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BILL ANALYSIS

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Senate Bills 776 and 1049 (as passed by the Senate)
Sponsor: Senator Cameron S. Brown (S.B. 776)
Senator John Pappageorge (S.B. 1049)
Committee: Health Policy (S.B. 776)
Judiciary (S.B. 1049)

Date Completed: 6-6-08

RATIONALE

In recent years, opponents of a procedure called "partial-birth abortion" have made efforts to criminalize that practice. In 2003, both the Michigan Legislature and the United States Congress approved legislation on this subject. At the Federal level, the Congress passed and President Bush signed the "Partial-Birth Abortion Ban Act", and the United States Supreme Court upheld the law in April 2007. In Michigan, the Legislature approved a bill creating the "Legal Birth Definition Act", which Governor Granholm vetoed. The Act then was proposed by initiative petition and passed into law without the Governor's signature. In June 2007, however, the U.S. Sixth Circuit Court of Appeals affirmed a ruling of the U.S. District Court that the Act is unconstitutional. On January 7, 2008, the U.S. Supreme Court declined to review the decision of the U.S. Court of Appeals, leaving the Act on the books but unenforceable. (The Federal and State legislation and related court decisions are described in **BACKGROUND**, below.) Since the Federal Partial-Birth Abortion Ban Act has been found constitutional, opponents of this abortion procedure believe that Michigan should enact legislation that would mirror the Federal law.

CONTENT

Senate Bill 776 would add the "Partial-Birth Abortion Ban Act" to the Michigan Penal Code to do the following:

-- Provide that a person who knowingly performed a partial-birth abortion

would be guilty of a felony punishable by imprisonment for up to two years and/or a maximum fine of \$50,000.

- Make an exception for a partial-birth abortion that was necessary to save the mother's life.**
- Provide that a woman who obtained a partial-birth abortion would not be guilty of a violation.**
- Allow the mother's spouse or, if the mother were a minor, her parents, to bring a civil action against the person who performed a partial-birth abortion.**
- Specify legislative findings.**

Senate Bill 1049 would amend the Code of Criminal Procedure to include a partial-birth abortion violation in the sentencing guidelines as a Class G felony against a person with a statutory maximum sentence of two years' imprisonment.

Senate Bill 1049 is tie-barred to Senate Bill 776, which is described in detail below.

Penalty

Under Senate Bill 776, except as otherwise provided, a physician, an individual performing an act, task, or function under the delegatory authority of a physician, or any other individual who was not a physician or not otherwise legally authorized to perform an abortion who knowingly performed a partial-birth abortion and killed a human fetus would be guilty of a felony

punishable by imprisonment for up to two years and/or a fine of up to \$50,000.

It would not be a violation if in the physician's reasonable medical judgment a partial-birth abortion were necessary to save the life of a mother whose life was endangered by a physical disorder, physical illness, or physical injury.

A woman who obtained or sought to obtain a partial-birth abortion would not be a conspirator to commit a violation of the proposed Act.

"Partial-birth abortion" would mean an abortion in which the physician, an individual acting under the delegatory authority of the physician, or any other individual performing the abortion deliberately and intentionally vaginally delivers a living fetus until, in the case of a headfirst presentation, the entire fetal head is outside the body of the mother, or in the case of a breech presentation, any part of the fetal trunk past the navel is outside the body of the mother, for the purpose of performing an overt act that the person knows will kill the partially delivered living fetus, and performs the overt act that kills the partially delivered living fetus rather than completing the delivery.

"Physician" would mean an individual licensed by the State to engage in the practice of medicine or osteopathic medicine and surgery under the Public Health Code.

Civil Action by Spouse or Parent

The spouse of the mother, or, if she were younger than 18 at the time of the partial-birth abortion, either of her parents, could file a civil action against the physician or other individual who performed the procedure for a violation of the proposed Act unless the pregnancy were a result of the plaintiff's criminal conduct or the plaintiff consented to the procedure. A plaintiff who prevailed in a civil action could recover both of the following:

- Actual damages, including damages for emotional distress.
- Treble damages for the cost of the partial-birth abortion.

