

CHILD INTERSTATE ABORTION NOTIFICATION ACT

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MAY 5, 2005.—Ordered to be printed
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Mr. SENSENBRENNER, from the Committee on the Judiciary,
submitted the following

SUPPLEMENTAL REPORT

together with

ADDITIONAL DISSENTING VIEWS

[To accompany H.R. 748]

Pursuant to clause 3(a)(2) of rule XIII of the Rules of the House of Representatives for the 109th Congress, the Committee on the Judiciary, to whom was referred the bill (H.R. 748) to amend title 18, United States Code, to prevent the transportation of minors in circumvention of certain laws relating to abortion, and for other purposes, herein files a supplemental report on the bill.

On April 21, 2005, the Committee on the Judiciary filed House Report 109-51, relating to H.R. 748, the “Child Interstate Abortion Notification Act of 2005”.

This supplemental report amends the headings that described Committee amendments offered to H.R. 748 that were subject to rollcall votes at pages 45 through 49 of House Report 109-51, Part 1. The following descriptive headings of amendments offered to H.R. 748 have been modified.

VOTE OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee notes that the following rollcall votes occurred during the Committee’s consideration of H.R. 748.

1. Mr. Nadler offered an amendment that would have allowed anyone subject to prosecution under the Act to challenge the adequacy of a judicial bypass provision provided for under State law in federal court. By a rollcall vote of 11 yeas to 16 nays, the amendment was defeated.

2. Mr. Nadler offered an amendment that would have exempted any grandparent or adult sibling of a minor from the Act. By a rollcall vote of 12 yeas to 19 nays, the amendment was defeated.

3. Mr. Scott offered an amendment that would have exempted any taxicab driver, bus driver, or those in the business of professional transport from the Act. By a rollcall vote of 13 yeas to 17 nays, the amendment was defeated.

4. Mr. Scott offered an amendment that would have exempted from the Act those who did not commit an offense in the first degree. By a rollcall vote of 12 yeas to 18 nays, the amendment was defeated.

5. Ms. Jackson-Lee offered an amendment that would have exempted from the Act any clergy, godparents, aunts, uncles, or first cousins, and would require a study by the Government Accounting Office. By a rollcall vote of 13 yeas to 20 nays, the amendment was defeated.

This supplemental report includes additional information that describes amendments offered at the markup of H.R. 748, the “Child Interstate Notification Abortion Act of 2005”.

AMENDMENTS OFFERED AT COMMITTEE

Amendments offered at the Committee on the Judiciary markup of H.R. 748 would have had the effect of creating blanket exclusions from the criminal prohibitions in the legislation without any exceptions for those who would commit statutory rape or incest. The loopholes those amendments would have created could have been exploited by the very sexual predators—that is, those who would exploit vulnerable young girls and commit statutory rape or incest—whose conduct the bill is designed to bring to light. All of the amendments offered would have carved out exceptions that could be exploited by sexual predators who sought to destroy evidence of their crimes by secretly taking a minor, without her parents’ knowledge, to another State to have an abortion, contrary to the purposes of the legislation.

The amendments offered by the minority would have created blanket exclusions for certain large classes of people who are not a minor’s parents. Those classes of people were “taxicab drivers, bus drivers, or others in the business of professional transport,”¹ “clergy, godparents, aunts, uncles, or first cousins of a minor,”² and “grandparents or adult siblings.”³ If any of the people described in the amendments offered became involved with a minor in a sexually abusive way, they would have been flatly excluded from the criminal prohibitions of H.R. 748, one of the primary purposes of which is to prevent sexual predators from continuing to abuse minors undetected.⁴ The amendments offered at the Judiciary Committee markup of April 13, 2005, were directly contrary to a primary purpose of the legislation.

Similarly, if an amendment were offered to a bill that would make it a federal crime to commit terrorist acts, and an offered

¹ H.R. Rep. No. 109–51 (2005) at 101 (amendment offered by Mr. Scott).

² H.R. Rep. No. 109–51 (2005) at 112 (amendment offered by Ms. Jackson-Lee).

³ H.R. Rep. No. 109–51 (2005) at 95 (amendment offered by Mr. Nadler).

