

# Senate Health and Human Services Committee

*Sophie Walsh 271-3469*

**SB 36**, relative to the collection and reporting of abortion statistics by health care providers and medical facilities.

**Hearing Date:** January 22, 2025

**Time Opened:** 10:23 a.m.

**Time Closed:** 11:36 a.m.

**Members of the Committee Present:** Senators Rochefort, Avard, Birdsell, Prentiss and Long

**Members of the Committee Absent:** None

**Bill Analysis:** This bill requires the collection and reporting of abortion statistics by health care providers and medical facilities.

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**Sponsors:**

Sen. Avard

Sen. Ward

Sen. Lang

Sen. Sullivan

Sen. Birdsell

Sen. Gannon

Sen. Murphy

Rep. Notter

Rep. Mooney

Rep. Rice

Rep. Pauer

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**Who supports the bill:** In total, 76 individuals signed-in in support of SB 36. The full sign in sheets are available upon request to the Legislative Aide, Sophie Walsh (sophie.walsh@gc.nh.gov).

**Who opposes the bill:** In total, 117 individuals signed-in in opposition of SB 36. The full sign in sheets are available upon request to the Legislative Aide, Sophie Walsh (sophie.walsh@gc.nh.gov).

**Who is neutral on the bill:** In total, 7 individuals signed-in as neutral SB 36. The full sign in sheets are available upon request to the Legislative Aide, Sophie Walsh (sophie.walsh@gc.nh.gov).

**Summary of testimony presented:**

Senator Kevin Avard, Senate District 12

- Senator Avard stated that he is re-introducing this bill to allow New Hampshire to join the 46 other states that collect anonymous abortion statistics.
- According to the CDC, New Hampshire continues to refuse to collect these anonymous statistics, grouping us with only three other states: California, Maryland, and New Jersey.

- Senator Avard explained that gathering accurate abortion statistics in New Hampshire is necessary because major abortion providers have repeatedly misrepresented the practice of abortion in New Hampshire. He provided two examples: in 2021 when abortion providers gave contradictory statements regarding the frequency of pre-abortion ultrasounds, and when abortion providers made contradictory statements about the frequency of late-term abortions in New Hampshire.
- People in both parties have an interest in this issue. A recent poll found that a large majority of Granite Staters are opposed to late-term abortions or abortions after 15 weeks when there is no risk to the mother's health.
- Senator Avard explained that approximately 60,000 abortions happen after 15-weeks in the U.S., meaning that hundreds of late-term elective abortions are likely taking place in New Hampshire.
- The people of New Hampshire deserve to have access to this information, so informed policy decisions can be made.
- This bill will set the record straight on what methods are being used to perform abortions, how often they are being performed, and at what gestational age they occur.
- This bill also allows New Hampshire to remain committed to privacy by keeping all patient information strictly anonymous.
- Senator Avard asked that the bill not be acted on until an amendment can be introduced. He would like to incorporate basic penalties for violations and make some other fixes.
- Senator Prentiss referenced Section II item (f) and asked why data on prescriptions written for the purpose of inducing an abortion is being collected. Senator Avard said he does not have an answer for that yet.
- Senator Prentiss explained that New Hampshire holds high privacy standards for data and acknowledged that in other areas of healthcare there can be conflict between what data is and is not shared.
- She said she had no indication that New Hampshire is refusing to provide data on abortion.
- Senator Prentiss explained that we must ensure that no data is being collected in such a way that location could be revealed. As an example, she explained there are standards in place to prevent reporting if there are so little instances of heart attacks taking place within a certain zip code because it would be possible to identify those who have had heart attacks. She would like to translate those protections into this bill.
- Senator Prentiss referenced Section II item (c) and asked why this information is being collected.

