



AMERICAN CIVIL LIBERTIES UNION OF UTAH FOUNDATION, INC  
355 NORTH 300 WEST, SALT LAKE CITY, UT 84103  
(801) 521-9862 PHONE • (801) 532-2850 FAX  
ACLU@ACLUUTAH.ORG • WWW.ACLUUTAH.ORG

---

February 19, 2009

Governor Gary R. Herbert  
Utah State Capitol Complex  
350 North State Street, Suite 200  
PO Box 142220  
Salt Lake City, Utah 84114-2220  
Fax: 801-538-1528

**Re: House Bill 12, "Criminal Homicide and Abortion Amendments"**

Dear Governor Herbert:

On behalf of the American Civil Liberties Union of Utah, we urge you to veto H.B. 12, "Criminal Homicide and Abortion Amendments."

This bill has been touted as an attempt to close a so-called "abortion loophole," brought to the attention of the legislature by the recent unfortunate situation where a 17-year old pregnant girl took intentional steps to terminate her pregnancy.

In effect, H.B. 12 radically changes Utah's abortion law. Previously in Utah, and in keeping with the majority of states in our nation (as well as the common law, which we inherited from England), a woman could not be charged criminally for seeking an abortion. States have long recognized that the consequences of imposing criminal liability, on balance, are more harmful than the state's interest in prosecuting. For example, should a woman seek out an unlawful abortion from an unlicensed provider, she is unlikely to report that physician or provider to the state. Likewise, should a woman seek an unlawful abortion and suffer serious physical harm as a result, she would be unlikely to obtain necessary medical attention.

The language of H.B. 12 results in the removal of immunity for women who seek to obtain or obtain an unlawful abortion, defined as any and all action that results in the death of a fetus that is not considered a medical procedure done under a physician's care. Practically speaking however, this bill changes the presumption that abortions obtained by a woman in this state are legal. If this bill is signed into law, women in this state will essentially be in the uncomfortable and unfortunate position of having to prove that the abortions they obtain (or miscarriages that they suffer) are **not** unlawful.

H.B. 12 removes immunity for women and in its place sets forth very narrow exceptions for when a woman is not open to criminal liability; the implication of

course is that if her behavior does not fall within one of the explicit exemptions set forth in the law, she is subject to criminal penalties.

Consequently, there are many foreseeable examples (and certainly others that will arise should this bill go into effect) where a woman will be vulnerable to criminal prosecution despite the fact that her behavior is outside of the asserted "intent" of H.B. 12.

For example, a woman might seek what she believes to be a lawful abortion but through no fault of her own, the attending physician fails to appropriately follow procedures set forth in the law. The woman could be criminally charged if her particular situation does not fit within one of the very narrow exceptions contemplated by H.B. 12.

Moreover, women who engage in behavior that is perceived as "knowing" or "reckless" and who then suffer a miscarriage are potentially vulnerable to criminal investigation and prosecution under H.B. 12. For example, a woman who fails to wear a seatbelt and is in a car accident could be charged with reckless homicide, should she miscarry. Likewise, a pregnant woman who has a substance abuse problem is likely to forego necessary prenatal care out of fear that she could be prosecuted for "knowing" or "reckless" homicide by continuing to use illegal substances while pregnant.

In a previous legislative session, the Utah legislature recognized, in relation to a bill that would have required pregnant women with substance abuse problems to be incarcerated, that the unintended consequence of such legislation would be to drive these women underground. These women would likely forego needed medical attention out of a fear of incarceration. So too with H.B. 12; women with substance abuse problems will likely avoid care during pregnancy because their addiction will now make them liable for criminal homicide.

We know from past experience that overzealous prosecutors can and do bring cases against individuals that go far beyond legislative intent, particularly where a law leaves room for interpretation. In 2004 in Utah, a woman was arrested and prosecuted under Utah's existing criminal homicide statute for refusing to undergo a cesarean section when recommended by her physicians. Clearly Utah's criminal homicide statute was not intended as a means to charge women who opt not to follow a physician's recommendations, and yet, it was used in that fashion. It is not unreasonable to expect that, should H.B. 12 become law, it has the potential to be used as grounds for investigating and charging women who similarly do not intend to terminate pregnancy.

There is an old legal aphorism that hard cases make bad law. We believe that this phrase appropriately sums up the situation presented by H.B. 12. While the event in Vernal was unfortunate for many reasons, passing legislation to target a single instance, which is unlikely to be repeated, is misguided. This is especially true given

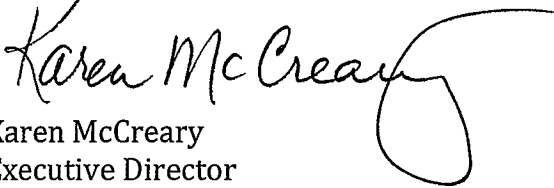
the very real potential for the law created by H.B. 12 to make criminally liable much more behavior than was intended.

Finally, we urge you to consider the glaring fact that the situation in Vernal does highlight: young people in Utah need appropriate and accurate information about sexual health and access to medical and mental health services.

We would be happy to discuss our concerns with you further should it be helpful.

Thank you.

Sincere regards,

A handwritten signature in black ink, appearing to read "Karen McCreary", with a large, looping flourish at the end.

Karen McCreary  
Executive Director

A handwritten signature in black ink, appearing to read "Marina Lowe", with a large, looping flourish at the end.

Marina Lowe  
Legislative and Policy Counsel

cc: John Pearce, Esq.  
General Counsel