Legislative Findings

The bill states the following legislative findings:

- "That partial-birth abortions pose serious risks to the health of a woman, no credible medical evidence exists that partial-birth abortions are safe, and partial-birth abortions are never medically necessary to preserve the health of the mother."
- "That the state has a compelling interest in preserving and protecting the life of the mother and the child by prohibiting partial-birth abortions."
- "That a prominent medical association has determined that a partial-birth abortion is not an accepted medical practice, is broadly disfavored by medical experts and the public, and is ethically wrong and never the only appropriate procedure; and that a partial-birth abortion has never been subject to even a minimal amount of the normal medical practice development, and therefore the relative advantages and disadvantages of the partial-birth procedure in specific circumstances remain unknown and no consensus exists among obstetricians about the performance of partial-birth abortions."
- "That the physician who is credited with developing the partial-birth abortion procedure has testified that he has never encountered a situation in which a partial-birth abortion was medically necessary to preserve the health of a woman."
- "That a ban on partial-birth abortions will advance the health interests of pregnant women seeking to terminate a pregnancy."
- "That, according to a prominent medical association, a partial-birth abortion is ethically different from other abortion procedures because it normally involves the killing of a fetus that has completed at least 20 weeks of gestation outside of the womb. In light of the findings related to *Roe v Wade* and *Planned Parenthood v Casey*, the partial delivery of a fetus gives the fetus an autonomy which separates it from the right of a woman to choose treatments for her own body."
- "That a partial-birth abortion confuses the medical, legal, and ethical duties of a physician to preserve and promote life. By performing a partial-birth abortion,

the physician acts directly against his or her duties to preserve and promote the life of a child, whom he or she had just delivered, all but the head, out of the womb, in order to end that life."

- "That, by aborting a child in the manner that purposefully seeks to kill the child after he or she has begun the process of birth, a partial-birth abortion procedure undermines the public's perception of the appropriate role of a physician during the delivery process and perverts a process during which life is brought into the world, in order to destroy a partially born child."
- "That the gruesome and inhumane nature of the partial-birth abortion procedure and its disturbing similarity to the killing of a newborn infant promotes a complete disregard for infant human life that can only be countered by a prohibition of the partial-birth abortion procedure."

The bill also contains the following finding: "That based on *Roe v Wade* and *Planned Parenthood v Casey*, a governmental interest in protecting the life of a child during the delivery process arises because a partial-birth abortion involves the inducement of labor and the beginning of the birth process. This distinction was recognized in *Roe* when the court noted, without comment, that the Texas Parturition Statute, which prohibited one from killing a child in a state of being born and before actual birth, was not under attack. This interest becomes compelling as the child emerges from the maternal body. A child that is completely born is a full, legal person entitled to constitutional protections afforded a person. Partial-birth abortions involve the killing of a child that is in the process of being born, in fact mere inches away from becoming a person. Thus, the government has a heightened interest in protecting the life of a partially born child."

Proposed MCL 750.90h (S.B. 776)
MCL 777.16d (S.B. 1049)

BACKGROUND

Roe v Wade (410 U.S. 113)

In 1973, the U.S. Supreme Court held that a Texas law that criminalized abortions except those necessary to save the mother's life, without regard to pregnancy stage and without recognition of the other interests

involved, violated the Due Process Clause of the Fourteenth Amendment. The Court found that the constitutional right of privacy "is broad enough to encompass a woman's decision whether or not to terminate her pregnancy...but that this right is not unqualified and must be considered against important state interests in regulation"; and, "a State may properly assert important interests in safeguarding health, in maintaining medical standards, and in protecting potential life. At some point in pregnancy, these respective interests become sufficiently compelling to sustain regulation of the factors that govern the abortion decision".

The Court concluded that, for the stage before the approximate end of the first trimester, the abortion decision and its effectuation must be left to the medical judgment of the pregnant woman's attending physician. For the stage after the approximate end of the first trimester, the state, in promoting its interest in the health of the mother, may regulate the abortion procedure in ways that are reasonably related to maternal health. For the stage subsequent to viability, the state, in promoting its interest in the potentiality of human life, may regulate and even proscribe abortion except when it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother.

Planned Parenthood of Southeastern Pennsylvania v Casey (505 U.S. 833)

In this 1992 plurality opinion, which dealt with the issue of informed consent to abortion, the U.S. Supreme Court reaffirmed the essential holdings in *Roe* that: A woman has the right to terminate her pregnancy before fetal viability occurs without any undue interference from the state; a state has the power to restrict abortions after viability, if the law contains exceptions for a pregnancy that endangers the woman's life or health; and the state has a legitimate interest from the outset of a pregnancy in protecting the health of the woman and the potential life of the fetus that may become a child. The Court, however, also affirmed an earlier decision in *Webster v Reproductive Health Services* (492 U.S. 490) to reject the rigid trimester framework outlined in *Roe*, reasoning that that approach was

incompatible with the state's interest in potential life throughout the pregnancy.