- Senator Avard said this is a very important question. There are 340,000 children unaccounted for in the U.S., and he wants to ensure that no child is coming into New Hampshire, receiving abortion services, and being taken back across state lines. If New Hampshire facilities are being used for this purpose, he wants to make sure that information is being captured. Thus, knowing that an individual is of a particular age and a New Hampshire resident is an important part of this bill.
- Senator Prentiss said she sees what Senator Avard is saying, but she wants to make sure that women who come here legally and legally obtain abortion related services are not affected by overreach from another state because this data is available. She emphasized that she does not want a monitoring or overreach provision, but acknowledged that there is a distinction between the two situations being described by her and Senator Avard.
- Senator Avard also acknowledged the distinction and said he appreciated her question.
- Senator Long referenced the effective date and asked, if the bill were to be passed in July, if there would only be 5 months to submit a report since the bill takes effect upon passage.
- Senator Avard said he could look into extending the effective date.
- Senator Long referenced line 15 and asked if the commissioner of DHHS can choose if reports be submitted more frequently than annually.
- Senator Avard said he thinks if the commissioner suspects malfeasance, that would be okay.
- Senator Long asked if that only refers to the report itself and not what will be provided for the report, and Senator Avard said he believes so.
- Senator Prentiss asked if DHHS would be testifying, and Senator Rochefort confirmed.

Representative Linda Gould, Hillsborough – District 2

- Representative Gould stated that she is in support of the bill. She distributed handouts to the committee.
- She stated there is no reason not to have statistics.

Representative Jeanine Notter, Hillsborough – District 12

- Representative Notter stated that this is a bill that she has prime-sponsored in the past.
- She explained that, regarding concerns about privacy in small towns, privacy will be protected if statistics are aggregated by county.
- Representative Notter referenced testimony from a previous year, submitted by Denise Burke, Esq. from Americans United for Life.

- The testimony said the true dangers of abortion have been ignored, and questioned how many women have been injured, killed, or continue to suffer from complications of abortions. It also questioned how many abortions are performed in New Hampshire annually and emphasized that the answers to all these questions remain unknown.
- The testimony explained that in order to protect the lives of women, complete data on abortions must be available to women, the medical community, and the general public. Comprehensive state reporting systems are the only way to accomplish this goal.

Patricia Tilley, Department of Health and Human Services (DHHS)

- Ms. Tilley stated that she is an associate commissioner at DHHS.
- The Department's understanding is this bill intends to redefine reporting requirements that exist within the Fetal Life Protection Act in RSA 329:44-49.
- This would require the development of a new data reporting system for all terminated pregnancies and an ongoing analysis of that data.
- RSA 329 currently sits within the authority of the Office of Professional Licensure and Certification (OPLC), but DHHS is directed to collect this data.
- Ms. Tilley noted that there may be a technical error in the bill, as it refers to RSA 329:49 as reporting, but to her understanding RSA 329:45 is the reporting section.
- RSA 329:44 currently states that, except in the case of fetal abnormalities incompatible with life or a medical emergency, no healthcare provider should knowingly perform, induce, or attempt to perform an abortion upon a pregnant woman when the probable gestational age has been determined to be at least 24 weeks.
- In the reporting section, it says the Department is to receive any reports of abortion that occur in the 24-week+ time period. The Department has never received a report of this.
- New Hampshire is one in a handful of states to not mandate the collection of abortion data. Ms. Tilley clarified that it is not that New Hampshire refuses to collect this data, but rather that DHHS does not have the authority to request it.
- This bill also seeks to share identifiable information of parents, in line with privacy. Ms. Tilley emphasized that DHHS understands and respects that.
- Ms. Tilley noted that while this requires date and place of abortion performed, dates are actually considered an identifier per federal HIPAA rules. Thus, DHHS would need to have a HIPAA-compliant data collection system.
- Ms. Tilley noted that the definition of 'place' on line 8 is unclear, as it could be an address, broader geographic location like county, or facility type.