⁴ That purpose is reviewed extensively in the Committee Report in an entire section entitled “CIANA Protects Minor Girls From Sexual Assault.” See H.R. Rep. No. 109–51 (2005) at 35–36.

amendment would exclude conduct by, for example, taxicab drivers, then that amendment would allow a taxicab driver to commit terrorist acts without being prosecuted. In the very same way, those who happen to drive taxicabs, or who work in the business of professional transportation, should not be free to commit statutory rape and transport a minor across state lines to get an abortion without telling one of the girl's parents. And brothers, uncles, or godparents, should not be allowed to commit incest and then transport a young girl across state lines to get an abortion so evidence of their crimes are destroyed without telling one of the girl's parents about the abortion. The amendments offered would have done just that in just that way.

The incidence of statutory rape in this country is shocking. As a recent presentation given at a U.S. Department of Health and Human Services Conference on the Sexual Exploitation of Teens showed, of minor girls' first sexual experiences, 13% constitute statutory rape.⁵ Further, the younger a sexually experienced teen is, the more likely they are to experience statutory rape. Of sexually experienced teens age 13 or younger, 65% experienced statutory rape. Of those age 14, 53% experienced statutory rape. Of those age 15, 41% experienced statutory rape.⁶ Also, blacks and Hispanics are more likely to experience statutory rape.⁷ Creating blanket exclusions in the bill for large categories of people would create a loophole in the legislation that statutory rapists could exploit.

Regarding family incest, one recent law review article⁸ summarized the research regarding the prevalence of sexual contact among siblings as follows: "Brother-sister sexual contact may be five times as common as father-daughter incest. A survey of 796 New England College students revealed that 15% of females . . . had a sexual experience with a sibling."⁹ Further, among those reporting sexual abuse, the incidence of abuse by cousins ranges from 10% to 40% among various studies.¹⁰ And 4.9% of women report an incestuous experience with an uncle before the age of 18,¹¹ and 16% of rape victims are raped by relatives other than their father.¹² Carving out exceptions to the criminal prohibitions of H.R. 748 for adult siblings, cousins, and uncles would not protect young girls who are made victims of incest by their adult siblings, cousins, or uncles.

Further, pregnancy as a result of all these crimes is all too common. As one Pennsylvania court has pointed out, "Twenty-five percent of incest victims become pregnant. The ratio is greater among victims of incest than those of rape because incestuous conduct is

⁵Kristin Moore, Ph.D. and Jennifer Manlove, Ph.D., "A Demographic Portrait of Statutory Rape," Presentation given at the United States Department of Health and Human Services' Conference on the Sexual Exploitation of Teens (March 23-24, 2005) (defining statutory rape as occurring when teens aged 15 or younger have sex with a partner 3 or more years older).

⁶Id.

⁷Id. (Hispanic, 17%, black, 16%, white, 11%).

⁸Victor Vieth, "When the Child Abuser is a Child," 25 *Hamline L. Rev.* 47, 51 (2001).

⁹Vernon R. Wiehe, *Sibling Abuse: Hidden Physical, Emotional, and Sexual Trauma* 50 (1990).

¹⁰See A. De Jong, *Sexual Interactions Among Siblings and Cousins*, 12(2), 271-279 (1988).

¹¹See Russell, Diana E.H., "The Incidence and Prevalence of Intrafamilial and Extrafamilial Sexual Abuse of Female Children," in *Handbook on Sexual Abuse of Children*, edited by Lenore E.A. Walker (1988).

¹²See D.G. Kilpatrick et al., *Rape in America: A Report to the Nation* (National Victim Center 1992).

usually long term and progressive whereas rape is usually a one time occurrence.”¹³

Another amendment offered at the Judiciary Committee markup of H.R. 748 would have created an additional layer of Federal court review that could be used by sexual predators to escape conviction under the bill.¹⁴ That amendment would have created an opportunity for a sexual predator to escape conviction if they could make a showing to a federal court that the judicial bypass provisions of a state law were somehow ineffective or somehow violated confidential information related to a minor’s pregnancy. If a sexual predator made a showing to the court on either of those issues—neither of which would expose the sexual predator’s crimes—then that sexual predator could completely evade the requirements of H.R. 748, which are designed to expose sexual predators and prevent future sexual abuse.

The final amendment offered would have exempted from prosecution under the bill those who aid and abet criminals who could be prosecuted under the bill. That amendment would have excluded from the bill anyone who did not “commit[] an offense in the first degree.”¹⁵ The consequences of adopting that amendment would have been to allow anyone who aided or abetted a criminal who ran afoul of the criminal prohibitions of H.R. 748 to instead get off scot-free.

