

Opening Statement of Senator Chuck Grassley of Iowa
Chairman, Senate Judiciary Committee

March 15, 2016

“Late Term Abortion: Protecting Babies Born Alive and Capable of Feeling Pain”

Good morning to my colleagues, the Ranking Member, and especially to our guests. I look forward to hearing from our panel about the subject of late term abortions.

This is not the first occasion on which this Committee has discussed the importance of protecting babies after the fifth month of pregnancy and newborns who are born alive during botched abortions. At a hearing two years ago, we discussed the shocking case of a woman who entered a West Philadelphia abortion clinic for the purpose of terminating her pregnancy, but who never made it out alive.

This woman, Karnamaya Monger, was 41 years old and about 19 weeks pregnant when she entered that clinic and died during an abortion performed there. She was just one of many of the victims of Kermit Gosnell, in whose clinic babies were born alive and had their spines sliced with scissors after breathing on their own. Kermit Gosnell ran his clinic in West Philadelphia for well over three decades, performing numerous late term abortions in this period. The Grand Jury report on his crimes is stomach churning.

But the Gosnell case also raises the question of whether the substandard abortion clinic is a phenomenon that exists in other communities across the United States. That very question was examined in a May 2013 *National Review* article, entitled “Abortion’s Underside.” The author, Jillian Kay Melchior, hints that the Gosnell case may not be the isolated incident that some would have us believe.

This 2013 article identified several abortion clinics, located mostly in Florida strip malls and operating on an essentially “walk-in basis,” that “had several run-ins with the law.” I will quote briefly from the article and ask unanimous consent to include this article in its entirety in the hearing record:

Sycloria Williams was recovering from a botched abortion at her Pompano, Fla., home on July 21, 2006, when two homicide detectives knocked on her door. They asked if she knew why they were there. “Yes,” Williams said immediately. “Because the baby was born alive.” It took investigators one week and three separate searches to find the corpse of Williams’s infant, which was hidden away in the abortion clinic in Hialeah, Fla. It was a tiny black girl, only 25.5 centimeters from head to toe, born prematurely on July 20....[T]he autopsy report and an expert physician’s review both suggested she had drawn breath on her own before she died.”

We do not yet know the extent to which these cases are the norm, and perhaps we will never know. But that doesn’t mean we shouldn’t support legislation that would help bring greater transparency and accountability to those who staff and operate abortion clinics.

S. 2066, the Born-Alive Abortion Survivor’s Protection Act, is an example of such legislation. I joined Senator Ben Sasse in introducing it last September. It’s aimed at those, like Kermit Gosnell, who furnish substandard care to women and their newborns after a failed abortion attempt. If enacted, it would require that any child born alive following an attempted abortion must receive the same degree of care as any other newborn born alive at the same gestational stage of development. In imposing mandatory reporting requirements on health care practitioners who know that this requirement was violated, the bill may help save lives.

I also have joined Senator Lindsey Graham in introducing a related measure, S.1553, the Pain-Capable Unborn Child Protection Act. This bill would protect the unborn beginning at 20 weeks after the date on which fertilization occurred, which is the same as 22 “weeks of pregnancy,” also known as 22 weeks gestational age.

Gestational age is a method that relies on the date of the mother’s last normal menstrual period. It is well established that babies can survive at 22 weeks gestational age. As noted in *The Washington Post* Fact Checker article of May 26, 2015: “That babies can survive at 22 weeks gestational age has been known for 15 years.” Research on the pain capacity of premature infants also suggests that the unborn child at this stage of development can experience pain that could even be more intense than that experienced by full-term newborns.

Some who object to the Graham bill do so on the ground that abortions past 20 weeks fetal age are exceedingly rare. Because data on late term abortions is not widely available, it’s hard to understand the basis for such a claim. Some jurisdictions with the most lax abortion policies don’t even collect data on the stage of pregnancy when an abortion is performed, while others could have reporting requirements on the books but not actually enforce them. Several hundred doctors in the United States reportedly perform abortions after 20 weeks fetal age, which seems to undercut the claim that late term abortions are exceedingly rare.

In addition to its ban on most elective abortions after the 22nd week of pregnancy, S. 1553 also would require that any child born alive after a failed abortion be provided the same care as a child who was born at the same gestational age. That means the child who survives an abortion attempt would have to be immediately transported to a hospital. Finally, the bill requires that health care workers with knowledge that these guidelines were not followed must report the violation to law enforcement.

As we explore these deeply important issues, we are fortunate to have both a distinguished and knowledgeable group of panelists join us today. First, I would like to welcome Iowa native Melissa Ohden. Ms. Ohden, who as a newborn survived a 1977 abortion attempt, has a Master’s in Social Work. Through an organization known as the Abortion Survivors Network that she founded, Ms. Ohden strives to help other abortion survivors heal.

I also want to thank the two physicians who are joining us today. Dr. Kathi Aultman, who recently retired after three decades of experience as a medical doctor in private practice, received her doctorate in medicine from the University of Florida’s College of Medicine. She completed her residency in OB-GYN at the University of Florida Health Education Programs. Dr. Aultman

co-founded the first Rape Treatment Center of Jacksonville Florida, and at one time served as the medical director of Planned Parenthood of Jacksonville, Florida.

Dr. Colleen A. Malloy, the other medical doctor who will testify today, works as a neonatologist at Children's Hospital of Chicago. She is board certified in general pediatrics and neonatal-perinatal medicine. Dr. Malloy also serves as Assistant Professor of Pediatrics-Neonatology at Northwestern University's Feinberg School of Medicine. Dr. Malloy earned her undergraduate degree, *summa cum laude*, at Notre Dame and obtained her doctorate from Northwestern University's Feinberg School of Medicine.

Finally, we are fortunate to have with us today four other witnesses willing to share their expertise with this Committee today. They include Ms. Angelina Baglini Nguyen, a lawyer and Associate Scholar with the pro-life Charlotte Lozier Institute in Washington, D.C.; Ms. Jodi Magee, the head of Physicians for Reproductive Health in New York; Diana Greene Foster, an Associate Professor in the Department of Obstetrics, Gynecology and Reproductive Services at the University of California in San Francisco, California; and Ms. Christy Zink of Washington, D.C.

The preservation of innocent human life is a very important subject for our Committee to discuss. I also want to thank my good friend and colleague from South Carolina for his leadership in crafting thoughtful legislation on this topic.