The plurality *Casey* opinion adopted an "undue burden" standard for evaluating a state's abortion restrictions and held that an undue burden exists when a provision of law has the purpose or effect of placing a "substantial obstacle" in the path of a woman seeking an abortion before fetal viability. Using this standard, the Court ruled that Pennsylvania's informed consent provisions--including a 24-hour waiting period and fetal descriptions--did not pose an undue burden on a woman's right to terminate a pregnancy, although the Court did reject a spousal notification requirement. In upholding major portions of Pennsylvania's statute, the Court overruled earlier informed consent decisions that, according to *Casey*, were inconsistent with the acknowledgment in *Roe* of an important interest in potential life.

Stenberg v Carhart (530 U.S. 914)

In 2000, the U.S. Supreme Court addressed the constitutionality of Nebraska's ban on partial-birth abortion. The Court declined to revisit the established legal principle "that the Constitution offers basic protection to the woman's right to choose". Rather, it applied to the Nebraska law three other established principles to determine the constitutionality of the partial-birth abortion ban.

The three principles are: 1) Before viability, a woman has the right to choose termination of her pregnancy; 2) a law restricting abortion is unconstitutional if it imposes an undue burden on the woman's decision before fetal viability and that undue burden is "shorthand for the conclusion that a state regulation has the purpose or effect of placing a substantial obstacle in the path of a woman seeking an abortion of a nonviable fetus"; and 3) "subsequent to viability, the State in promoting its interest in the potentiality of human life may, if it chooses, regulate, and even proscribe, abortion except where it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother". Considering these principles, the Court held that the Nebraska statute was unconstitutional.

After reviewing various abortion procedures, the Court determined that Nebraska's law criminalizing partial-birth abortion violated the Constitution for at least two reasons. Quoting *Casey*, the Court concluded that "the law lacks any exception 'for the preservation of the...health of the mother'" and that "it 'imposes an undue burden on a woman's ability' to choose a D&E abortion, thereby unduly burdening the right to choose abortion itself". (The Court identified dilation and evacuation, or D&E, as the most commonly used procedure in second trimester abortions.) The Court also determined that the Nebraska statute did not further an interest in the potential human life of the fetus because it would not save the fetus from destruction, but would regulate only a method of performing abortion.

Federal Prohibition

In 2003, Congress passed and President George W. Bush signed into law the Partial-Birth Abortion Ban Act (18 USC 1531). The Act prohibits a physician, acting in or affecting interstate or foreign commerce, from knowingly performing a partial-birth abortion, thereby killing a human fetus. The prohibition "does not apply to a partial-birth abortion that is necessary to save the life of a mother whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself". The Act prescribes a criminal penalty of a fine or up to two years' imprisonment and includes provisions for civil actions.

The Act defines "partial-birth abortion" as an abortion in which the person performing the procedure "deliberately and intentionally vaginally delivers a living fetus until, in the case of a head-first presentation, the entire fetal head is outside the body of the mother, or, in the case of breech presentation, any part of the fetal trunk past the navel is outside the body of the mother, for the purpose of performing an overt act that the person knows will kill the partially delivered living fetus".

Gonzales v Carhart (550 U.S. ____)

In April 2007, the U.S. Supreme Court overturned lower courts and upheld the Federal Partial-Birth Abortion Ban Act. The

Court began its opinion with a description of the surgical procedures typically used in second trimester abortions. The usual method, dilation and extraction (D&E), involves dilating the cervix and extracting the fetus in pieces. The procedure that is commonly referred to as partial-birth abortion is medically known as "intact D&E" or "dilation and extraction" (D&X), which means that the fetus is extracted intact or largely intact. Intact D&E also begins with dilation of the cervix but extraction is done in a way conducive to removing the entire body. Because the head usually lodges in the cervix and dilation is insufficient to allow it to pass, the physician may make an incision in the skull and remove the contents (or crush the skull), before removing the fetus. Other second trimester abortion methods include medical induction (in which labor and contractions are induced, and the fetus is delivered), hysterotomy (in which the fetus is removed through an incision in the woman's abdomen), and hysterectomy (which requires removal of the entire uterus).

