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Kansas Prosecutor Demands Files on Late-Term Abortion Patients

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TOPEKA, Kan., Feb. 24 - Attorney General Phill Kline, a Republican who has made fighting abortion a staple of his two years in the post, is demanding the complete medical files of scores of women and girls who had late-term abortions, saying on Thursday that he needs the information to prosecute criminal cases.

Mr. Kline emphasized statutory rape at a news conference here but also spoke obliquely of other crimes that court documents suggest could include doctors' providing illegal late-term abortions and health professionals' failing to heed a state law that requires the reporting of suspected child sexual abuse.

"When a 10-, 11- or 12-year-old child is pregnant, under Kansas law that child has been raped, and as the state's chief law enforcement official it is my obligation to investigate child rape in order to protect Kansas children," Mr. Kline said. "There are two things that child predators want, access to children and secrecy. As attorney general, I'm bound and determined not to give them either."

He declined to answer questions about his investigation.

Advocates on both sides of the abortion issue said the broad investigation, backed by a judge's subpoena, is the first of its kind in pursuit of criminal charges, although the federal Justice Department has unsuccessfully sought similar records in its defense of a ban on a procedure sometimes used to end pregnancies after the first trimester that doctors call intact dilation and extraction and that critics call partial-birth abortion.

Kansas is one of 31 states that have passed laws to ban or restrict the procedure. But Kansas does not ban it outright, allowing such abortions if women's health is endangered.

Mr. Kline's efforts to obtain records from abortion clinics follows his failed attempt last year to require the state's health workers to report any sexual activity of girls younger than 16, the age of legal consent in Kansas.

Health-care providers sued, and a federal judge granted a temporary restraining order.

Mr. Kline's new investigation could yield similar records. His effort became public this week when two clinics whose records are being subpoenaed filed a brief in State Supreme Court to block what they called a "secret inquisition" and "fishing expedition" that threatened the doctor-patient privilege and women's constitutional rights.

Noting that personal details like marital status, race, employment history and emergency

contacts are in the records, lawyers for the clinics asked, "How can a woman's method of birth control or prior history of abortions or use of drugs and medications be relevant?"

The brief, which provided the first glimpse into a yearlong battle whose records have been sealed, said the laws cited as the basis for the subpoenas are one that restricts abortions after 22 weeks of pregnancy and another that requires health professionals to report suspected child abuse.

When Mr. Kline was in the legislature, he helped write the 22-week limit.

Although Mr. Kline emphasized statutory rape in his news conference, many here on both sides of the abortion debate said they suspected that his real target was doctors who provide late-term abortions.

Kansas law restricts abortions after 22 weeks of pregnancy, where the fetus would be viable outside the womb, except when "continuation of the pregnancy will cause a substantial and irreversible impairment of a major bodily function of the pregnant woman."

Despite that law passed in 1998, Kansas has become a national magnet for late-term abortions because of a doctor in Wichita who performs hundreds of them each year. The doctor, George Tiller, funneled at least \$150,000 through political action committees to Mr. Kline's opponent in the attorney general's race in 2002, and his clinic, Women's Health Care Services, is one of the two whose records are being subpoenaed.

In a statement on Dr. Tiller's behalf, his lawyer and a spokesman noted that he had complied with a subpoena from Texas authorities this week in relation to a patient who died after an abortion at his clinic and said he "scrupulously follows" Kansas laws on reporting suspected child abuse.

But, the statement says: "Our client has an extraordinary duty to protect the privacy of his patients. He is bound to do so by law, by ethics and by compassion." State lawmakers and advocates on both sides seized on the investigation as the latest front in the abortion wars. State Senator Marci Francisco, Democrat of Lawrence, said, "We shouldn't use medical records to try to identify whether crimes have been committed."

State Senator Jim Barnett, an Emporia Republican who is a practicing physician, said that a young girl's pregnancy was evidence of statutory rape and that "if it's occurring the one time, it's probably going to happen again."

Nancy Keenan, president of Naral Pro-Choice America, called the subpoenas wildly intrusive and wrote in an e-mail message, "The vast majority of Americans will rightly be appalled at the notion of a state official issuing a mass subpoena about the most private, personal information there is."

Mary Kay Culp, executive director of Kansans for Life, an anti-abortion group, said, "It

is shameful that anybody would want to stop" Mr. Kline from pursuing lawbreakers.

"We're talking about sworn law enforcement officers having access to files so they can go after child rapists and predators," Ms. Culp said in a telephone interview. "Because our attorney general happens to be pro-life is no reason to deny him information that can spare children that pain."

The clinics' brief said that the subpoena covered "the entire, unredacted patient files of nearly 90 women who obtained abortions at two Kansas clinics in 2003" and that it was not limited by age or the absence of abuse reports.

State health records show that 78 Kansans younger than 15 received abortions in 2003 and that 491 abortions were performed past the 22nd week of pregnancy, though the late-term abortions were not broken down by the patients' ages.

After closed hearings, Richard D. Anderson, chief judge of Shawnee County District Court here, ordered the two clinics to provide the records for review by a lawyer to be selected by the judge and a physician picked by Mr. Kline. The clinics are asking the State Supreme Court to quash the subpoena, narrow its scope or at least remove the patients' names.

It is unclear exactly how the records could lead prosecutors to rape suspects, although the clinics say the files often include information about how patients became pregnant, among other "intimate details of their lives" like sexual history, birth control practices, drug use, psychological profiles, information about fetal anomalies and communications with law enforcement.

"These records are of the utmost sensitivity," the brief says. "The logical and natural progression of this action could well be a knock on the door of a woman who exercised her constitutional right to privacy by special agents of the attorney general who seek to inquire into her personal medical, sexual or legal history."

Mr. Kline, head of the national Republican attorneys general association, was in the Kansas House for eight years and is a staunch abortion opponent. He argued last year that *Roe v. Wade* should be overturned in an brief in the federal cases on abortions after the first trimester.

Gretchen Ruethling contributed reporting from Chicago for this article.