

child offenders on death row in America who are scheduled to be executed this year. In fact, incredibly, Texas has scheduled the execution of four child offenders between March and June of this year, despite the Supreme Court's announcement that it will consider the constitutionality of such executions in the Simmons case this term.

Currently, 38 States authorize the use of the death penalty. Nineteen of those States have decided that they will only execute defendants who were 18 or older at the time of the crime. But 5 States use 17 as the minimum age, and the other 16 States permit the execution of defendants who were as young as 16 when they committed the crime.

The State Department has said: "Because the promotion of human rights is an important national interest, the United States seeks to hold governments accountable to their obligations under universal human rights norms and international human rights instruments." But we can only call ourselves protectors of human rights if we practice what we preach. Here at home, we continue to apply capital punishment to those who were convicted of crimes committed before legally becoming adults. Spreading decency and humanity must begin here at home. As long as America executes child offenders, our reputation as a shining example of respect for human rights is tarnished.

At the beginning of the 108th Congress, I introduced the National Death Penalty Moratorium Act, which would suspend Federal executions while we conduct a thorough study of the administration of the Federal death penalty at the State and Federal levels. My bill would specifically require a commission to review all aspects of the system, including the practice of sentencing child offenders to death. I urge my colleagues to cosponsor and support the National Death Penalty Moratorium Act, and I look forward to the Supreme Court's review of this important issue. I am hopeful that the Court will build upon the progress it made two years ago when it ended the execution of the mentally retarded. Banning the execution of child offenders is the right thing to do. Congress should act if the Court doesn't.

HEALTHY MOTHERS AND HEALTHY BABIES ACCESS TO CARE ACT OF 2003

MEDICAL MALPRACTICE

Mr. KYL. Mr. President, last year, the Senate considered legislation to try to mitigate healthcare cost increases by reforming the medical malpractice system. The bill we took up was S. 11, "The Patients First Act of 2003," which I had co-sponsored. Unfortunately, gridlock prevailed when a cloture motion was defeated. While I was disappointed that the Senate could not address healthcare liability reform on a comprehensive basis, we now have the opportunity to address the obstet-

rics and gynecological specialty with S. 2061, "The Healthy Mothers and Healthy Babies Access to Care Act."

There is a reason that the OB/GYN specialty should be one of the first areas addressed by medical malpractice. It is one of three specialties subject to the highest liability insurance premiums. Nationally, the dramatic increases in premiums—more than 160 percent over 16 years, 1982 to 1998—have greatly outpaced the rate of inflation, and many physicians and hospitals have been unable to keep up with these escalating costs. In Arizona, OB/GYN practices face premiums averaging \$67,000—up 16 percent in just one year's time.

There are only a few ways doctors and hospitals can bear these costs. They can pass a portion of them on to patients or they can alter their practice patterns. Some physicians have cut the salaries of their hard-working, professionally trained medical staff or reduced headcount in their practices. Those who are still employed after the cutbacks are overworked, stretched thin with added responsibilities. Other doctors have reduced or completely eliminated some gynecological, surgical or high-risk obstetric procedures. Perhaps most disturbing are the instances of physicians retiring early, relocating their practices to states with friendly laws, or dropping obstetrics altogether.

The result is that women's access to prenatal and delivery care is compromised. There are fewer physicians in practice to tend to women; patients have less time with their doctor. I am concerned that women seeking prenatal care and delivering their babies in Arizona may have to travel long distances, passing by hospitals along the way, just to find a facility that can accommodate their needs. While Arizona is not deemed a medical liability "crisis state" by the American Medical Association—I am working to make sure that does not become the case—instances of facilities having to close are too frequent. For instance, Copper Queen Community Hospital in Bisbee, AZ, closed its maternity ward after physicians there, who were able to deliver babies, lost their liability insurance coverage. Imagine a community hospital that cannot meet one of the primary needs of its residents because of escalating medical liability costs.

The problem lies with a tremendous backlog in our courts and excessive jury awards that average \$3.9 million. With more than 50 percent of jury awards totaling over \$1 million, and the number of cases presented steadily on the rise, medical malpractice insurance carriers incur a great expense for defending suits, even those that are dismissed with no indemnity payment. Physicians Insurers Association of America claims that it costs physicians more than \$75,000 to defend themselves in cases that they win—of course, even more in cases where they are found liable. Most notable may be

the number of cases that are settled out of court without an admission or determination of guilt, just to avert the possibility of a "mega award" that could bankrupt a practice.

Looking ahead, I am troubled by the number of medical students and residents who are feeling medical liability's sting. Almost 50 percent of America's medical students say they factor the medical liability crisis in their choice of specialty. Can we afford to have some of the best and brightest physicians of tomorrow dissuaded from specialties because we did not do what was right and fix the system today?

The Healthy Mothers and Healthy Babies Access to Care Act only addresses obstetrical and gynecological care. It would establish parameters to maximize returns to the patients instead of trial lawyers. It would hold physicians and insurers accountable for medical expenses in instances where they are clearly wrong. The legislation would establish a period of 3 years from the date of injury for a person to bring forth a claim, making exceptions to this statute of limitations in cases involving minors. S. 2061 would allow for unlimited awards of economic damages, while placing reasonable caps on non-economic damages—pain and suffering. This is an important distinction that I want to take a moment to address.

Economic damages are for the payment of medical expenses—both past and future—the loss of earnings—both past and future—as well as the cost of having services in the home to assist someone who has been injured or incapacitated from a negligent act. There is no limit on these awards. It is important to me to preserve a patient's access to full medical care when a party has been found negligent. This legislation does that.

Non-economic damages meant to compensate for physical and emotional pain and suffering are not easily quantified. For these damages, awards would be capped at \$250,000 and would be in addition to economic damages awarded. Very often, juries have awarded individuals millions of dollars to punish a defendant, not necessarily to compensate for what is an intangible loss.

Under S. 2061, contingency fees would be set to make sure that patients with valid claims do not see their awards siphoned away by lawyers. The bill would allow lawyers to recoup fees and make a profit, but not at the unfair expense of the plaintiff.

We have been down this road before and I am hopeful that my colleagues on both sides of the aisle will join me in support of medical malpractice reform. This legislation will deliver on the promise made to our constituents to fix the healthcare system in this country and rein in excessive and frivolous lawsuits.