The Court applied the principles articulated in *Casey* and concluded, "[T]he Act is not void for vagueness, does not impose an undue burden from any overbreadth, and is not invalid on its face." The Court stated, "Compared to the state statute at issue in *Stenberg*, the Act is more specific concerning the instances to which it applies and in this respect more precise in its coverage." Since the prohibited procedure involves delivery of a fetus to certain "anatomical landmarks" (i.e., the presentation of the head or, in a breech birth, the presentation of the trunk past the navel), the Court held that the Act affords doctors a reasonable opportunity to know what is prohibited: "Unlike the statutory language in *Stenberg* that prohibited delivery of a 'substantial portion' of the fetus—where a doctor might question how much of the fetus is a substantial portion—the Act defines the line between potentially criminal conduct on the one hand and lawful abortion on the other."

The Court also pointed out that the Act contains scienter (or knowledge) requirements for all actions involved in the prohibited abortion. The physician must have "deliberately and intentionally" delivered the fetus to one of the anatomical landmarks, and the fetus must have been

delivered "for the purpose of performing an overt act that the [doctor] knows will kill [it]". If the physician intends from the start to remove the fetus in pieces (perform a standard D&E), but the fetus comes out largely intact, the requisite intent to commit a partial-birth abortion is absent, and the physician is not criminally liable.

Regarding the Act's lack of a health exception, the Court held, "The Act is not invalid on its face where there is uncertainty over whether the barred procedure is ever necessary to preserve a woman's health, given the availability of other abortion procedures that are considered to be safe alternatives." The Court pointed out that the physician could perform a standard D&E or, since the Act refers to a "living fetus", he or she could use an injection to kill the fetus before aborting it. The Court concluded, "The medical uncertainty over whether the Act's prohibition creates significant health risks provides a sufficient basis to conclude...that the Act does not impose an undue burden."

Michigan Law

In 2003, the Legislature approved Senate Bill 395, which proposed the Legal Birth Definition Act, and sent the bill to Governor Granholm, who vetoed the measure. The Act then was proposed by initiative petition and passed into law by the Legislature, without the Governor's signature, becoming Public Act 135 of 2004. (Under Article 2, Section 9 of the State Constitution, measures proposed by citizen initiative and approved by a majority vote of the Senate and House of Representatives become law without the Governor's signature.) While the Act remains on the books, it has been found unconstitutional, as discussed below.

The Legal Birth Definition Act does not refer directly to any abortion procedure, but provides that a "perinate" is considered a legally born person for all purposes under the law. The Act defines "perinate" as "a live human being at any point after which any anatomical part of the human being is known [sic] to have passed beyond the plane of the vaginal introitus until the point of complete expulsion or extraction from the mother's body". "Live" means evidence of breathing, evidence of spontaneous movement, or umbilical cord pulsation. "Anatomical part" means any portion of the

anatomy of a human being that has not been severed from the body, but not including the umbilical cord or placenta.

The Act includes an immunity provision for performing any procedure that results in injury or death of a perinate if the perinate is being expelled from the mother's body as a result of spontaneous abortion; or if, in the physician's reasonable medical judgment and in compliance with the applicable standard of practice and care, the procedure was necessary either 1) to save the life of the mother and every reasonable effort was made to preserve the life of both the mother and the perinate, or 2) to avert an imminent threat to the physical health of the mother, and any harm to the perinate was incidental to treating the mother and not a known or intended result of the procedure performed.

In June 2007, the U.S. Sixth Circuit Court of Appeals affirmed the ruling of the U.S. District Court that the Legal Birth Definition Act is unconstitutional, in *Northland Family Planning Clinic v Cox* (Nos. 05-2417/2418). The Court of Appeals found that "Michigan's law fails to comply with the explicit limitations that the Supreme Court has established for statutes regulating abortion".

The Court pointed out that, unlike the Federal prohibition upheld in *Gonzales*, the Michigan statute does not rely on anatomical landmarks, but essentially would prohibit any abortion procedure in which any anatomical part of a live fetus is removed from the mother's body. The Court opined that this "necessarily means it applies to D&E procedures" and also could apply to other protected abortion procedures. The Court stated, "*Gonzales* left undisturbed the holding from *Stenberg* that a prohibition on D&E amounts to an undue burden on a woman's right to terminate her pregnancy". "[I]t is apparent that the Michigan statute would prohibit D&E, and under the framework of *Stenberg* and *Gonzales*, impose an unconstitutional undue burden."

