

New law could mean death penalty for doctors: Legislators say that wasn't their intent with the abortion measure

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AUSTIN - Texas doctors who perform abortions without parental approval or after the third trimester could face capital murder charges because of a new law that takes effect this week, a prosecutors group says.

The Texas District and County Attorneys Association has outlined that scenario in its new book updating the Texas penal code and in public presentations around the state. The group says such charges could occur under the new law because of the 2003 fetal protection law.

Key legislators said Monday that wasn't their intent.

Sen. Jane Nelson, R-Lewisville, who pushed the parental consent measure, said in a prepared statement that her legislation was strictly limited to giving parents the right to consent when a minor is considering an abortion and to preventing late-term abortions.

"There were no discussions about the death penalty during our legislative discussions of this issue," Nelson said.

A capital murder conviction can result in the death penalty.

Rep. Ray Allen, R-Grand Prairie, who sponsored the 2003 bill defining an embryo or fetus as an "individual," said the law may need clearing up in a future legislative session.

"I don't see the Legislature wanting to charge doctors with capital murder based on a technical legal issue over whether parental consent was properly documented," Allen said.

The fetal protection bill was designed to allow for prosecution of a person who harms or kills an embryo or fetus, supporters say. Exceptions were made for legal drug use, action taken by the mother or a "lawful medical procedure."

But legislators this year defined two scenarios that would be "prohibited practice" in medicine: performing an abortion on an unmarried girl under age 18 without proper consent, and performing an abortion in the third trimester that isn't covered by certain exceptions. The law takes effect Thursday.

That means a doctor performing a prohibited abortion could be accused of capital murder because the capital murder law covers the death of a child under age 6, according to the prosecutors association.

"I think it's a little bit of a stretch," said Elizabeth Graham, director of Texas Right To Life. "The legislative intent clearly was not to incarcerate doctors or execute doctors who are performing abortions, illegal or otherwise." The chances are "very slim" that a district attorney would try such prosecution, she said.

Sarah Wheat, executive director of NARAL Pro-choice Texas, said it can't be ruled out.

"I think, when it comes to this issue, there is always someone who is looking for a political win," Wheat said.

Like Texas, many states have enacted parental consent and fetal protection laws, said Jody Ruskamp-Hatz, policy specialist for the National Conference of State Legislatures. Ruskamp-Hatz said she is not aware of another state in which there is an interpretation that abortion doctors could be subjected to capital murder charges.

The Texas Medical Association said it opposes any legislation with the stated purpose of subjecting doctors to capital murder charges. A violation of the parental consent law "would mean the physician could lose his or her license, not his or her liberty," spokesman Darren Whitehurst said.