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OFFICE OF MANAGEMENT AND BUDGET
LEGISLATIVE AFFAIRS

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(includes cover page)

Eleanor D. Acheson
Assistant Attorney General, United States Department of Justice
Unborn Victims of Violence Act
Senate Judiciary Committee
February 23, 2000 10:00 am

Good morning. I appreciate the opportunity to appear before this Committee to express the Justice Department's views regarding the proposed Unborn Victims of Violence Act (S. 1673).

S. 1673 would amend the criminal code and the Uniform Code of Military Justice to make it a separate federal offense to cause "death or bodily injury" to a "child in utero" in the course of committing any one of 68 enumerated federal offenses against a pregnant woman. The new crime created by S. 1673 has an expansive reach. ^{The bill} ~~it defines "child in utero" to reach a "member of the species homo sapiens at any stage of development"~~ and does not require that the perpetrator know, or even suspect, that the adult woman he harms is pregnant. The punishment for this new offense is the same as if the perpetrator had harmed the pregnant woman, except that the death penalty is not permitted.

~~At the outset, it is important to emphasize the Administration's position -- shared by the sponsors of S. 1673 -- that violence against the unborn is simply intolerable. We are all familiar with the story of how Adrian Gregory Robbins brutally beat his wife when she was 34 weeks pregnant, and how that beating induced a miscarriage. Such deplorable behavior must not go unpunished. For the reasons set forth below, however, the Administration believes that federal efforts to curtail violence against the unborn are better directed toward preventing violence against women, since pregnant women are also victimized whenever the unborn are harmed.~~

Halting violence against all women, including pregnant women, has been a top priority of

this Administration for the past seven years. In 1994, the Administration, with the bipartisan support of Congress and the support of the President, made the Violence Against Women Act (VAWA) the law of the land. VAWA marked a critical turning point in the national effort to address domestic violence, sexual assault, and stalking. VAWA, for the first time, created federal domestic violence offenses with strong penalties to supplement state and local efforts to hold violent offenders accountable. To date, the Department of Justice has complemented state and local prosecutions by filing over 200 VAWA and VAWA-related indictments, and this number continues to grow. In addition, the Department of Justice alone has awarded well over \$800 million through VAWA grant programs since 1994, directing critical resources to communities' efforts to respond to domestic violence, sexual assault, and stalking. These funds have made a difference in women's lives, and in how communities respond to violence against women. Indeed, these funds have helped save the lives of many victims of domestic violence.

While we agree with the sponsors of S. 1673 that the federal government can and should play an important role in the campaign to end violence against women, S. 1673 is, in our view, a flawed federal response to the evils of such violence. It is, moreover, one that has several troubling collateral consequences. The Administration accordingly opposes this bill, and the President's senior advisors would recommend that he veto it.

Our first concern is that S. 1673 reaches only pregnant women, and then only if they happen already to be protected by one of the 68 enumerated federal offenses listed in S. 1673. Because it penalizes harm only to a subset of women, S. 1673 is a less effective means of combating violence against all women, and may have the side effect of devaluing the gravity of violence done to women not falling under S. 1673's auspices.

[INSERT language from Justice's letter of 9/9/99 - See
~~It is no answer, in our view, that S. 1673 might nevertheless deter violence against all women. Some proponents of S. 1673 have noted that the bill explicitly disavows any requirement that the offender know or even have reason to know that the victim is pregnant.~~ noted paragraph]

~~Because the Act defines "child in utero" as a "member of the species homo sapiens, at any stage of development, who is carried in the womb," the victim herself need not know that she is pregnant. As a result, they argument goes, a person who harms any woman of child-bearing age is always in danger of also committing the offense created by S. 1673.~~

We strongly object to this "Russian roulette" aspect of S. 1673, which dramatically increases the penalty for harming a pregnant woman – in some cases, from as little as a year in jail to life imprisonment – based on the existence of an element, harm to the unborn, for which liability is strict. To be sure, strict liability enhancements are not unheard of in the American criminal law. The Federal felony-murder rule, for example, increases the punishment for homicides committed in the course of certain enumerated felonies.¹ Similarly, American tort law often holds a tortfeasor liable for injury no matter what the special sensitivities of the injured party. But in both situations, liability is usually tied to a culpability and is limited to the legal consequences the wrongdoer can reasonably foresee. That is why the felony-murder rule is limited to the subclass of felonies from which a death is reasonably likely to occur – arson, escape, murder, kidnapping, burglary, to name a few. S. 1673's new crime, by contrast, has no such limitations and applies to a range of crimes for which harm to the unborn is not necessarily foreseeable, such as damaging religious property² or animal enterprise terrorism.³ This infirmity might be cured on a case-by-case basis if the crime were defined to require that an offender know, or have reason to suspect, that his female victim is pregnant, but S. 1673 goes out of its way to expressly disavow any such requirement. And by automatically and steadfastly equating

¹ See 18 U.S.C. § 1111 (listing among first-degree murder "[c]very murder . . . committed in the perpetration of, or attempt to perpetrate, any arson, escape, murder, kidnapping, treason, espionage, sabotage, aggravated sexual abuse or sexual abuse, burglary, or robbery").

² 18 U.S.C. § 247.

³ 18 U.S.C. § 43.

harm to the unborn with harm to the pregnant woman, S. 1673 replaces judicial discretion in sentencing with mandatory and substantial increases in sentencing without regard to individual culpability. In short, S. 1673's blunderbuss decoupling of punishment and culpability – combined with its heavy, mandatory increases in sentences that leaves little room for judicial discretion – is far too broad a brush to paint with in this arena.

In addition to having these broader policy defects, S. 1673 is also likely to be ineffective – if not counter-productive – as a practical matter. S. 1673 may be ineffective because it cannot be used to prosecute any persons who are not already subject to federal prosecution. Because one element of S. 1673's new crime is that the offender “engage in conduct that violates” one of 68 specifically enumerated crimes, S. 1673 would not in any way expand the universe of violent individuals subject to federal prosecution.