In sum, the effect of the amendments offered would have been to exempt cab drivers, other professional transporters, and certain relatives who aren’t parents from the criminal prohibitions of H.R. 748, and that would have prevented parents from knowing when those perpetrators of statutory rape or incest were secretly taking their children across state lines for an abortion to destroy evidence of their crimes.

This supplemental report also adds the following additional text at the end of the Additional Dissenting Views.

¹³*Fischner v. Department of Public Welfare*, 482 A.2d 1137, 1143 (Pa. Commonwealth 1984).

¹⁴H.R. Rep. No. 109–51 (2005) at 90 (amendment offered by Mr. Nadler).

¹⁵H.R. Rep. No. 109–51 (2005) at 107 (amendment offered by Mr. Scott).

ADDITIONAL DISSENTING VIEWS OF REPRESENTATIVES CONYERS

I understand that some contend that certain Democratic Amendments offered at the markup of H.R. 748 would have protected sexual predators.¹⁶ This is not the purpose, intent or effect of the Amendments.

First, it is important to note that the term “sexual predator” is not included in the text of any of the Democratic Amendments, nor is it included in the text of the legislation itself. In addition, the term was only used on a single occasion during the substantive consideration of the legislation at full committee, very briefly during debate on the second Scott amendment.¹⁷

Second, I believe it is incorrect to assert, for example, that the bill creates a loophole for grandparents or taxicab drivers under the amendments. In the highly unlikely event that a grandparent or a taxicab driver had engaged in sexual relations with a young woman, the amendments would not have let such individuals off the hook for their acts. That is to say, they would be separately and independently culpable for the act of rape, statutory rape, or incest, with or without the adoption of these amendments.

Third, the amendments simply reflected good faith efforts of Democratic Members to carve out from the provisions of the legislation certain categories of individuals who were not sexual predators, but were simply acting out of the best interests of the young woman involved. For example:

- When Mr. Nadler offered an amendment to allow a subject party to challenge the adequacy of judicial bypass procedures, he did so because of his knowledge that quite frequently judicial bypass procedures do not operate to allow a woman who has been raped by a parent to find an objective and independent legal forum to obtain a waiver.

- When Mr. Nadler offered an amendment to exempt grandparents and adult siblings from the scope of the legislation, and Ms. Jackson-Lee offered an amendment to exempt clergy, godparents, aunts, uncles or first cousins from the legislation, they did so because they understand that quite frequently a trusted relative or clergy member is turned to by a young woman who is scared of or cannot trust her parents.

¹⁶The five amendments in question are Nadler Amendment No. 11–16 (allows an adult who could be prosecuted under the bill to go to a Federal district court and seek a waiver to the state’s parental notice laws if this remedy is not available in the state court); Nadler Amendment No. 12–19 (exempts a grandparent or adult sibling from the criminal and civil provisions in the bill); Scott Amendment No. 13–17 (exempts cab drivers, bus drivers and others in the business transportation profession from the criminal provisions in the bill); Scott Amendment No. 12–18 (would have limited criminal liability to the person committing the offense in the first degree); Jackson-Lee Amendment No. 13–20 (exempts clergy, godparents, aunts, uncles or first cousins from the penalties in the bill).

¹⁷See Mr. Chabot’s remarks on page 107 of H.R. Report No. 109–51.

- When Mr. Scott offered an amendment to exempt taxicab drivers, bus drivers, or those in the business of professional transport from the legislation, he did so because he did not want these innocent common carriers to be caught up in legal danger as the result of the actions of an overzealous prosecutor.

- When Mr. Scott offered an amendment to exempt individuals who did not commit offenses in the first degree, he did so to insure that the legislation focused on those who acted with specific intent to violate the law, as is ordinarily the case with our criminal laws or to be prevented from simply doing their jobs in transporting individuals across state lines.

In each of these cases far from protecting sexual predators, the amendments were designed to make it easier for a young woman who wants to obtain an abortion from being able to do so without being forced to seek the permission of a parent who is himself a sexual predator. I believe the amendments were straightforward and justified, and would have provided important improvements to the underlying legislation without opening up any additional loopholes.

JOHN CONYERS, JR.

