 7, 2013 from U.S. Representatives Bob Goodlatte and Trent Franks, which requested a range of information related to abortion in Wisconsin.

Attached, please find the response letter from Attorney General J.B. Van Hollen dated May 29, 2013. Within our response letter, we did provide answers to the questions asked, but there were no enclosures. Therefore, this letter constitutes a complete copy of the information provided to U.S. Representatives Bob Goodlatte and Trent Franks.

The Department of Justice charges \$.15 per page and \$1.00 per CD-ROM for copies provided in response to public records requests. However, our normal copying fee is waived in instances where the total cost is less than \$5.00, so no payment is required in this instance.

Pursuant to Wis. Stat. § 19.35(4)(b), this determination is subject to review by mandamus under Wis. Stat. § 19.37(1) or upon application to a district attorney or the Attorney General.

Sincerely,

Kevin C. Potter
Assistant Attorney General
Administrator, Legal Services Division
Public Records Custodian

KCP:lkw
Attachment



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May 29, 2013

Chairman Bob Goodlatte and Subcommittee Chairman Trent Franks
Committee on the Judiciary
House of Representatives
United States Congress
2138 Rayburn House Office Building
Washington, DC 20515-6216

Re: Response to Request for Information on May 7, 2013

Dear Chairman Goodlatte and Subcommittee Chairman Franks:

I am writing in response to your letter of May 7, 2013, in which you asked that I respond to five questions, with subparts, relating to the statutory protection of newborns and the prosecution of such cases. Your inquiry was prompted by the recent trial of Dr. Kermit Gosnell. Your questions and my responses are as follows:

1. In 2002 Congress enacted the Born-Alive Infants Protection Act, which provides that all federal protections for persons apply to every infant born alive. Do prosecutors in your state treat the deliberate killing of newborns, including those newborns who were delivered alive in the process of abortion, as a criminal offense? If so, have there been any prosecutions in your state for this crime? If the answer to the previous question is yes, please provide a log of cases, excluding any personally identifying information.

In Wisconsin, primary jurisdiction for the prosecution of crime rests with the constitutionally elected District Attorneys (DA) for each county in the state. My office has original jurisdiction only for statutorily specified crimes and therefore lacks the authority to prosecute most offenses, unless a DA requests assistance, or if appointed as a special prosecutor when the DA has a conflict of interest.

Both my office and the state's elected DAs treat the deliberate killing of newborns as criminal offenses. Such prosecutions typically would be handled through homicide statutes contained within Chapter 940 of the Wisconsin Statutes. As for the killing of newborns delivered alive in the process of abortion, my office has not received a request to prosecute such

a crime during my tenure as Attorney General, nor am I aware of such a case having been recently prosecuted in Wisconsin.

My office does not track the types or number of cases prosecuted by DAs on a statewide basis and therefore I am unable to provide you with any statistics regarding crimes against newborns. Tracking such cases would be complicated by the fact that there are several statutory offenses which could be charged, ranging from first degree intentional homicide, to neglect of a child resulting in death. Many of these general offenses would apply equally to adults and newborns, so determining whether newborns were involved would require a case by case review.

2. Has the legislature in your state enacted laws, in addition to general laws against homicide or requiring ordinary medical treatment, specifically to protect newborns delivered alive in the process of abortions? If so, how if at all, have these laws changed prosecutorial practices?

In Wisconsin, Chapter 940 addresses crimes against life and bodily security. Offenses within this chapter would include homicide, felony murder, mutilating or hiding a corpse. Chapter 948 addresses crimes against children. Wisconsin also has laws related to crimes against public health and safety within Chapter 941. These general laws would apply to newborn children as well as adults.

Wisconsin Statutes do contain several criminal offenses specifically related to newborns. Wis. Stat. § 940.04 prohibits abortion. Wis. Stat. § 940.16 prohibits partial-birth abortions, however, the enforcement of that provision has been enjoined under *Stenberg v. Carhart*, 530 U.S. 949, 147 L. Ed. 2d 743 (2000). See also *Hope Clinic v. Ryan*, 249 F.3d 603 (2001). Wis. Stat. § 940.13 provides an exception for charges against women who obtain abortions and Wis. Stat. § 940.15 prohibits abortions involving fetuses who are deemed "viable." When the conduct in question results in injury rather than death, Wis. Stat. § 940.195 codifies the crime of battery to an unborn child.

Without knowing what cases are being prosecuted by DAs throughout the state, I am unable to comment on how these laws have changed prosecutorial practices.

3. The grand jury expressed concern about Pennsylvania law's applying a statute of limitations to infanticide by neglect that it does not apply to murder. Does your state have different statutes of limitations for culpability in the death of an infant and culpability in the death of human beings in later stages of development? If so, what is the understood rationale for that difference?

The Wisconsin Statutes generally have a longer statute of limitations, the more serious the crime. The time limitations on prosecutions are contained in section 939.74 of the Wisconsin Statutes. Unless the statutes specifically identify a longer time, the prosecution for a felony must

be commenced within six years. Several of the most serious homicide offenses, e.g., first-degree intentional homicide, first-degree reckless homicide and felony murder have no statute of limitations, whereas other crimes resulting in death have the standard six-year limitation.

4. Have you or your predecessors prosecuted any criminal cases in which a woman has died or suffered serious complications as a result of an abortion? If so, please provide a log of such cases, excluding any personal identifying information.

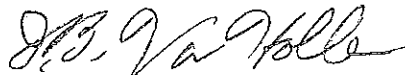
Neither I, nor to my knowledge, my predecessors, have prosecuted criminal cases in which a woman has died or suffered serious complications as a result of an abortion. As noted previously, this office only accounts for a relatively small number of prosecutions throughout the state and we do not track those cases prosecuted by local DAs.

5. This Gosnell case has also raised concerns about the effectiveness of state laws that limit, or purport to limit, abortions late in pregnancy. If your state has such a limit, have abortions performed after the statutory limit been prosecuted in your state? If so, please provide a log of such cases, excluding any personally identifying information. If not, are there legal considerations that have prevented such prosecutions from proceeding?

Again, as explained previously in my response to question #1, we do not track these cases and therefore, I am unable to accurately respond to this question. The prosecution of these cases generally rests with the locally elected DA, so such information would have to be obtained at the county level.

Thank you for allowing me to respond to the important issues raised in your letter. I hope the information I have provided is helpful.

Sincerely,



J.B. Van Hollen
Attorney General