S. 1673 may also be counterproductive to federal efforts to stop domestic violence. Because S. 1673 does not require that the government first obtain a conviction for the underlying conduct against a pregnant woman, S. 1673 may actually reduce the number of prosecutions brought for injury to the pregnant woman. If, for example, a person “forcibly . . . intimidates” a female postal worker during the first month of her pregnancy, and she miscarries, a prosecutor would have two options in prosecuting the aggressor: (i) for violating 18 U.S.C. § 111, which carries a one-year maximum sentence; or (ii) for violating the offense created by S. 1673, which would carry a maximum life sentence because causing the miscarriage is treated as if the aggressor murdered the pregnant woman, a federal officer. This is a substantial increase in sentence as compared with the sentence that could otherwise be imposed for injury to the woman who is not pregnant. A prosecutor faced with this choice may therefore proceed solely under S. 1673's new offense. Even if the prosecutor initiated a dual prosecution for both crimes, the prosecution for injury to the “unborn child” is likely to overshadow the prosecution for injury to the pregnant woman. In either event, rather than reinforcing the federal government's

commitment to ending violence against women, this bill would downplay or ignore the significance of the injury to the woman.

S. 1673 may also be unconstitutional in some of its applications. The drafters of S. 1673 were careful to recognize that abortion-related conduct is constitutionally protected.⁴ The bill accordingly prohibits prosecution for conduct relating to a consensual abortion or an abortion where consent "is implied by law in a medical emergency."⁵ Without this exception, the bill would be plainly unconstitutional. Including the exception does not, however, remove all doubt about the bill's constitutionality. The bill's exception for abortion-related conduct does not, on its face, encompass situations in which consent to an abortion may be implied by law (if, for example, the pregnant woman is incapacitated) even though there is no medical emergency. In this situation, the bill may unduly infringe on the constitutionally protected conduct.

Most troubling, however, is the fact that S. 1673 may be perceived as gratuitously plunging the federal government into one of the most difficult and complex issues of religious and scientific consideration and into the midst of a variety of State approaches to handling these issues. The bill's identification of a fetus as a separate and distinct victim of crime is unprecedented as a matter of federal statute. Moreover, such an approach is unnecessary for legislation that would augment punishment of violence against pregnant women.

Other, more effective means of federal intervention to stop domestic violence and other violence against women currently exist. ~~Right now, Senators Biden and Hatch have introduced~~

⁴ See Roe v. Wade, 410 U.S. 113 (1973); Planned Parenthood v. Casey, 505 U.S. 833 (1992).

⁵ The bill also prohibits prosecution of any persons for medical treatment of the pregnant woman or her unborn child or any woman with respect to her "unborn child."

~~legislation that would reauthorize the grant programs established by the original VAWA in 1994.~~

If the progress over the past 5 years is any harbinger of the potential for success, reauthorizing VAWA is a straight-forward and effective way to diminish violence against women. Moreover, there are other available avenues that are better tailored than S. 1673 to addressing the additional harm a pregnant woman suffers when her fetus is injured. We are willing to work with Congress to strengthen the criminal provisions of VAWA, and to develop alternative legislation to strengthen punishment for intentional violence against women whom the perpetrator knows or should know is pregnant. The availability of these better tailored alternatives makes enactment of S. 1673 unnecessary, and even more unwise as a policy matter.

For all of these reasons, the Administration strongly opposes S. 1673, and the President's senior advisors would recommend that he veto the bill. Instead, we urge the Senate to support the reauthorization of VAWA as a more direct and effective way to combat violence against women and violence against the unborn.

Thank you for the opportunity to testify on this legislation.



Office of Legislative Affairs

FINAL

Office of the Assistant Attorney General

Washington, D.C. 20530

September 9, 1999

Honorable Henry Hyde
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This letter presents the views of the Department of Justice on H.R. 2436, the "Unborn Victims of Violence Act of 1999."

Section 2 of H.R. 2436 would make it a separate federal offense to cause "death or bodily injury" to "a child in utero" in the course of committing any one of 68 enumerated federal crimes.¹ The punishment for the new crime under H.R. 2436 is the same as if the harm had been inflicted upon the "unborn child's mother," except that the death penalty is not permitted. Section 3 of H.R. 2436 would make substantively identical amendments to the Uniform Code of Military Justice.

The Justice Department strongly objects to H.R. 2436 as a matter of public policy and also believes that in specific circumstances, illustrated below, the bill may raise a constitutional concern. The Administration has made the fight against domestic violence and other violence against women a top priority. The Violence Against Women Act (VAWA), which passed with the bipartisan support of Congress in 1994, has been a critical turning point in our national effort to address domestic violence and sexual assault. VAWA, for the first time, created federal domestic violence offenses with strong penalties to hold violent offenders accountable. While most domestic violence

¹ The enumerated crimes cover a broad range of activities -- from assault or murder within United States jurisdiction, 18 U.S.C. §§ 113-115, 1111-1119, to damaging religious property, 18 U.S.C. § 247, and animal enterprise terrorism, 18 U.S.C. § 43.

crimes are appropriately prosecuted at the state and local level, the Department of Justice has brought 179 VAWA and VAWA-related federal indictments to date, and this number continues to grow. In addition, the Department of Justice alone has awarded well over \$700 million through VAWA grant programs since 1994, directing critical resources to communities' efforts to respond to domestic violence and sexual assault. These funds have made a difference in women's lives, and in how communities respond to violence against women. Indeed, these funds have helped save the lives of many victims of domestic violence.

If the Committee wants to make a difference in the lives of women victims of violence, it should reauthorize the Violence Against Women Act. We hope that Congress will work with us on this common goal. H.R. 2436, however, is not an adequate response to violence against women. Our three main objections to H.R. 2436 are described below.

First, H.R. 2436 provides that the punishment for a violation shall be the same as the punishment that would have been imposed had the pregnant woman herself suffered the injury inflicted upon her fetus. The Department agrees that some additional punishment may be warranted for injury to pregnant women. H.R. 2436, however, would trigger a substantial increase in sentence as compared with the sentence that could otherwise be imposed for injury to a woman who is not pregnant.

* Second, H.R. 2436 expressly provides that the defendant need not know or have reason to know that the victim is pregnant. The bill thus makes a potentially dramatic increase in penalty turn on an element for which liability is strict. As a consequence, for example, if a police officer uses a slight amount of excessive force to subdue a female suspect -- without knowing or having any reason to believe that she was pregnant -- and she later miscarries, the officer could be subject to mandatory life imprisonment without possibility of parole, even though the maximum sentence for such use of force on a non-pregnant woman would be 10 years. This approach is an unwarranted departure from the ordinary rule that punishment should correspond to culpability, as evinced by the defendant's mental state.²

² H.R. 2436 also could be read to impose two punishments for the same injury. Under the newly created § 1841(a)(2)(C), intentional injury to the "child in utero" is to be treated as murder or manslaughter, but the bill does not specify whether

← insert language from this paragraph into testimony as noted.

