

ENGROSSED HOUSE  
BILL NO. 1737

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WEAVER, WEBB, WEESE,  
WIDENER, and WORTHEN of  
the HOUSE

and

HOBSON of the SENATE

AN ACT RELATING TO CRIMES AND PUNISHMENTS AND POOR  
PERSONS; AMENDING 21 O.S. 1981, SECTION 846, AS  
LAST AMENDED BY SECTION 1, CHAPTER 167, O.S.L. 1987  
(21 O.S. SUPP. 1990, SECTION 846), WHICH RELATES TO  
MANDATORY REPORTING OF CHILD ABUSE; REQUIRING  
CERTAIN REPORTS RELATED TO CHILD ABUSE AND NEGLECT  
TO BE IN WRITING; AUTHORIZING ACCESS TO CERTAIN  
CONFIDENTIAL RECORDS BY CERTAIN PERSONS UNDER  
CERTAIN CIRCUMSTANCES; PROVIDING FOR DESIGNATION OF  
MULTIDISCIPLINARY CASE CONSULTATION TEAMS; DEFINING  
TERMS; AUTHORIZING DISCLOSURE OF CONFIDENTIAL  
INFORMATION; PROVIDING THAT CERTAIN APPLICATIONS  
AND RECORDS RELATED TO PUBLIC ASSISTANCE REMAIN  
CONFIDENTIAL; AMENDING 56 O.S. 1981, SECTION 183,  
WHICH RELATES TO CERTAIN CONFIDENTIAL RECORDS;  
PROHIBITING THE DISCLOSURE OF CERTAIN RECORDS FOR  
CERTAIN PURPOSES; ENACTING THE OKLAHOMA PARENTAL  
NOTIFICATION FOR ABORTIONS ACT; DEFINING TERMS;  
PROHIBITING ABORTIONS ON CERTAIN PERSONS WITHOUT

CERTAIN NOTIFICATION; PROVIDING PROCEDURES FOR NOTIFICATION; PROVIDING CRIMINAL PENALTY; PROVIDING AUTHORIZATION FOR CIVIL ACTIONS; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 21 O.S. 1981, Section 846, as last amended by Section 1, Chapter 167, O.S.L. 1987 (21 O.S. Supp. 1990, Section 846), is amended to read as follows:

Section 846. A. Every physician or surgeon, including doctors of medicine and dentistry, licensed osteopathic physicians, residents and interns, examining, attending or treating a child under the age of eighteen (18) years and every registered nurse examining, attending or treating such a child in the absence of a physician or surgeon, every teacher of any child under the age of eighteen (18) years, and every other person having reason to believe that a child under the age of eighteen (18) years has had physical injury or injuries inflicted upon him or her by other than accidental means where the injury appears to have been caused as a result of physical abuse or neglect, shall report the matter promptly to the county office of the Department of Human Services in the county wherein the suspected injury occurred. Every physician or surgeon, including doctors of medicine, licensed osteopathic physicians, residents and interns, or any other health care professional attending the birth of a child who appears to be a child born in a condition of dependence on a controlled dangerous substance shall promptly report the matter to the county office of the Department of Human Services in the county in which such birth occurred. Ordinary force utilized as a means of discipline,

including but not limited to spanking, switching or paddling by parents, teachers or other persons consistent with Section 844 of this title shall not be deemed child abuse. Provided it shall be a misdemeanor for any person to knowingly and willfully fail to promptly report any incident as provided above. If the report is not made in writing in the first instance, ~~it~~ and if the person making the report is a licensed medical or mental health services provider who participated in examining, attending or treating the child, such report shall be reduced to writing by the maker thereof as soon as may be after it is initially made by telephone or otherwise and shall contain the names and addresses of the child and his or her parents or other persons responsible for his or her care, the child's age, the nature and extent of the child's injuries, including any evidence of previous injuries, the nature and extent of the child's dependence on a controlled dangerous substance and any other information that the maker of the report believes might be helpful in establishing the cause of the injuries and the identity of the person or persons responsible therefor if such information or any part thereof is known to the person making the report.

The county office receiving any report as herein provided shall investigate said report in accordance with priority guidelines established by the Department of Human Services and if the county office finds evidence of abuse and neglect forward its findings to the district attorney's office in the county wherein the suspected injury occurred together with its recommendation as to disposition. In addition, a copy of the findings shall be sent to the Child Welfare Division of the Department of Human Services which shall be responsible for maintaining a permanent central registry, suitably cross-indexed, of all such reported findings. Any information contained in the central registry shall be available to any county office and to any district attorney's office or public law enforcement agency investigating a report of suspected child abuse

or neglect. The Department of Human Services may promulgate rules and regulations in furtherance of the provisions of this section.

