

## No 'Kiss and Tell' Big Brother in Kansas, Say Rights Groups

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By Kari Lydersen

*In a decision that could open or close the door to such laws for conservative politicians nationwide, a federal district court in Kansas will decide whether the state has to be notified when children have consensual sexual contact.*

A teenager tells her school counselor about making out with her boyfriend. Another asks her doctor for advice on safe sex. A mother who knows her teenage son is sexually active asks her own therapist for advice on how to talk to him about it.

Under a revised interpretation of child-abuse reporting statutes proposed by Kansas Attorney General Phil Kline in 2003, the counselor, therapist and doctor in these scenarios would have to report what they had heard to state authorities, under the assumption that any sexual activity involving people under age 16 constitutes child abuse, even if both parties are consenting minors.

After Kline made his proposal, the **Center for Reproductive Rights** filed a lawsuit on behalf of healthcare providers and counseling professionals and obtained a preliminary injunction preventing the implementation of the new rules while the case makes its way through the courts. The issue goes to trial in December in federal district court in Kansas. Meanwhile, the state is challenging the injunction in appellate court.

The **Center for Reproductive Rights**, a national legal organization, argues that access to confidential counseling and health advice is crucial to teens' sexual and psychological health. The group and its clients say that Kline's interpretation of the statute – which they have dubbed "kiss and tell" -- would essentially make that access impossible.

"A vital and precious part of their development will be cordoned off from safe exploration with trusted professionals, and teens will be left to negotiate this terrain more alone than ever," said licensed clinical psychologist Beth McGilley, one of the named plaintiffs in the lawsuit. "Medicine and psychology have been strictly couched in the tradition of privacy, and that is key to most patients being able to get their health care questions answered and their needs met."

Brenda Blanchard, a 49-year-old landscape designer in Wichita, spent seven years in therapy with McGilley, talking through the long-term effects of abuse she suffered as a teen. Psychological issues stemming from the abuse were triggered when her own two children reached adolescence. Blanchard said talking about her children's sexuality with McGilley was a crucial part of recovery.

"I had to discuss a lot of things about what is normal and isn't normal with sexual behavior," said Blanchard, who ended regular therapy two years ago. "I wanted to make sure they were on cue. I was wary, I was worried about some of the same things happening to my daughter."

Blanchard and McGilley were able to confidentially discuss Blanchard's feelings about her kid's behavior. But under Kline's proposed interpretation, McGilley would have been legally required to report to state authorities what she knew about Blanchard's children's sex lives.

"I know that would have silenced me," said Blanchard. "I just wouldn't have involved my kids in the discussions if that were the case, and the family would have missed out on a lot of good things that came from those discussions."

Under Kansas law, any sexual contact between teens under 16 is illegal, but the lawsuit does not legally challenge the idea of criminalizing sexual activity between consenting minors, though plenty of youth psychologists, educators, parents and teens find ludicrous the idea that any sexual conduct -- including kissing -- between people under 16 might constitute abuse.

"If you had to report every [young] couple you see kissing... I see it all the time!" said Jeanetta Green, a 16-year-old high school junior in Wichita and member of the youth group Hope Street. "I don't see any problem with [youth under 16 being sexually intimate] as long as they're responsible."

The plaintiffs' expert testimony, by Dr. Stanley Henshaw, cites numerous studies showing how common "age-mate" consensual sexual activity is among youth under 16, in the US and around the world, and notes that the majority of sexually active adolescents are dating others within a few years of their own age.

The lawsuit notes that Kline's interpretation is contrary to a 1992 opinion written by former Kansas Attorney General Robert Stephan, who construed the reporting statute to mean that illegal sexual activity involving youth under 16 is not necessarily harmful and thus may not

need be reported as abuse.

If Kline's rule does take effect and teens' sexual activity is reported to state authorities, the body which evaluates such reports, the Department of Social and Rehabilitation Services, would evaluate whether the case should be investigated, and if it is, whether there is any criminal activity involved.

Whitney Watson, spokesman for Kline's office, said there are unlikely to be any prosecutions stemming from consensual activity.

"But how do you know [if abuse is occurring] if you don't investigate?" he asked.

In response to the question of whether ending teens' expectation of privacy poses risks, he said, "The risk is to children who may be being raped or otherwise assaulted and no one is investigating."

McGilley notes that caregivers are already expected to report any signs of abuse they see, and there are no legal barriers to them doing so.

Opponents of Kline's interpretation say that along with obstacles to counseling and psychological care, teens could suffer serious health effects if they are not free to discuss sex with professionals. For instance, they predict, teens may be more likely to have unsafe sex if they cannot obtain information about protection, and they are less likely to seek needed medical care.

"What if by eradicating the privacy of teens under 16 discussing their sex lives, they refuse to go to a doctor at the first sign of an STD [sexually transmitted disease] because of the mandated reporting law?" asked McGilley. "What further damage could be caused by their waiting that would have been spared if they could have gone right away without fear of reprisal?"

The risks posed by delayed or foregone detection and treatment are serious -- diseases like gonorrhea and syphilis, which are easily treated in the early stages, can cause severe health problems and transmit more easily if left untreated.

Many reproductive-rights advocates see the kiss-and-tell proposal as part of a larger strategy to use child abuse investigations to harass or impede abortion and contraception providers. Kline has already subpoenaed two Kansas clinics for records of 90 clients who received abortions, arguing that they are evidence in potential statutory or child rape cases. He also recently announced investigations into 62 live births to "underage"

women; records in live births don't need to be subpoenaed.

"This is totally part of the anti-choice movement," said **Bonnie Scott Jones**, the lead attorney on the case.

But Watson said his boss did not aim the rule at abortion providers. "This is about child abuse," he said.

**Scott Jones** said the lawsuit has "huge" potential to set precedent for other states. "There really hasn't been a case like this before," she said. "It's not a clear area of law. It's the first of its kind."