Third, H.R. 2436's identification of a fetus as a separate and distinct victim of crime is unprecedented as a matter of federal statute. Such an approach is unnecessary for legislation that would augment punishment of violence against pregnant women. Additionally, such an approach is unwise to the extent that it may be perceived as gratuitously plunging the federal government into one of the most -- if not the most -- difficult and complex issues of religious and scientific consideration and into the midst of a variety of State approaches to handling these issues.

Our policy concerns with H.R. 2436 are exacerbated by the likelihood that the bill will yield little practical benefit. Because the criminal conduct that would be addressed by H.R. 2436 is already the subject of federal law (since any assault on an "unborn child" cannot occur without an assault on the pregnant woman), H.R. 2436 would not provide for the prosecution of any additional criminals. At the same time, prosecutors proceeding under H.R. 2436 would be likely to encounter difficulty collecting evidence to support their prosecutions. For instance, the prosecutor would have to establish that the defendant's conduct "cause[d]" the injury -- given the inherent risk of miscarriage and birth defects that occur absent any human intervention, causation may be very difficult to establish.

Finally and critically, the drafters of H.R. 2436 are careful to recognize that abortion-related conduct is constitutionally protected.³ The bill accordingly prohibits prosecution for conduct relating to a consensual abortion or an abortion where consent "is implied by law in a medical emergency."⁴ Without this exception, the bill would be plainly unconstitutional. Including the exception does not, however, remove all doubt about the bill's constitutionality. The bill's exception for abortion-related conduct does not, on its face,

this treatment supplants or supplements H.R. 2436's default punishment -- the punishment the defendant would receive had he injured the pregnant woman.

³ See Roe v. Wade, 410 U.S. 113 (1973); Planned Parenthood v. Casey, 505 U.S. 833 (1992).

⁴ The bill also prohibits prosecution of any persons for medical treatment of the pregnant woman or her unborn child or any woman with respect to her "unborn child."

encompass situations in which consent to an abortion may be implied by law (if, for example, the pregnant woman is incapacitated) even though there is no medical emergency. In this situation, the bill may unduly infringe on constitutionally protected conduct.

For these reasons, we strongly oppose H.R. 2436. The Administration, however, would work with Congress to develop alternative legislation that would strengthen punishment for intentional violence against women whom the perpetrator knows or should know is pregnant, strengthen the criminal provisions of VAWA, and reauthorize the grant programs established by this historic legislation.

Thank you for this opportunity to present our views. The Office of Management and Budget has advised us that from the standpoint of the Administration, there is no objection to submission of this letter. Please do not hesitate to call upon us if we may be of further assistance.

Sincerely,



Jon P. Jennings
Acting Assistant Attorney General

cc: Honorable John Conyers, Jr.
Ranking Minority Member

● **Brooke B. Livingston**

02/22/2000 05:23:37 PM

Record Type: Record

To: Ann O'Leary/OPD/EOP@EOP

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Subject: Re: FOR CLEARANCE -- Justice Testimony on Unborn Victims of Violence Act -- DUE AT 8PM 

September 30, 1999
(House)

H.R. 2436 - Unborn Victims of Violence Act of 1999
(Rep. Graham (R) SC and 66 cosponsors)

The Administration strongly opposes enactment of H.R. 2436, which would make it a separate Federal offense to cause "death or bodily injury" to a "child in utero" in the course of committing certain specified Federal crimes. If H.R. 2436 were presented to the President, his senior advisers would recommend that he veto the bill.

The Administration has made the fight against domestic violence and other violence against women a top priority. The Violence Against Women Act (VAWA), which passed with the bipartisan support of Congress in 1994, marked a critical turning point in our national effort to address domestic violence and sexual assault. VAWA, for the first time, created Federal domestic violence offenses with strong penalties to hold violent offenders accountable. To date, the Department of Justice has brought 179 VAWA and VAWA-related Federal indictments and awarded over \$700 million in VAWA grants to communities to assist in combating violence against women.

Unfortunately, H.R. 2436 is not designed to respond to violence against women. The Administration has significant public policy concerns with the legislation, as described in the Department of Justice letter to the House Committee on the Judiciary on September 9, 1999. For example, H.R. 2436 would: (1) trigger an excessive increase in the length of the sentence as compared with the sentence that could otherwise be imposed for injury to a woman who is not pregnant; (2) depart from the traditional rule that criminal punishment should correspond to the knowledge and intent of the defendant; and (3) identify a fetus as a separate and distinct victim of a crime, which is unprecedented as a matter of Federal statute, and unnecessary to achieve the goal of increasing the punishment for violence against pregnant women.

H.R. 2436 is careful to recognize that abortion-related conduct is constitutionally protected; however, this does not remove all doubt about the bill's constitutionality, as explained in the Department of Justice letter to the House Committee on the Judiciary on September 9th.

The Administration understands that Representative Lofgren will offer an alternative that appropriately focuses on increasing the punishment for violence against pregnant women without identifying a fetus as a separate and distinct victim of a crime. The Administration is willing to work with Congress to develop legislation that would strengthen the punishment for intentional violence against women whom the perpetrator knows or should know is pregnant, strengthen the criminal provisions of VAWA, and reauthorize the grant programs established by VAWA.

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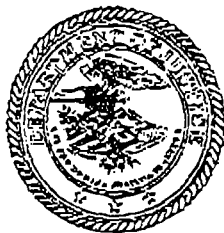
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COMMENTS: Final Justice Testimony

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Department of Justice

STATEMENT

OF

ELEANOR D. ACHESON
ASSISTANT ATTORNEY GENERAL
OFFICE OF POLICY DEVELOPMENT

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

CONCERNING

S. 1673, THE UNBORN VICTIMS OF VIOLENCE ACT

PRESENTED ON

FEBRUARY 23, 2000

Eleanor D. Acheson
Assistant Attorney General, United States Department of Justice
Unborn Victims of Violence Act
Senate Judiciary Committee
February 23, 2000 10:00 am

Good morning. I appreciate the opportunity to appear before this Committee to express the Justice Department's views regarding the proposed Unborn Victims of Violence Act (S. 1673).

S. 1673 would amend the criminal code and the Uniform Code of Military Justice to make it a separate federal offense to cause "death or bodily injury" to a "child in utero" in the course of committing any one of 68 enumerated federal offenses against a pregnant woman. The new crime created by S. 1673 has an expansive reach. The bill does not require that the perpetrator know, or even suspect, that the adult woman he harms is pregnant. The punishment for this new offense is the same as if the perpetrator had harmed the pregnant woman, except that the death penalty is not permitted.