All records concerning child abuse shall be confidential and shall be open to inspection only to persons duly authorized by the state or United States in connection with the performance of their official duties, to members of multidisciplinary case consultation teams as provided in Section 2 of this act, and to agencies or persons authorized by the Department of Human Services to diagnose, care for, treat or supervise a child who is the subject of a report or record of child abuse or neglect. It shall be unlawful and a misdemeanor for the Commission, or any employee working under the direction of the Department of Human Services, any other public officer or employee, or any court-appointed special advocate to furnish or permit to be taken off of the records any information therein contained for commercial, political or any other unauthorized purpose.

No provision of this section shall be construed to mean that a child has been abused or neglected because said child's parent, guardian or custodian in good faith selects and depends upon spiritual means or prayer for the treatment or cure of disease or remedial care of such child.

B. In every case filed under Section 843 of this title, the judge of the district court shall appoint an attorney-at-law to appear for and represent a child who is the alleged subject of child abuse in such case. The attorney may be allowed a reasonable fee for such services to be paid from the court fund to be fixed by the district court. The attorney shall be given access to all reports relevant to the case and to any reports of examination of the child's parents or other custodian made pursuant to this section. The attorney shall be charged with the representation of the child's best interests. To that end, he shall make such further investigation that he deems necessary to ascertain the facts, to

interview witnesses, examine and cross-examine witnesses at the preliminary hearing and trial, make recommendations to the court and participate further in the proceedings to the degree appropriate for adequately representing the child. A court-appointed special advocate as defined by Section 1109 of Title 10 of the Oklahoma Statutes may be appointed to represent a child who is the alleged subject of child abuse or neglect. The court-appointed special advocate shall be given access to all reports relevant to the case and to any reports of examination of the child's parents or other custodian made pursuant to this section.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1120.1 of Title 10, unless there is created a duplication in numbering, reads as follows:

The Department of Human Services may designate multidisciplinary case consultation teams for the purpose of acting as a consultant to the Department of Human Services to better enable the agency in carrying out its child protection functions and assist the agency in its plans for treatment of a child and for the parents or persons responsible for the care of the child.

As used in this section, "multidisciplinary case consultation team" means any team of three or more persons who possess knowledge and skills related to the prevention, diagnosis, supervision, treatment or disposition of child abuse and neglect cases and who are qualified to provide services related to child abuse and neglect. The team may include:

1. Psychiatrists, psychologists or other counseling personnel;
2. Representatives of law enforcement agencies, including the office of the District Attorney;
3. Medical personnel;
4. Health, education, mental health, or social service agency representatives; and
5. Court appointed special advocate.

The Department of Human Services may promulgate rules and regulations in furtherance of the provisions of this section.

Notwithstanding any other provision of law governing the disclosure of information and records concerning child abuse, members of a multidisciplinary case consultation team designated by the Department of Human Services may disclose confidential information to one another relating to any incident of child abuse or neglect if the member of the team having the information reasonably believes it is relevant to the prevention, diagnosis, supervision, treatment or disposition of cases involving child abuse and neglect.

All information, reports, statements, memoranda or other data exchanged or furnished by reason of this section, and any findings or conclusions resulting from such multidisciplinary team consultation, shall remain confidential and privileged and shall not be used or offered or received in evidence in any legal proceedings.

SECTION 3. AMENDATORY 56 O.S. 1981, Section 183, is amended to read as follows:

Section 183. All applications and records concerning any applicant or recipient shall be confidential and shall be open to inspection only to persons duly authorized by the state or United States in connection with the performance of their official duties. Provided the monthly warrant register now furnished the county boards by the Department of ~~Institutions, Social and Rehabilitative~~ Human Services, showing the names and addresses of all recipients and all employees receiving salary, expenses, mileage and payment under this act in such county, together with the amount paid to each recipient, shall be a public record in the county office and shall be open to public inspection as provided by law.

It shall be unlawful and a misdemeanor for the Commission, a county board or any employee working under the direction of the Department, or the State Auditor and Inspector or the State

Treasurer, or any other public officer or employee, to furnish or permit to be taken off of the records any information therein contained or to furnish or permit the release of any information obtained during the scope of employment or office of such person relating to any applicant or recipient for commercial or political purposes.

It shall also be unlawful, and shall be a felony, punishable by imprisonment in the State Penitentiary for not to exceed two (2) years, for any person, firm or corporation to publish, or to use for commercial or political purposes, any list or names obtained through access to such records, or for any person, firm or corporation to use, for commercial or political purposes, any list or names of recipients of public assistance.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2625.1 of Title 63, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Oklahoma Parental Notification for Abortions Act".