- The combination of date, place, and gestational age potentially allows individuals in small settings to be identified. Ms. Tilley raised consideration for the individuals who may need to have a termination later in pregnancy, as this is an uncommon situation.
- Ms. Tilley suggested requiring estimated gestational age instead of exact gestational age, as this would be easier to comply with during the first trimester.
- Due to the sensitivity of these data requirements, DHHS is going to need to utilize a secure data repository to collect data.
- This would require the development of a new HIPAA-compliant electronic data system, which would cost an estimated \$950,000.
- An additional \$250,000 would be needed to connect with OPLC to complete a verification process for providers.
- This system would also require staffing; at least one full-time position and a part-time position.
- While the effective date is upon passage, the Department would not be able to start immediately because the system needs to be developed.
- Ms. Tilley stated that data is data, and the Department understands that other states use this data well. While this data would give them a clearer picture, there is a need to balance it with privacy and resource allocation.
- Senator Birdsell noted that data is collected on other medical issues, such as cancer, and asked what the difference is here in regard to HIPAA compliance.
- Ms. Tilley explained that the State has the authority for a cancer registry, which is a multi-million dollar system. It is possible to collect such HIPAA-compliant data for this bill, but resources would be needed to build that system. She noted that the use of procedure codes may be nuanced in these circumstances.
- Senator Birdsell asked if that authority and funding was provided by the legislature.
- Ms. Tilley confirmed and explained that funding for the cancer registry is through general and federal funds.
- Senator Prentiss clarified that the State has not been refusing to collect this data, but rather has not had the authority to. Ms. Tilley confirmed.
- Senator Prentiss asked if aggregating data would be the best pathway to protecting privacy, aside from HIPAA.
- Ms. Tilley agreed and said they would support the public reporting be aggregated. However, it is important that line-level data be collected if the Department is to produce meaningful analyses.
- Senator Long asked if the bill should clarify what is publicly reported.

- Ms. Tilley said that is something to be contemplated, and noted that the Department already has its own data stewardship policies that would prohibit them from presenting data that could be constructively identifiable.
- Senator Rochefort asked if it would make sense to move this away from OPLC.
- Ms. Tilley said this is also something to consider and explained that it is with OPLC currently because it is directing providers. She emphasized that collection of data typically lives within DHHS statute, but there is a role for each here.
- Senator Rochefort asked if reducing the level of granularity in this data would allow the State to be HIPAA-compliant while still reaching goals.
- Ms. Tilley said there is a need to balance the degree to which you want to analyze the data. Line-level data allows the Department to produce meaningful analyses on trends, but if the legislature is looking for just one big number, there could be less-stringent data requirements.

Courtney Tanner, Dartmouth Health

- Ms. Tanner stated that she is the senior director of government relations at Dartmouth Health.
- Dartmouth Health appreciated that access to quality, protected health information drives health outcomes. They are proud to participate in the State's cancer and vaccine registries.
- While other states have abortion data collection systems, Ms. Tanner has some considerations and concerns to share.
- Ms. Tanner said the small size of New Hampshire should be considered, as the volume of abortions being provided is extremely small. The number of New Hampshire patients receiving abortion services in the later stages of pregnancy is even smaller.
- While other states have the abortion data collection systems, Dartmouth Health has some considerations and concerns that they would like to raise.
- Ms. Tanner explained that collecting date of abortion, patient age, and gestational age could quickly be used to identify a person.
- She expressed concern for the privacy and safety of both patients and providers, and suggested that consideration be given to how location is articulated in the interest of ensuring provider safety.
- Senator Rochefort asked if Dartmouth Health would be comfortable with this bill if the patient and provider issues are addressed.
- Ms. Tanner said they would be happy to work on the bill.
- She emphasized that the number of late-term abortions in New Hampshire is extremely small.
- Senator Rochefort noted that there is no data reporting on that currently, so they must take their word for it.