Halting violence against all women, including pregnant women, has been a top priority of this Administration for the past seven years. In 1994, the Administration, with the bipartisan support of Congress and the support of the President, made the Violence Against Women Act (VAWA) the law of the land. VAWA marked a critical turning point in the national effort to address domestic violence, sexual assault, and stalking. VAWA, for the first time, created federal domestic violence offenses with strong penalties to supplement state and local efforts to hold violent offenders accountable. To date, the Department of Justice has complemented state

and local prosecutions by filing over 200 VAWA and VAWA-related indictments, and this number continues to grow. In addition, the Department of Justice alone has awarded well over \$800 million through VAWA grant programs since 1994, directing critical resources to communities' efforts to respond to domestic violence, sexual assault, and stalking. These funds have made a difference in women's lives, and in how communities respond to violence against women. Indeed, these funds have helped save the lives of many victims of domestic violence.

While we agree with the sponsors of S. 1673 that the federal government can and should play an important role in the campaign to end violence against women, S. 1673 is, in our view, a flawed federal response to the evils of such violence. It is, moreover, one that has several troubling collateral consequences. The Administration accordingly opposes this bill, and the President's senior advisors would recommend that he veto it.

Our first concern is that S. 1673 reaches only pregnant women, and then only if they happen already to be protected by one of the 68 enumerated federal offenses listed in S. 1673. Because it penalizes harm only to a subset of women, S. 1673 is a less effective means of combating violence against all women, and may have the side effect of devaluing the gravity of violence done to women not falling under S. 1673's auspices.

Second, the bill expressly provides that the defendant need not know or have reason to know that the victim is pregnant. The bill thus makes a potentially dramatic increase in penalty turn on an element for which liability is strict. As a consequence, for example, if a police officer

uses a slight amount of excessive force to subdue a female suspect – without knowing or having any reason to believe that she was pregnant – and she later miscarries, the officer could be subject to mandatory life imprisonment without possibility of parole, even though the maximum sentence for such use of force on a non-pregnant woman would be 10 years. This approach is an unwarranted departure from the ordinary rule that punishment should correspond to culpability, as evinced by the defendant's mental state.

We strongly object to this "Russian roulette" aspect of S. 1673, which dramatically increases the penalty for harming a pregnant woman – in some cases, from as little as a year in jail to life imprisonment – based on the existence of an element, harm to the unborn, for which liability is strict. To be sure, strict liability enhancements are not unheard of in the American criminal law. The Federal felony-murder rule, for example, increases the punishment for homicides committed in the course of certain enumerated felonies.¹ Similarly, American tort law often holds a tortfeasor liable for injury no matter what the special sensitivities of the injured party. But in both situations, liability is usually tied to culpability and is limited to the legal consequences the wrongdoer can reasonably foresee. That is why the felony-murder rule is limited to the subclass of felonies from which a death is reasonably likely to occur – arson, escape, murder, kidnapping, burglary, to name a few. S. 1673's new crime, by contrast, has no such limitations and applies to a range of crimes for which harm to the unborn is not necessarily

¹ See 18 U.S.C. § 1111 (listing among first-degree murder "[e]very murder . . . committed in the perpetration of, or attempt to perpetrate, any arson, escape, murder, kidnapping, treason, espionage, sabotage, aggravated sexual abuse or sexual abuse, burglary, or robbery").

foreseeable, such as damaging religious property² or animal enterprise terrorism.³ This infirmity might be cured on a case-by-case basis if the crime were defined to require that an offender know, or have reason to suspect, that his female victim is pregnant, but S. 1673 goes out of its way to expressly disavow any such requirement. And by automatically and steadfastly equating harm to the unborn with harm to the pregnant woman, S. 1673 replaces judicial discretion in sentencing with mandatory and substantial increases in sentencing without regard to individual culpability. In short, S. 1673's blunderbuss decoupling of punishment and culpability – combined with its heavy, mandatory increases in sentences that leaves little room for judicial discretion – is far too broad a brush to paint with in this arena.

In addition to having these broader policy defects, S. 1673 is also likely to be ineffective – if not counter-productive – as a practical matter. S. 1673 may be ineffective because it cannot be used to prosecute any persons who are not already subject to federal prosecution. Because one element of S. 1673's new crime is that the offender “engage in conduct that violates” one of 68 specifically enumerated crimes, S. 1673 would not in any way expand the universe of violent individuals subject to federal prosecution.

S. 1673 may also be counterproductive to federal efforts to stop domestic violence. Because S. 1673 does not require that the government first obtain a conviction for the underlying conduct against a pregnant woman, S. 1673 may actually reduce the number of prosecutions

² 18 U.S.C. § 247.

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brought for injury to the pregnant woman. If, for example, a person "forcibly . . . intimidates" a female postal worker during the first month of her pregnancy, and she miscarries, a prosecutor would have two options in prosecuting the aggressor: (i) for violating 18 U.S.C. § 111, which carries a one-year maximum sentence; or (ii) for violating the offense created by S. 1673, which would carry a maximum life sentence because causing the miscarriage is treated as if the aggressor murdered the pregnant woman, a federal officer. This is a substantial increase in sentence as compared with the sentence that could otherwise be imposed for injury to the woman who is not pregnant. A prosecutor faced with this choice may therefore proceed solely under S. 1673's new offense. Even if the prosecutor initiated a dual prosecution for both crimes, the prosecution for injury to the "unborn child" is likely to overshadow the prosecution for injury to the pregnant woman. In either event, rather than reinforcing the federal government's commitment to ending violence against women, this bill would downplay or ignore the significance of the injury to the woman.

S. 1673 may also be unconstitutional in some of its applications. The drafters of S. 1673 were careful to recognize that abortion-related conduct is constitutionally protected.⁴ The bill accordingly prohibits prosecution for conduct relating to a consensual abortion or an abortion where consent "is implied by law in a medical emergency."⁵ Without this exception, the bill would be plainly unconstitutional. Including the exception does not, however, remove all doubt

⁴ See Roe v. Wade, 410 U.S. 113 (1973); Planned Parenthood v. Casey, 505 U.S. 833 (1992).