Regarding the health exception in the Michigan statute, the Court of Appeals found that it could affirm the District Court's ruling that the Act failed to protect the health of the woman "without addressing the complicated implications of *Gonzales*". The Court of Appeals stated, "The bottom line is that the life and health exceptions are *exceptions* to an unconstitutional and un-

fixable general prohibition on certain abortion procedures" (emphasis in original).

On January 7, 2008, the United States Supreme Court declined to review the decision of the U.S. Court of Appeals.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The Partial-Birth Abortion Ban Act proposed by Senate Bill 776 is substantively the same as the Federal Partial-Birth Abortion Ban Act that the U.S. Supreme Court found constitutional. In particular, the proposed definition of "partial-birth abortion" is virtually identical to the definition found in the Federal law, which relies on "anatomical landmarks" and gives abortion providers a reasonable opportunity to know what is prohibited—factors significant to the Court's decision. The proposed exception to save the life of the mother also is nearly identical to the exception found in the Federal law. In addition, like the Federal statute, the bill would require a person to act knowingly, deliberately, and intentionally in order to be guilty of an offense. Enacting this bill would implement the wishes of the Michigan voters who signed initiative petitions several years ago to enact the Legal Birth Definition Act after the Governor vetoed it.

Supporting Argument

Although *Roe v Wade* established a woman's right to choose an abortion, that landmark case also held that the right is not without qualification and that there is a significant state interest in the potentiality of human life. By definition, partial-birth abortion destroys a potential human life that is, as the bill states, "mere inches away from becoming a person", particularly when a nearly full-term fetus is partially delivered and then killed. The procedure in question is more appropriately called "partial-birth infanticide", since there is a difference between terminating a pregnancy and terminating the life of a child being born. This medieval procedure that has fallen out of modern medical practice and no longer serves any purpose. Banning partial-birth abortion would give meaning to the inalienable right to life that is recognized in the Declaration of Independence, and would

help define this State and its citizens as a civilized society.

Opposing Argument

Simply because legislation would be constitutional does not mean that it would be good public policy. This legislation would deny women access to what can be a safe medical procedure, depending on an individual woman's medical condition and history and the stage of her pregnancy. The specific abortion procedure to employ under particular circumstances is a decision best made by the pregnant woman with the advice of her physician.

The bill, at least, should contain an exception for situations in which partial-birth abortion is necessary to protect the health of the pregnant woman, including her future fertility. Notwithstanding the legislative finding that "partial-birth abortions are never medically necessary to preserve the health of the mother", there is no consensus within the medical community on this issue. Like the other legislative findings in the bill, that statement was lifted from the Congressional findings in the Federal law and, according to the U.S. Supreme Court, is incorrect. As the Court stated, "The evidence presented in the District Courts contradicts that conclusion." Although the Court used the "medical uncertainty over whether the Act's prohibition creates significant health risks" as a basis to conclude that the Act did not impose an undue burden, that decision addressed the issue of constitutionality. It does not prevent Michigan from setting a higher standard of protection for women seeking to terminate a pregnancy.

Opponents of partial-birth abortion talk about the value of human life, and the bill contains a legislative finding that partial-birth abortion "promotes a complete disregard for infant human life". At the same time, however, opponents of this procedure claim that the ban is necessary to protect women's health, and that safer procedures are available. The U.S. Supreme Court also relied on the availability of alternative abortion procedures to uphold the Federal law, and pointed out that, to avoid criminal liability, doctors "must adjust their conduct to the law by not attempting to deliver the fetus to either of [the anatomical landmarks]". Rather than protecting human life, the bill merely would

outlaw one *method* of abortion. As the dissent in *Gonzales* stated, "In sum, the notion that the Partial-Birth Abortion Ban Act furthers any legitimate governmental interest is, quite simply, irrational...[T]he Act, and the Court's defense of it, cannot be understood as anything other than an effort to chip away at a right declared again and again by this Court—and with increasing comprehension of its centrality to women's lives."

Furthermore, despite the graphic descriptions used by supporters of the prohibition, the bill's definition of "partial-birth abortion" is not limited to late-term abortions or viable fetuses (those capable of surviving outside the womb), when the State has an interest in protecting potential human life. The procedure or procedures covered by the definition also can be performed earlier in the pregnancy, when the State has less justification to intrude on a woman's abortion decision. The legislation would encroach on the right of women to terminate a pregnancy at any stage.

