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Trial Opens in Challenge to Law Over Teenage Sex

By JODI RUDOREN

WICHITA, Kan., Jan. 30 — A federal trial opened here Monday over whether a Kansas law prohibiting virtually all sexual activity by people under age 16 means health care professionals and educators must report such behavior to state authorities, which some say would stop many teenagers from seeking contraception or treatment for sexually transmitted diseases.

The class-action lawsuit stems from a 2003 opinion by the Kansas attorney general, Phill Kline, a conservative Republican who has developed a national reputation for fighting abortion and whose pursuit of abortion clinic records is also being challenged in court.

Mr. Kline's interpretation of the law focused mainly on the reporting duty of abortion providers, arguing that any pregnant, unmarried minor had by definition been the victim of rape or abuse. But it included a broad mandate for reporting whenever "compelling evidence of sexual interaction is present."

Bonnie Scott Jones, a lawyer for the Center for Reproductive Rights in New York, which is representing the plaintiffs, said in her opening statement that Mr. Kline's "dragnet approach" to amassing information on under-age sex violated minors' privacy rights and the Constitution's equal protection clause, and that it "seriously endangers the health and well-being of adolescents."

"Sexual abuse is not synonymous with consensual sexual activity," **Ms. Jones** said to the judge deciding the case, J. Thomas Marten of Federal District Court. "Consensual sexual activity is not inherently injurious. It is a normal part of adolescent development."

Steve Alexander, an assistant attorney general defending the suit, said the Kansas statute meant that those younger than 16 could not consent to sex, and that those violating the law forfeited any privacy rights.

"Illegal sexual activity by minors can lead to S.T.D.'s, unwanted pregnancies, abortion, depression, mental illness," Mr. Alexander said. "To pretend otherwise is foolish." He said the case was in essence a challenge to the law barring consensual sex between young people of a similar age, which he called "a policy argument that plaintiffs would be better served making in the Legislature."

Kansas is one of 12 states where sex under a certain age — 16, 17 or 18 — is illegal regardless of the age difference between partners, according to a 2004 report prepared by the Lewin Group, a consulting firm, for the federal Department of Health and Human Services. Laws on reporting child sexual abuse also vary, but a third of states require reporting only when statutory rape involves a parent or guardian, the report found.

Dr. Robert W. Blum, a Johns Hopkins University professor and an expert in pediatrics and adolescent medicine, who was the plaintiffs' lead witness, testified Monday that only one state, California, had previously tried to require reporting of all under-age sex, and that it reversed course after a year in the early 1990's because the authorities were flooded with "irrelevant and obstructive" reports.

Among the plaintiffs' arguments is that blanket reporting of sexual activity would be futile because the Kansas Department of Social and Rehabilitation Services has a policy against investigating cases of consensual teenage sex.

Pressed on cross-examination, Dr. Blum said he did consider all sex by children 12 or younger to be "problematic" and worthy of reporting, but he said, "That's distinctly different than a 14-, 15- or 16-year-old in a romantic relationship."

Nationally, studies suggest that about 30 percent of teenagers under 16 have had intercourse, and an additional 20 percent have experimented with oral sex or genital fondling.

A federal appeals court on Friday overturned a temporary injunction blocking enactment of Mr. Kline's ruling but provided a two-week window, approximately the expected length of the trial, before the reporting would be required.

Among the issues debated Monday was the very definition of sexual activity. Anal and vaginal intercourse and oral sex are mentioned in the law, as is "lewd fondling or touching" done with "the intent to arouse," which **Ms. Jones** said could cover even intense French kissing.

Mr. Kline, who is expected to testify Friday, declined to discuss the case. In an e-mail statement, he avoided the central controversy over consensual sex between teenagers of a similar age.

"Plaintiffs are arguing that the constitution does not allow the state to require people to report child rape," the statement said. "We differ. Prosecuting and investigating child rapists depends on such laws, and if the plaintiffs believe that adult-child sex should be legal they need to take that debate to the Legislature rather than initiate litigation."

Similarly, Mr. Kline said last year that prosecuting rapists was his goal in seeking access to the medical files of women and girls who had had late-term abortions, which led to a separate lawsuit awaiting a decision by the State Supreme Court.

Mr. Kline, elected in 2002, also serves as chairman of the Republican Attorneys General Association and has fought against abortion throughout his career. He filed a lawsuit, recently dismissed, to challenge the state's use of Medicaid funds for abortions, and he submitted a brief in a federal case arguing that *Roe v. Wade* should be overturned.

Last year, Mr. Kline successfully lobbied the Legislature to require that abortion providers collect fetal tissue from patients younger than 14 and turn it over to law enforcement.

"He's certainly on a crusade to limit or eliminate abortion in Kansas," said Peter Brownlie, chief executive of Planned Parenthood of Kansas and Mid-Missouri. "That's been a clear agenda for a long time." Mr. Brownlie said Mr. Kline had helped make Kansas a national battleground in the abortion debate.

But the doctors, nurses, counselors and educators suing over Mr. Kline's interpretation of the reporting law say it goes far beyond abortion to include every teenager who requests birth control pills or H.I.V. testing, or who in a group therapy session even discusses "heavy petting" with a boyfriend or girlfriend.

"If they know what they tell me is reported, they simply won't talk," said **Beth McGilley**, a Wichita therapist who is among the plaintiffs, referring to both teenage clients and adults who often consult her about their children's sexual exploration.

"To me, it's violating what, quite essentially, therapy is couched in: confidentiality," **Ms. McGilley** said. "You have two 15-year-olds mashing in the back seat of the car — who's the criminal here? Do we really need Big Brother to decide whether or not that needs to be judiciously pursued?"

Gretchen Ruethling contributed reporting from Chicago for this article.