

has been performed shall include certain information. It is unclear whether this requirement is applicable to all abortions performed in the State of Maryland or only to those performed after the twentieth week of pregnancy. The United States Supreme Court in Roe v. Wade, 410 U.S. 113 (1973), held that a state may not interfere with or regulate an attending physician's decision, reached in consultation with his patient, that the patient's pregnancy should be terminated prior to the end of the first trimester of pregnancy. The information to be included in the medical record, in particular the information required by paragraph 6 relative to pre-abortion counseling, could be construed as an attempt by the State to interfere with the relationship between a physician and a patient if this provision of subsection (a) is viewed as applicable to the first trimester of pregnancy. We understand that it was the intent of the legislature that this provision be applicable only after the twentieth week of pregnancy. Since a contrary construction may put the State in the position of attempting to require something prohibited by Doe, supra, because of what we understand to be the legislative intent, and in light of the indication in the title of the bill that it regulates "late abortion", we must therefore advise you that this provision requiring that certain information be contained in the medical record of a patient having an abortion is applicable only to those abortions performed after the twentieth week of pregnancy.

Subsection (b) also causes us some concern. That section creates a presumption, albeit easily rebuttable, that a woman who has decided to have an abortion and the father of an aborted fetus are not willing to accept the parental rights and responsibilities for a fetus born alive. The bill initially provides that a fetus born alive as a result of an abortion shall be treated as a "dependent or neglected child". Subsection (k) goes on to provide as follows:

"The child shall become an abandoned ward of the State, the same as if the child had been so adjudicated in a court of law, and the parents shall have no parental rights or obligations, unless one or both of the parents of the child agrees within 30 days of the birth to accept the parental rights and responsibilities for the child."

Before turning to the constitutional problem which we perceive in the application of this provision to various circumstances, we should note that it raises certain interpretive and practical questions. The initial provision that a fetus born alive as a result of an abortion is to be treated as a dependent or neglected child appears to be operative at the moment of birth, but