Response: The U.S. Supreme Court in *Casey* rejected the interpretation of *Roe* that considered all previability regulations of abortion unwarranted, and overruled the holdings in two prior cases because they undervalued the State's interest in potential human life. The *Gonzales* majority opinion reiterated the principle articulated in *Casey* that, "[T]he State has legitimate interests *from the outset of the pregnancy* in protecting the health of the woman and the life of the fetus that may become a child" (emphasis added).

Opposing Argument

The language used in Senate Bill 776 is both unscientific and ambiguous. The term "partial-birth abortion" is not used in medical textbooks, and the bill's definition is not aligned with a specific medical procedure. According to the Michigan State Medical Society, the proposed language still would require a fair amount of interpretation by physicians as well as by the prosecutors and other authorities charged with enforcing the legislation. This ambiguity could have a chilling effect on procedures other than "partial-birth abortion". This bill also would diminish the doctor-relationship by preventing physicians from using their clinical experience and judgment.

Response: The State's interest in regulating the practice of medicine and

protecting the public's health justifies any impact on the doctor-patient relationship. Many laws—such as the prohibition on physician-assisted suicide, immunization requirements, and HIV testing requirements—already affect the doctor-patient relationship. In fact, health care is probably among the most regulated sectors of this society.

Opposing Argument

Senate Bills 776 and 1049 would set a dangerous precedent by criminalizing certain aspects of the practice of medicine. Historically, legislation has assured that physicians are held to appropriate standards through review by other physicians, and the State has created a mechanism to address deviations from the standard of practice through the Board of Medicine and the Board of Osteopathic Medicine and Surgery. This regulatory approach provides due process and careful scrutiny of a particular case, and prevents physicians from becoming targets of law enforcement even though they have not broken the law, which can happen when enforcement is done by individuals without the education and training of medical professionals.

Opposing Argument

The legislation would be an unnecessary duplication of the Federal law. Partial-birth abortion in Michigan already can be prosecuted under that statute.

Response: In order for the Michigan Attorney General and county prosecuting attorneys to prosecute partial-birth abortion, it is necessary to have a State law criminalizing that practice. These officials cannot enforce the Federal law. In addition, considering the resources available and the magnitude of the offense, State and local prosecutors would be more likely than their Federal counterparts to bring charges for partial-birth abortion. Also, while both the bill and the Federal law provide for up to two years' imprisonment, the Federal law does not prescribe a specific fine. The proposed \$50,000 maximum fine could be an effective deterrent to someone motivated by money.

Opposing Argument

Senate Bill 776 states many legislative findings that are medical in nature and contain considerable language that is not typically not put in statute. This includes unsubstantiated statements, such as a determination and position of a "prominent

medical association" and the alleged testimony of a particular physician. The bill also includes inflammatory statements, such as references to the "gruesome and inhumane nature" of the procedure and "its disturbing similarity to the killing of a newborn child". Any abortion procedure (or any surgical procedure) might be considered gruesome if described in the detail used to depict "partial-birth abortion".

As noted above, the language in the bill mirrors the Congressional findings stated in the Federal law, some of which the U.S. Supreme Court found to be incorrect. Rather than relying on the Congressional findings to uphold the Federal law, the Court stated, "Uncritical deference to Congress' factual findings in these cases is inappropriate."

Opposing Argument

It is ironic that Senate Bill 776 would create a private cause of action and access to damages for relatives of women who received a partial-birth abortion, when Michigan residents cannot sue pharmaceutical companies for their actions that result in death.

Response: The Federal statute also allows a civil suit by the father and the maternal grandparents of the aborted fetus.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bills would have an indeterminate fiscal impact on State and local government. There are no data to indicate how many offenders would be convicted of the proposed offense. An offender convicted of the Class G offense would receive a sentencing guidelines minimum sentence range of 0-3 months to 7-23 months. Local governments would incur the costs of incarceration in local facilities, which vary by county. The State would incur the cost of felony probation at an annual average cost of \$2,000, as well as the cost of incarceration in a State facility at an average annual cost of \$33,000. Additional penal fine revenue would benefit public libraries.

Fiscal Analyst: Lindsay Hollander

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.