⁵ The bill also prohibits prosecution of any persons for medical treatment of the pregnant woman or her unborn child or any woman with respect to her "unborn child."

about the bill's constitutionality. The bill's exception for abortion-related conduct does not, on its face, encompass situations in which consent to an abortion may be implied by law (if, for example, the pregnant woman is incapacitated) even though there is no medical emergency. In this situation, the bill may unduly infringe on the constitutionally protected conduct.

Most troubling, however, is the fact that S.1673 may be perceived as gratuitously plunging the federal government into one of the most difficult and complex issues of religious and scientific consideration and into the midst of a variety of State approaches to handling these issues. The bill's identification of a fetus as a separate and distinct victim of crime is unprecedented as a matter of federal statute. Moreover, such an approach is unnecessary for legislation that would augment punishment of violence against pregnant women.

Other, more effective means of federal intervention to stop domestic violence and other violence against women currently exist. If the progress over the past 5 years is any harbinger of the potential for success, reauthorizing VAWA is a straight-forward and effective way to diminish violence against women. Moreover, there are other available avenues that are better tailored than S. 1673 to addressing the additional harm a pregnant woman suffers when her fetus is injured. We are willing to work with Congress to strengthen the criminal provisions of VAWA, and to develop alternative legislation to strengthen punishment for intentional violence against women whom the perpetrator knows or should know is pregnant. The availability of these better tailored alternatives makes enactment of S. 1673 unnecessary, and even more unwise as a policy matter.

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For all of these reasons, the Administration strongly opposes S. 1673, and the President's senior advisors would recommend that he veto the bill. Instead, we urge the Senate to support the reauthorization of VAWA as a more direct and effective way to combat violence against women and violence against the unborn.

Thank you for the opportunity to testify on this legislation.



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

September 9, 1999

Honorable Henry Hyde
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

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The Justice Department strongly objects to H.R. 2436 as a matter of public policy and also believes that in specific circumstances, illustrated below, the bill may raise a constitutional concern. The Administration has made the fight against domestic violence and other violence against women a top priority. The Violence Against Women Act (VAWA), which passed with the bipartisan support of Congress in 1994, has been a critical turning point in our national effort to address domestic violence and sexual assault. VAWA, for the first time, created federal domestic violence offenses with strong penalties to hold violent offenders accountable. While most domestic violence

¹ The enumerated crimes cover a broad range of activities -- from assault or murder within United States jurisdiction, 18 U.S.C. §§ 113-115, 1111-1119, to damaging religious property, 18 U.S.C. § 247, and animal enterprise terrorism, 18 U.S.C. § 43.

crimes are appropriately prosecuted at the state and local level, the Department of Justice has brought 179 VAWA and VAWA-related federal indictments to date, and this number continues to grow. In addition, the Department of Justice alone has awarded well over \$700 million through VAWA grant programs since 1994, directing critical resources to communities' efforts to respond to domestic violence and sexual assault. These funds have made a difference in women's lives, and in how communities respond to violence against women. Indeed, these funds have helped save the lives of many victims of domestic violence.

If the Committee wants to make a difference in the lives of women victims of violence, it should reauthorize the Violence Against Women Act. We hope that Congress will work with us on this common goal. H.R. 2436, however, is not an adequate response to violence against women. Our three main objections to H.R. 2436 are described below.

First, H.R. 2436 provides that the punishment for a violation shall be the same as the punishment that would have been imposed had the pregnant woman herself suffered the injury inflicted upon her fetus. The Department agrees that some additional punishment may be warranted for injury to pregnant women. H.R. 2436, however, would trigger a substantial increase in sentence as compared with the sentence that could otherwise be imposed for injury to a woman who is not pregnant.

Second, H.R. 2436 expressly provides that the defendant need not know or have reason to know that the victim is pregnant. The bill thus makes a potentially dramatic increase in penalty turn on an element for which liability is strict. As a consequence, for example, if a police officer uses a slight amount of excessive force to subdue a female suspect -- without knowing or having any reason to believe that she was pregnant -- and she later miscarries, the officer could be subject to mandatory life imprisonment without possibility of parole, even though the maximum sentence for such use of force on a non-pregnant woman would be 10 years. This approach is an unwarranted departure from the ordinary rule that punishment should correspond to culpability, as evinced by the defendant's mental state.²

² H.R. 2436 also could be read to impose two punishments for the same injury. Under the newly created § 1841(a)(2)(C), intentional injury to the "child in utero" is to be treated as murder or manslaughter, but the bill does not specify whether

Third, H.R. 2436's identification of a fetus as a separate and distinct victim of crime is unprecedented as a matter of federal statute. Such an approach is unnecessary for legislation that would augment punishment of violence against pregnant women. Additionally, such an approach is unwise to the extent that it may be perceived as gratuitously plunging the federal government into one of the most -- if not the most -- difficult and complex issues of religious and scientific consideration and into the midst of a variety of State approaches to handling these issues.

Our policy concerns with H.R. 2436 are exacerbated by the likelihood that the bill will yield little practical benefit. Because the criminal conduct that would be addressed by H.R. 2436 is already the subject of federal law (since any assault on an "unborn child" cannot occur without an assault on the pregnant woman), H.R. 2436 would not provide for the prosecution of any additional criminals. At the same time, prosecutors proceeding under H.R. 2436 would be likely to encounter difficulty collecting evidence to support their prosecutions. For instance, the prosecutor would have to establish that the defendant's conduct "cause[d]" the injury -- given the inherent risk of miscarriage and birth defects that occur absent any human intervention, causation may be very difficult to establish.

Finally and critically, the drafters of H.R. 2436 are careful to recognize that abortion-related conduct is constitutionally protected.³ The bill accordingly prohibits prosecution for conduct relating to a consensual abortion or an abortion where consent "is implied by law in a medical emergency."⁴ Without this exception, the bill would be plainly unconstitutional. Including the exception does not, however, remove all doubt about the bill's constitutionality. The bill's exception for abortion-related conduct does not, on its face,

this treatment supplants or supplements H.R. 2436's default punishment -- the punishment the defendant would receive had he injured the pregnant woman.

³ See Roe v. Wade, 410 U.S. 113 (1973); Planned Parenthood v. Casey, 505 U.S. 833 (1992).

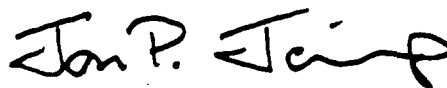
⁴ The bill also prohibits prosecution of any persons for medical treatment of the pregnant woman or her unborn child or any woman with respect to her "unborn child."

encompass situations in which consent to an abortion may be implied by law (if, for example, the pregnant woman is incapacitated) even though there is no medical emergency. In this situation, the bill may unduly infringe on constitutionally protected conduct.