- Ms. Tanner assured the committee that they have that protected data, and they know the number is extremely small. She emphasized the importance of being protective of this small patient population.
- Senator Rochefort clarified that if these details are sorted out, Dartmouth Health would be supportive of the bill.
- Ms. Tanner said they also have a number of requests to their partners that work on abortion data across the nation, so they would be happy to bring those resources to the conversation.
- Senator Rochefort emphasized that privacy seems to be the biggest concern. He clarified that other states and partner facilities are collecting data securely and confidentially for both patients and providers.
- Ms. Tanner emphasized that they want to be part of the work.

#### Courtney Reed, ACLU of NH

- Ms. Reed stated that she is speaking in opposition to this bill as a policy advocate with the ACLU of New Hampshire.
- Ms. Reed acknowledged the risk of data breaches in New Hampshire, noting that DHHS experienced a breach in 2016 that affected up to 15,000 individuals' identifiable information.
- Because New Hampshire is a rural state, even anonymized data carries the risk of becoming identifiable. Despite these risks, there is a lack of resource investment to ensure data security in this bill.
- After *Dobbs v. Jackson Women's Health Organization*, the consequences of breaches of personal abortion data have become more significant with high stakes for patients and providers from both a privacy and criminalization standpoint.
- States hostile to abortion are seeking out this type of identifiable data for criminal proceedings as they try to impose their abortion laws in states where patients are seeking legal abortion care.
- This is a top concern for the ACLU because there is a lack of clarity on what data will be available to the public and there is no right-to-know exemption in the bill.
- Another concern of the ACLU is the patient state-of-residence and the lack of clarity about the frequency of incident reports, especially if this data is stored in a manner that exposes a risk for patient identity.
- Ms. Reed emphasized that New Hampshire citizens care about data privacy and asked the committee to also put privacy at the top of the line when considering this bill.

Liz Canada, Planned Parenthood Northern New England & Planned Parenthood NH Action Fund

- Ms. Canada stated that she is the advocacy director at Planned Parenthood of Northern New England (PPNNE) and Planned Parenthood New Hampshire Action Fund.
- PPNNE does not have a position on this bill at this time, but they do have some context and concerns to share.
- PPNNE has health centers in Maine, New Hampshire, and Vermont. Their centers in Maine and Vermont submit data to their states. If any version of this bill passes, PPNNE will follow those laws.
- Ms. Canada offered several suggestions for the bill.
- PPNNE suggests collecting aggregate data instead of incident reporting. This includes collecting location by county, collecting month of procedure instead of specific date, and using estimated gestational age.
- PPNNE suggests recording in-state or out-of-state, rather than specific state information. Because of the small amount of abortions performed in New Hampshire and the lack of a shield law, it is important to protect individuals who may be coming from states with hostile abortion policies. Maine, Vermont, and Massachusetts have shield laws in place to protect providers and patients.
- PPNNE recommends establishing one or two specific dates for data submissions. This allows the public, health care providers, and lawmakers to know when they can expect this information.
- PPNNE suggests removing data collection related to individualized medical prescriptions.
- PPNNE suggests specifying that the annual report will be an aggregate report.
- PPNNE voluntarily offers data to the Guttmacher Institute because they collect aggregate data.
- Ms. Canada offered PPNNE's help as the bill continues to be worked on.
- Senator Long asked if the information being requested in other states differs greatly from what SB 36 is requesting.
- Ms. Canada emphasized that the information in this bill is identifiable, so a HIPAA-compliant system would be needed. She noted that Maine has a HIPAA-compliant system through an online portal that providers submit data through. If that were to be incorporated in New Hampshire, resources would need to be available.
- Senator Long clarified that while Maine has an online portal, this bill requires data in writing. He is not sure if that can be interpreted to include an online form. Ms. Canada confirmed.
- Senator Birdsell noted that Massachusetts requires a similar data set and presumed this must be HIPAA-compliant as well.
- Ms. Canada stated that she cannot speak for Massachusetts because PPNNE does not have any centers there, but presumes that is HIPAA-compliant as well.

