

JAN 15 2004  
HUMAN RESOURCES

HOUSE FILE 2036  
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DE BOEF, BODDICKER, WATTS,  
CHAMBERS, LUKAN, ROBERTS,  
and HAHN

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

**A BILL FOR**

1 An Act establishing a legal process for an adult pregnant woman  
2 to obtain an abortion, including the appointing of a guardian  
3 ad litem to represent the fetus, and providing a penalty.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 2036

1 Section 1. NEW SECTION. 146A.1 LEGAL PROCESS -- ABORTION  
2 -- APPOINTMENT OF GUARDIAN AD LITEM FOR FETUS.

3 1. An adult pregnant woman seeking an abortion shall file  
4 a petition in the district court of the county of the adult  
5 pregnant woman's residence requesting approval for the  
6 performance of an abortion.

7 2. Upon the filing of a petition pursuant to subsection 1,  
8 the court shall appoint a guardian ad litem to represent the  
9 fetus.

10 3. Within thirty days of the filing of a petition pursuant  
11 to subsection 1, the court shall hold a hearing for the  
12 purpose of balancing the interests of the fetus to continue to  
13 full term and the rights of the adult pregnant woman seeking  
14 the abortion.

15 4. The court shall render a decision within twenty-four  
16 hours of the conclusion of the hearing and shall issue written  
17 and specific findings of fact and conclusions of law  
18 supporting the court's decision. The court shall furnish two  
19 certified copies of the court's decision to the parties.

20 5. An expedited appeal of the final order shall be  
21 available. The supreme court shall prescribe rules necessary  
22 to ensure the expeditious disposition of proceedings brought  
23 under this section.

24 6. A licensed physician shall not perform an abortion on  
25 an adult pregnant woman without first obtaining a certified  
26 copy of the court's decision ruling in favor of the adult  
27 pregnant woman.

28 7. A licensed physician who knowingly performs an abortion  
29 in violation of this section is guilty of a serious  
30 misdemeanor.

31 8. For the purposes of this section:

32 a. "Abortion" means abortion as defined in section 146.1.

33 b. "Adult" means a person eighteen years of age or older  
34 or a person who attains majority by marriage.

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EXPLANATION

1 This bill requires that an adult pregnant woman who is  
2 seeking an abortion file a petition in the district court in  
3 the county of the adult woman's residence requesting approval  
4 for the performance of an abortion. Upon the filing of the  
5 petition, the court is directed to appoint a guardian ad litem  
6 to represent the fetus. The court is directed to hold a  
7 hearing within 30 days of the filing of the petition to  
8 balance the interests of the fetus to continue to full term  
9 and the rights of the adult pregnant woman seeking the  
10 abortion. The court is to render a decision within 24 hours  
11 of the conclusion of the hearing and is to issue written and  
12 specific findings of fact and conclusions of law supporting  
13 the court's decision. The court is to furnish two certified  
14 copies of the court's decision to the parties. An expedited  
15 appeal of the final order is to be available and the supreme  
16 court is directed to prescribe rules necessary to ensure the  
17 expeditious disposition of the proceedings.

18 The bill prohibits a licensed physician from performing an  
19 abortion on an adult pregnant woman without first obtaining a  
20 certified copy of the court's decision ruling in favor of the  
21 adult pregnant woman. A licensed physician who knowingly  
22 performs an abortion in violation of the bill is guilty of a  
23 serious misdemeanor. The bill defines "adult" as a person 18  
24 years of age or older or a person who attains majority by  
25 marriage.

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**Fiscal Services Division  
Legislative Services Agency  
Fiscal Note**

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HF 2036 - Guardian Ad Litem for the Unborn (LSB 5410 YH)  
Analyst: Jennifer Acton (Phone: (515) 281-7846) (jennifer.acton@legis.state.ia.us)  
Fiscal Note Version — New  
Requested by Representative Mark Smith

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**Description**

House File 2036 establishes a legal process for an adult woman seeking an abortion to file a petition in the district court in the county of the woman's residence to request approval for an abortion. If a physician performs an abortion without a certified copy of the court's decision, the physician is guilty of a serious misdemeanor.

**Assumptions**

1. Charge, conviction, and sentencing patterns and trends will not change over the projection period.
2. Prisoner length of stay, revocation rates, and other correction policies and practices will not change over the projection period.
3. The law will become effective July 1, 2004. A lag effect of six months is assumed, from the law's effective date to the date of first entry of affected offenders into the correctional system.
4. Between 1998 and 2003, there have been no convictions for violations of partial birth abortion provisions (Section 707.8A, Code of Iowa), duty to preserve the life of a fetus (Section 707.10, Code of Iowa), or feticide (Section 707.7, Code of Iowa).
5. In 1999, there were two convictions regarding murder of a fetus aborted alive (Section 707.9, Code of Iowa) but it is unknown whether a physician was the offender.
6. Based on the number of convictions under current law, it is estimated that the proposed new law will have few convictions and that physicians would comply with the law.
7. In FY 2003, the incarceration rate for Class C violent offenses was 74.0%.
8. In FY 2003, the average time served in prison for Class C violent offenders was four years.
9. House File 2036 requires the Judicial Branch to appoint a guardian ad litem to represent the unborn fetus. The cost for this provision cannot be determined due to insufficient information. One court case involving a guardian ad litem being assigned to an unborn fetus would result in about three hours of court time and would include a district court judge, court reporter, and a court attendant and two hours of clerk of court time. The average cost per case would be about \$375.
10. A three-justice panel would hear the appeal without oral argument. The hearing time per case would be approximately four hours per justice and six hours for a screening attorney to assist the court.
11. The following is a chart showing pregnancy terminations for calendar year 1999 to calendar year 2002.

<u>Calendar Year</u>	<u>Age 18 and Over Pregnancy Terminations</u>
2002	5,783
2001	5,298
2000	5,555
1999	5,618

12. Comparing 1999 to 2002, the number of pregnancy terminations increased by 165 cases or 3.0%. The fiscal impact assumes a 3.0% increase and decrease on 5,783 pregnancy terminations.

### **Correctional Impact**

House File 2036 increases the likelihood of a correctional impact for feticide convictions; however, there is no readily available information to determine the impact.

### **Fiscal Impact**

#### **Termination of Pregnancy Hearings**

The estimated General Fund impact of HF 2036 to the Judicial Branch is approximately \$2.1 million annually. This estimate does not include the reimbursement costs for the guardian ad litem (impact cannot be determined).

In addition to the above estimate, the Bill also requires a three-justice panel to hear appeals, but due to insufficient information the fiscal impact cannot be determined. The cost for one appeal would be approximately \$1,000 per case.

#### **Feticide**

The number of feticide convictions cannot be determined due to insufficient information. The maximum cost for one feticide case resulting in a conviction is approximately \$23,000 over a five and one-half year period.

#### **Criminal Justice System Costs**

Judicial Branch	\$	1,500
Indigent Defense		1,500
Department of Corrections		19,000
Community-Based Corrections		1,000
	\$	<u>23,000</u>

### **Sources**

Department of Human Rights, Criminal and Juvenile Justice Planning Division  
Judicial Branch

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Dennis C Prouty

March 1, 2004

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The fiscal note and correctional impact statement for this bill was prepared pursuant to Joint Rule 17 and pursuant to Section 2.56, Code of Iowa. Data used in developing this fiscal note and correctional impact statement are available from the Fiscal Services Division, Legislative Services Agency to members of the Legislature upon request.

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