For these reasons, we strongly oppose H.R. 2436. The Administration, however, would work with Congress to develop alternative legislation that would strengthen punishment for intentional violence against women whom the perpetrator knows or should know is pregnant, strengthen the criminal provisions of VAWA, and reauthorize the grant programs established by this historic legislation.

Thank you for this opportunity to present our views. The Office of Management and Budget has advised us that from the standpoint of the Administration, there is no objection to submission of this letter. Please do not hesitate to call upon us if we may be of further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Jon P. Jennings". The signature is fluid and cursive, with a large, stylized "J" and "P".

Jon P. Jennings
Acting Assistant Attorney General

cc: Honorable John Conyers, Jr.
Ranking Minority Member

Ellen G

Eleanor D. Acheson
Assistant Attorney General, United States Department of Justice
Unborn Victims of Violence Act
Senate Judiciary Committee
February 23, 2000 10:00 am

Good morning. I appreciate the opportunity to appear before this Committee to express the Justice Department's views regarding the proposed Unborn Victims of Violence Act (S. 1673).

S. 1673 would amend the criminal code and the Uniform Code of Military Justice to make it a separate federal offense to cause "death or bodily injury" to a "child in utero" in the course of committing any one of 68 enumerated federal offenses against a pregnant woman. The new crime created by S. 1673 has an expansive reach. It defines "child in utero" to reach a "~~member of the species homo sapiens at any stage of development~~" and does not require that the perpetrator know, or even suspect, that the adult woman he harms is pregnant. The punishment for this new offense is the same as if the perpetrator had harmed the pregnant woman, except that the death penalty is not permitted.

At the outset, it is important to emphasize the Administration's position – shared by the sponsors of S. 1673 – that violence against the unborn is simply intolerable. We are all familiar with the story of how Airman Gregory Robbins brutally beat his wife when she was 34 weeks pregnant, and how that beating induced a miscarriage. Such deplorable behavior must not go unpunished. For the reasons set forth below, however, the Administration believes that federal efforts to curtail violence against the unborn are better directed toward preventing violence against woman, since pregnant women are also victimized whenever the unborn are harmed.

Halting violence against all women, including pregnant women, has been a top priority of

this Administration for the past seven years. In 1994, the Administration, with the bipartisan support of Congress and the support of the President, made the Violence Against Women Act (VAWA) the law of the land. VAWA marked a critical turning point in the national effort to address domestic violence, sexual assault, and stalking. VAWA, for the first time, created federal domestic violence offenses with strong penalties to supplement state and local efforts to hold violent offenders accountable. To date, the Department of Justice has complemented state and local prosecutions by filing over 200 VAWA and VAWA-related indictments, and this number continues to grow. In addition, the Department of Justice alone has awarded well over \$800 million through VAWA grant programs since 1994, directing critical resources to communities' efforts to respond to domestic violence, sexual assault, and stalking. These funds have made a difference in women's lives, and in how communities respond to violence against women. Indeed, these funds have helped save the lives of many victims of domestic violence.

While we agree with the sponsors of S. 1673 that the federal government can and should play an important role in the campaign to end violence against women, S. 1673 is, in our view, a flawed federal response to the evils of such violence. It is, moreover, one that has several troubling collateral consequences. The Administration accordingly opposes this bill, and the President's senior advisors would recommend that he veto it.

Our first concern is that S. 1673 reaches only pregnant women, and then only if they happen already to be protected by one of the 68 enumerated federal offenses listed in S. 1673. Because it penalizes harm only to a subset of women, S. 1673 is a less effective means of combating violence against all women, and may have the side effect of devaluing the gravity of violence done to women not falling under S. 1673's auspices.

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It is no answer, in our view, that S. 1673 might nevertheless deter violence against all women. Some proponents of S. 1673 have noted that the bill explicitly disavows any requirement that the offender know – or even have reason to know – that the victim is pregnant.

Because the Act defines “child in utero” as a “~~member-of-the-species homo-sapiens, at any stage of development, who is carried in the~~ womb,” the victim herself need not know that she is pregnant. As a result, they argument goes, a person who harms any woman of child-bearing age is always in danger of also committing the offense created by S. 1673.

We strongly object to this “Russian roulette” aspect of S. 1673, which dramatically increases the penalty for harming a pregnant woman – in some cases, from as little as a year in jail to life imprisonment – based on the existence of an element, harm to the unborn, for which liability is strict. To be sure, strict liability enhancements are not unheard of in the American criminal law. The Federal felony-murder rule, for example, increases the punishment for homicides committed in the course of certain enumerated felonies.¹ Similarly, American tort law often holds a tortfeasor liable for injury no matter what the special sensitivities of the injured party. But in both situations, liability is usually tied to a culpability and is limited to the legal consequences the wrongdoer can reasonably foresee. That is why the felony-murder rule is limited to the subclass of felonies from which a death is reasonably likely to occur – arson, escape, murder, kidnapping, burglary, to name a few. S. 1673’s new crime, by contrast, has no such limitations and applies to a range of crimes for which harm to the unborn is not necessarily foreseeable, such as damaging religious property² or animal enterprise terrorism.³ This infirmity might be cured on a case-by-case basis if the crime were defined to require that an offender know, or have reason to suspect, that his female victim is pregnant, but S. 1673 goes out of its way to expressly disavow any such requirement. And by automatically and steadfastly equating harm to the unborn with harm to the pregnant woman, S. 1673 replaces judicial discretion in

¹ See 18 U.S.C. § 1111 (listing among first-degree murder “[e]very murder . . . committed in the perpetration of, or attempt to perpetrate, any arson, escape, murder, kidnapping, treason, espionage, sabotage, aggravated sexual abuse or sexual abuse, burglary, or robbery”).

² 18 U.S.C. § 247.

³ 18 U.S.C. § 43.

sentencing with mandatory and substantial increases in sentencing without regard to individual culpability. In short, S. 1673's blunderbuss decoupling of punishment and culpability – combined with its heavy, mandatory increases in sentences that leaves little room for judicial discretion – is far too broad a brush to paint with in this arena.

In addition to having these broader policy defects, S. 1673 is also likely to be ineffective – if not counter-productive – as a practical matter. S. 1673 may be ineffective because it cannot be used to prosecute any persons who are not already subject to federal prosecution. Because one element of S. 1673's new crime is that the offender “engage in conduct that violates” one of 68 specifically enumerated crimes, S. 1673 would not in any way expand the universe of violent individuals subject to federal prosecution.