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2625.2 of Title 63, unless there is created a duplication in numbering, reads as follows:

For purposes of the Oklahoma Parental Notification for Abortions Act:

1. "Abortion" has the same meaning as the term is defined by Section 1-730 of Title 63 of the Oklahoma Statutes;

2. "Fetus" has the same definition as the term "unborn child" as defined by Section 1-730 of Title 63 of the Oklahoma Statutes;

3. "Minor" means any child less than eighteen (18) years of age;

4. "Parent" means:

a. one parent of the pregnant minor, or

b. the guardian or conservator if the pregnant female has one;

5. "Pregnant female" means an unemancipated minor or a woman for whom a guardian or conservator has been appointed because of a finding of incapacity; and

6. "Unemancipated" means a minor who is not or has not been married or has not judicially obtained rights of majority.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2625.3 of Title 63, unless there is created a duplication in numbering, reads as follows:

Except as otherwise provided in the Oklahoma Parental Notification for Abortions Act, no abortion shall be performed upon a pregnant female until at least forty-eight (48) hours after written notice of the pending abortion has been delivered in the manner specified in this section.

1. The notice shall be addressed to the parent at the last-known address of the parent and delivered personally to the parent by the physician or an agent of the physician.

2. In lieu of the delivery required by paragraph 1 of this section, notice may be made by a certificate of mailing addressed to the parent at the last-known address of the parent. Time of delivery of the mail shall be deemed to occur at twelve o'clock noon on the next day on which regular mail delivery takes place, subsequent to the mailing. Notice shall also mean actual notice in person, by phone or by telefacsimile if the parent has the ability to receive the telefacsimile and the transmission is certified to by the sender.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2625.4 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. No notice shall be required under the Oklahoma Parental Notification for Abortions Act if:

1. The attending physician certifies in the medical record of the pregnant female that her life may be endangered if the abortion is delayed pending an attempt to notify a parent or to obtain the alternative to notification provided in this section;

2. The person who is entitled to notice certifies in writing that such person has been notified;

3. The minor declares in writing that she is a victim of abuse and neglect as such term is defined by Section 845 of Title 21 of the Oklahoma Statutes and the attending physician has notified the county office of the Department of Human Services in the county wherein the suspected injury occurred about the alleged abuse or neglect;

4. The pregnant female is married, or has a dependent child, or is emancipated;

5. The pregnant female is separated from her parents and does not receive her major support from her parents;

6. Both of the parents of the pregnant female are deceased; or

7. The pregnant female objects to parental notification and a mediation and counseling provider as defined in subsection E of this section certifies in writing that either the pregnant female is of sufficient maturity and soundness of mind to make an informed decision as to whether an abortion is in her best interest or she is not sufficiently mature to make an informed decision about having an abortion, then the mediation and counseling provider shall determine whether the performance of an abortion upon her without notification of her parent would be in her best interests.

B. If a parent of a pregnant female seeking abortion is notified of his child's desire for an abortion, a physician may perform an abortion on the pregnant female after the expiration of forty-eight (48) hours of her parent being notified.

C. If the physician and the pregnant female are unable, despite a good faith attempt, to notify a parent of the pregnant female

within two (2) days of the pregnant female requesting that the physician perform an abortion on her, the physician may perform an abortion on the pregnant female if she obtains certification, as specified in paragraph 7 of subsection A of this section, from a mediation and counseling provider, as defined in subsection E of this section.

D. Once a pregnant female has given her consent, it cannot later be disaffirmed or revoked by her in an attempt to bring legal action against a physician who performs an abortion on her. Provided, that nothing in this section shall require a physician to perform or induce an abortion on a pregnant female who has not given parental notice or obtained certification from a mediation and counseling provider as defined in subsection E of this section.

E. As used in this section, the term "mediation and counseling provider" shall mean a person licensed by the State of Oklahoma as a:

1. judge of the district court;
2. physician;
3. psychiatrist; or
4. psychologist.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2625.5 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Any person convicted of performing an abortion in violation of this act shall be guilty of a misdemeanor.

B. In addition to the criminal penalty prescribed by subsection A of this section, the performance of an abortion in violation of this act shall be grounds for a civil action by a person wrongfully denied notification. A person shall not be held liable pursuant to this section if the person establishes by written evidence that the person relied upon evidence sufficient to convince a careful and prudent person that the representations of the pregnant female

regarding information necessary to comply with this section are bona fide and true, or if the person has attempted with reasonable diligence to deliver notice, but has been unable to do so.

SECTION 9. This act shall become effective September 1, 1991.

Passed the House of Representatives the 11th day of March, 1991.

Speaker of the House of  
Representatives

Passed the Senate the \_\_\_\_ day of \_\_\_\_\_, 1991.

President of the Senate