- Senator Prentiss recited the first line of PPNNE's written testimony stating that when data is collected and secured safely, privately, and in the aggregate, PPNNE is not opposed to the practice. Senator Prentiss confirmed that PPNNE is not opposed to this, but rather emphasizes the importance of how this data will be collected, stored, and reported.
- Ms. Canada confirmed and emphasized that while they do have concerns with the bill as written, they do not have a position on the bill

Bob Dunn, Roman Catholic Bishop of Manchester

- Mr. Dunn stated that he would submit written testimony in place of testifying.

Ian Huyett, Cornerstone

- Mr. Huyett stated that Cornerstone does not have a position on every aspect of this bill, but highlighted two critical changes that they would oppose without.
- They recommend changing the definition of abortion used in the bill from the definition from RSA 329:43 to the definition from RSA 132:32.
- They recommend incorporating penalties into the bill. Mr. Huyett explained that legislating on polarizing issues with no or inadequate penalties allows laws to be essentially ignored. He cited the 2022 Patients' Bill of Rights prohibition of discrimination on COVID vaccination status as an example.
- He suggested that the penalty for an intentional and knowing non-report be at least a Class A Misdemeanor with a \$10,000 fine per non-report.

Jason Hennessey, NH Right to Life

- Mr. Hennessey stated that he is speaking in favor of this bill.
- The only people who have this data currently in New Hampshire are the providers themselves, but both the legislature and the public have a need for this data.
- This data is worth recording because other vital statistics like births and deaths are already recorded.
- Mr. Hennessey commended the bill's explicit privacy protections, pointing out that no names or zip codes are required from his understanding.
- It is common for governments to collect this type of information and release aggregate data. Maine, Vermont, and Massachusetts collect very similar data to what is being proposed in this bill.
- Mr. Hennessey noted that he did not hear any examples of harm from states collecting this type of information brought up today.
- Mr. Hennessey reviewed a number of changes NH Right to Life would support.
- They would like to target a different section of Chapter 329 and ideally insert it into a new section.
- They wish to include reporting of post-abortion complications.

- They would like to include a penalty, in addition to explicit language for the prescribing of abortions. 60-70% of abortions in the U.S. are through abortion pills.
- They would like to use the Chapter 132 definition as the definition of abortion and also suggested including ectopic pregnancies.

Jinelle Hall, on behalf of Lovering Health Center

- Ms. Hall stated that she is the executive director of the Equality Health Center in Concord, but she is speaking on behalf of her colleague, Sandi Denoncour, from Lovering Health Center.
- Ms. Denoncour is in opposition to this bill as Lovering Health Center is one of the reproductive health facilities directly impacted by this legislation.
- She pointed out that this data is being requested while states with hostile abortion laws are beginning to exercise rights to pursue and prosecute across state lines.
- Without legal protections or a shield law in New Hampshire, the legislature cannot safely say there is no path to identifying patients from states with hostile abortion laws who obtain legal abortion care in New Hampshire. The legislature also cannot say there is no path to identifying and criminalizing the providers of that care.
- Reporting each abortion as a unique event with exact date, location, age, and gestational age could result in enough information being collected to identify patients in small communities.
- It is unclear what 'place' is defined as in this bill. Ms. Denoncour questioned if the use of abortion pills would require reporting home addresses as place of abortion. She also pointed out that this information could potentially be used to predict which days a clinic may be performing procedural abortion care, thereby creating a risk.
- Ms. Denoncour emphasized that this bill defines no clear intent to positively impact public health and pointed out that it is hard to justify why data reporting is essential now with these specific reporting elements.
- Facilities are not unwilling to provide abortion data; they must feel confident in understanding the use of data and how any collection or reporting will be managed to ensure patient privacy.
- Lovering Health Center voluntarily reports data to the Guttmacher Institute and the National Abortion Federation.
- The defunding of their Title X Family Planning contracts and contracts for all New Hampshire abortion providers sends a clear message signaling that this is not the time to expect data to have a collaborative impact on rebuilding and enhancing successful family planning strategies.

SW

Date Hearing Report completed: January 28, 2025