

STATE OF OKLAHOMA

1st Session of the 43rd Legislature (1991)

SENATE BILL NO. 436

BY: WEEDN, GUSTAFSON, LAWLER,  
SNYDER, LONG (Lewis),  
HENDRICK, TALIAFERRO,  
RUBOTTOM, EASLEY, CAPPS,  
FORD and COLE of the  
SENATE

AND

MITCHELL of the HOUSE

AS INTRODUCED

AN ACT RELATING TO PUBLIC HEALTH AND SAFETY; DEFINING  
TERMS; REQUIRING NOTIFICATION OF CERTAIN PERSONS  
PRIOR TO PERFORMANCE OF AN ABORTION UPON CERTAIN  
PREGNANT FEMALES; PROVIDING PROCEDURES FOR  
NOTIFICATION; SPECIFYING EXCEPTIONS TO  
NOTIFICATION; PROVIDING FOR JUDICIAL PROCEEDINGS IN  
CERTAIN CASES; SPECIFYING PENALTIES; PROVIDING FOR  
LIABILITY OF CERTAIN PERSONS; PROVIDING ALTERNATIVE  
STATUTORY LANGUAGE UNDER CERTAIN CIRCUMSTANCES;  
PROVIDING FOR JUDICIAL AUTHORIZATION OF ABORTION  
AND PROCEDURES THERETO; PROVIDING FOR APPEAL UNDER  
CERTAIN CIRCUMSTANCES AND PROCEDURES THERETO;  
PROVIDING FOR CODIFICATION; AND PROVIDING AN  
EFFECTIVE DATE.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2610 of Title 63, unless there is created a duplication in numbering, reads as follows:

For purposes of this act:

1. "Parent" means:

- a. one parent of the pregnant minor, or
- b. the guardian or conservator of the pregnant minor if she has one;

2. "Abortion" means the use of any means to terminate the pregnancy of a female known to be pregnant with knowledge that the termination with those means will, with reasonable likelihood, cause the death of the fetus;

3. "Fetus" means any individual human organism from fertilization until birth;

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

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

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

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2611 of Title 63, unless there is created a duplication in numbering, reads as follows:

No abortion shall be performed upon an unemancipated minor or upon a female for whom a guardian or conservator has been appointed because of a finding of incompetency, 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 shall be made by certified mail addressed to the parent at the last-known address of the parent with return receipt requested and with restricted delivery to the addressee. The time of delivery of certified mail shall be deemed to occur at 12:00 noon on the next day on which regular mail delivery takes place, subsequent to mailing.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2612 of Title 63, unless there is created a duplication in numbering, reads as follows:

No notice shall be required under this act if:

1. The attending physician certifies in the pregnant female's medical record that the abortion is necessary to prevent the female's death and there is insufficient time to provide the required notice;

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

3. The pregnant female declares 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; or

4. The pregnant female follows the procedure set forth in Section 4 of this act.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2613 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. If a pregnant female elects not to allow the notification of one or both of her parents or guardian or conservator, any judge of a court of competent jurisdiction shall, upon petition, or motion, and after an appropriate hearing, authorize a physician to perform

the abortion if the judge determines that the pregnant female is mature and capable of giving informed consent to the proposed abortion. If the judge determines that the pregnant female is not mature, or if the pregnant female does not claim to be mature, the judge shall determine whether the performance of an abortion upon her without notification of her parent, guardian, or conservator would be in her best interests and shall authorize a physician to perform the abortion without such notification if the judge concludes that the pregnant female's best interests would be served thereby.

B. Such a pregnant female may participate in proceedings in the court on her own behalf, and the court may appoint a guardian ad litem for her. The court shall, however, advise her that she has a right to court-appointed counsel, and shall, upon her request, provide her with such counsel.

C. Proceedings in the court under this section shall be confidential and shall be given precedence over other pending matters so that the court may reach a decision promptly and without delay so as to serve the best interests of the pregnant female. A judge of the court who conducts proceedings under this section shall make, in writing, specific factual findings and legal conclusions supporting the decision and shall order a record of the evidence to be maintained including the judge's own findings and conclusions.

D. An expedited confidential appeal shall be available to any such pregnant female for whom the court denies an order authorizing an abortion without notification. An order authorizing an abortion without notification shall not be subject to appeal. No filing fees shall be required of any such pregnant female at either the trial or the appellate level. Access to the trial court for the purposes of such a petition or motion, and access to the appellate courts for purposes of making an appeal from denial of the same, shall be

afforded such a pregnant female twenty-four (24) hours a day, seven (7) days a week.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2614 of Title 63, unless there is created a duplication in numbering, reads as follows:

Performance of an abortion in violation of this section shall be a misdemeanor and shall be grounds for a civil action by a person wrongfully denied notification. A person shall not be held liable under 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 6. This act shall become effective September 1, 1991.

43-1-538

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