S. 1673 may also be counterproductive to federal efforts to stop domestic violence. Because S. 1673 does not require that the government first obtain a conviction for the underlying conduct against a pregnant woman, S. 1673 may actually reduce the number of prosecutions brought for injury to the pregnant woman. If, for example, a person “forcibly . . . intimidates” a female postal worker during the first month of her pregnancy, and she miscarries, a prosecutor would have two options in prosecuting the aggressor: (i) for violating 18 U.S.C. § 111, which carries a one-year maximum sentence; or (ii) for violating the offense created by S. 1673, which would carry a maximum life sentence because causing the miscarriage is treated as if the aggressor murdered the pregnant woman, a federal officer. This is a substantial increase in sentence as compared with the sentence that could otherwise be imposed for injury to the woman who is not pregnant. A prosecutor faced with this choice may therefore proceed solely under S. 1673's new offense. Even if the prosecutor initiated a dual prosecution for both crimes, the prosecution for injury to the “unborn child” is likely to overshadow the prosecution for injury to the pregnant woman. In either event, rather than reinforcing the federal government's commitment to ending violence against women, this bill would downplay or ignore the

significance of the injury to the woman. *In the to*

S. 1673 may also be unconstitutional in some of its applications. The drafters of S. 1673 were careful to recognize that abortion-related conduct is constitutionally protected.⁴ The bill accordingly prohibits prosecution for conduct relating to a consensual abortion or an abortion where consent “is implied by law in a medical emergency.”⁵ Without this exception, the bill would be plainly unconstitutional. Including the exception does not, however, remove all doubt about the bill’s constitutionality. The bill’s exception for abortion-related conduct does not, on its face, encompass situations in which consent to an abortion may be implied by law (if, for example, the pregnant woman is incapacitated) even though there is no medical emergency. In this situation, the bill may unduly infringe on the constitutionally protected conduct.

Most troubling, however, is the fact that S. 1673 may be perceived as gratuitously plunging the federal government into one of the most difficult and complex issues of religious and scientific consideration and into the midst of a variety of State approaches to handling these issues. The bill’s identification of a fetus as a separate and distinct victim of crime is unprecedented as a matter of federal statute. Moreover, such an approach is unnecessary for legislation that would augment punishment of violence against pregnant women.

Other, more effective means of federal intervention to stop domestic violence and other violence against women currently exist. Right now, Senators Biden and Hatch have introduced legislation that would reauthorize the grant programs established by the original VAWA in 1994.

⁴ See Roe v. Wade, 410 U.S. 113 (1973); Planned Parenthood v. Casey, 505 U.S. 833 (1992).

⁵ The bill also prohibits prosecution of any persons for medical treatment of the pregnant woman or her unborn child or any woman with respect to her “unborn child.”

If the progress over the past 5 years is any harbinger of the potential for success, reauthorizing VAWA is a straight-forward and effective way to diminish violence against women. Moreover, there are other available avenues that are better tailored than S. 1673 to addressing the additional harm a pregnant woman suffers when her fetus is injured. We are willing to work with Congress to strengthen the criminal provisions of VAWA, and to develop alternative legislation to strengthen punishment for intentional violence against women whom the perpetrator knows or should know is pregnant. The availability of these better tailored alternatives makes enactment of S. 1673 unnecessary, and even more unwise as a policy matter.

For all of these reasons, the Administration strongly opposes S. 1673, and the President's senior advisors would recommend that he veto the bill. Instead, we urge the Senate to support the reauthorization of VAWA as a more direct and effective way to combat violence against women and violence against the unborn.

Thank you for the opportunity to testify on this legislation.

Eleanor D. Acheson
Assistant Attorney General, United States Department of Justice
Unborn Victims of Violence Act
Senate Judiciary Committee
February 23, 2000 10:00 am

Good morning. I appreciate the opportunity to appear before this Committee to express the Justice Department's views regarding the proposed Unborn Victims of Violence Act (S. 1673).

The proposed bill would amend the criminal code and the Uniform Code of Military Justice to make it a separate federal offense to cause "death or bodily injury" to a ("child in utero") in the course of committing any one of 68 enumerated federal offenses against the pregnant woman. The punishment for this new offense is the same as if the perpetrator had killed or injured the "unborn child's mother," except that the death penalty is not permitted.

The Administration has for over seven years strongly supported the fight to stop violence against women, including domestic violence. In 1994, the Violence Against Women Act (VAWA) passed with the bipartisan support of Congress and the support of the President. VAWA marked a critical turning point in the national effort to address domestic violence, sexual assault, and stalking. VAWA, for the first time, created federal domestic violence offenses with strong penalties to supplement state and local efforts to hold violent offenders accountable. To date, the Department of Justice has complemented state and local prosecutions by filing [XXX] VAWA and VAWA-related indictments, and this number continues to grow. In addition, the Department of Justice alone has awarded well over \$800 million through VAWA grant programs since 1994, directing critical resources to communities' efforts to respond to domestic violence, sexual assault, and stalking. These funds have made a difference in women's lives, and in how communities respond to violence against women. Indeed, these funds have helped save the lives

My name is Eleanor D. Acheson

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of many victims of domestic violence.

Curtailing, and hopefully one day eliminating, violence against women continues to be a top priority of the Administration. Despite the statements of some of its sponsors, however, the proposed Unborn Victims of Violence Act is a flawed vehicle for addressing this important issue. It is for this reason that the Administration strongly opposes this legislation.

As an initial matter, the Administration is skeptical that S. 1673 will substantially assist the federal effort to reduce violence against women. As noted above, the new offense created by the bill requires the prosecution to prove that (i) a person has “engage[d] in conduct that violates” one of 68 specifically enumerated federal crimes; and (ii) injury or death to “a child, who is in utero” resulted. By definition, therefore, S. 1673 cannot be used to prosecute any persons who are not already subject to federal prosecution for their crime against the pregnant woman. In other words, the bill would not in any way expand the universe of violent individuals subject to federal prosecution.

In fact, the creation of the new offense under S. 1673 may actually reduce the number of prosecutions brought against this identical universe of individuals for injury to the pregnant woman and therefore would not advance our efforts to combat violence against women. Injury to the fetus under S. 1673 is to be punished as if “that injury or death occurred to the unborn child’s mother.” If, for example, a person “forcibly . . . intimidates” a female postal worker on her rounds, and she miscarries during the first month of her pregnancy, a prosecutor would have two options in prosecuting the aggressor: (i) for violating 18 U.S.C. § 111, which carries a one-year maximum sentence; or (ii) for violating the offense created by S. 1673, which would carry a maximum life sentence because causing the miscarriage is treated as if the aggressor murdered the pregnant woman, a federal officer. This is a substantial increase in sentence as compared with the sentence that could otherwise be imposed for injury to the woman who is not pregnant.

A prosecutor faced with this choice may therefore proceed solely under S. 1673's new offense, since S. 1673 does not require that the government first obtain a conviction for the underlying conduct against the pregnant woman. Even if the prosecutor initiated a dual prosecution for both crimes, the prosecution for injury to the "unborn child" is likely to overshadow the prosecution for injury to the pregnant woman. In either event, rather than reinforcing the federal government's commitment to ending violence against women, this bill would downplay or ignore the significance of the injury to the woman.

Moreover, S.1673's approach is an unwarranted departure from the ordinary rule that punishment should correspond to culpability, as evinced by the defendant's mental state. S. 1673 expressly provides that the defendant need not know or have reason to know that the victim is pregnant; indeed, the victim herself need not know that she is pregnant. The bill thus makes a potentially dramatic increase in penalty tun on an element for which liability is strict.

This sort of "punitive jackpot" approach is unusual in the American criminal law, which normally links punishment with culpability. To be sure, the Federal felony-murder rule, for example, increases the punishment for homicides committed in the course of certain enumerated felonies.¹ But the rule limits itself to the subclass of felonies from which death is reasonably foreseeable – arson, escape, murder, kidnapping, burglary, to name a few. S. 1673's new crime, however, dramatically increases the sentence – from as little as a year to as much as life in prison – for a range of crimes for which the additional harm to a woman is not necessarily foreseeable, such as damaging religious property, 18 U.S.C. § 247, or animal enterprise terrorism, 18 U.S.C. §

¹ See 18 U.S.C. § 1111 (listing among first-degree murder "[e]very murder . . . committed in the perpetration of, or attempt to perpetrate, any arson, escape, murder, kidnapping, treason, espionage, sabotage, aggravated sexual abuse or sexual abuse, burglary, or robbery").

43, and does so on a strict liability basis. S. 1673's blunderbuss decoupling of punishment and culpability – coupled with its heavy, mandatory increases in sentences that leaves little room for judicial discretion – is far too broad a brush to paint with in this arena.

S. 1673 may also be unconstitutional in some of its applications and runs the risk of embroiling the Federal criminal law in the divisive, difficult debate over the propriety of abortion. The drafters of S. 1673 were careful to recognize that abortion-related conduct is constitutionally protected.² The bill accordingly prohibits prosecution for conduct relating to a consensual abortion or an abortion where consent “is implied by law in a medical emergency.”³ Without this exception, the bill would be plainly unconstitutional. Including the exception does not, however, remove all doubt about the bill's constitutionality. The bill's exception for abortion-related conduct does not, on its face, encompass situations in which consent to an abortion may be implied by law (if, for example, the pregnant woman is incapacitated) even though there is no medical emergency. This bill, unlike its House counterpart, also does not except from its reach abortions to which a “person authorized to act on . . . behalf” of the pregnant woman has consented. In these situations, the bill may unduly infringe on the constitutionally protected conduct.

At a minimum, however, S. 1673 may be perceived as gratuitously plunging the federal government into one of the most difficult and complex issues of religious and scientific consideration and into the midst of a variety of State approaches to handling these issues. Its identification of a fetus as a separate and distinct victim of crime is unprecedented as a matter of

² See Roe v. Wade, 410 U.S. 113 (1973); Planned Parenthood v. Casey, 505 U.S. 833 (1992).

³ The bill also prohibits prosecution of any persons for medical treatment of the pregnant woman or her unborn child or any woman with respect to her “unborn child.”

federal statute. Moreover, such an approach is unnecessary for legislation that would augment punishment of violence against pregnant women.

Fortunately, other, more effective means of Congressional intervention to stop domestic violence and other violence against women exist. Right now, Senators Biden and Hatch have introduced legislation that would reauthorize the grant programs established by the original VAWA in 1994. If the progress over the past 5 years is any harbinger of the potential for success, reauthorizing VAWA is a straight-forward and effective way to diminish violence against women. Moreover, there are other available avenues that are better tailored than S. 1673 to addressing the additional harm a pregnant woman suffers when her fetus is injured. We are willing to work with Congress to strengthen the criminal provisions of VAWA, and to develop alternative legislation to strengthen punishment for intentional violence against women whom the perpetrator knows or should know is pregnant.

For all of these reasons, we strongly oppose passage of S. 1679 and support the reauthorization of VAWA. Thank you for the opportunity to submit the views of the Department of Justice on these pieces of legislation.

Ben Rogers
has left a pm comment
5-7754

From: Robert J. Pellicci on 02/18/2000 03:05:59 PM

Record Type: Record

To: See the distribution list at the bottom of this message

cc: James J. Jukes/OMB/EOP@EOP

Subject: LRM RJP236 - - JUSTICE Testimony on S1673 Unborn Victims of Violence Act

COMMENTS DUE BY 10:00 A.M. TUESDAY, FEBRUARY 22ND - HEARING IS BEFORE THE SENATE JUDICIARY COMMITTEE ON WEDNESDAY, FEBRUARY 23RD. ASSISTANT ATTORNEY GENERAL ELEANOR ACHESON IS THE WITNESS. THE TESTIMONY FOLLOWS-



unbornvic.sen.test.ver.01.wpc

Reminder - On 9/30/99, the SAP on HR 2436, an almost identical House bill, contained a "senior advisers" veto threat.

----- Forwarded by Robert J. Pellicci/OMB/EOP on 02/18/2000 02:47 PM -----

LRM ID: RJP236

**EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001**

Friday, February 18, 2000

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below

FROM: Robert J. Pellicci (for) Assistant Director for Legislative Reference

OMB CONTACT: Robert J. Pellicci

PHONE: (202)395-4871 FAX: (202)395-6148

SUBJECT: **JUSTICE Testimony on S1673 Unborn Victims of Violence Act**

DEADLINE: **10:00 a.m. Tuesday, February 22, 2000**

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. **Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.**

COMMENTS: Hearing is before the Senate Judiciary Committee on Wednesday, February 23rd.

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