

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

HOUSE BILL NO. 2352

By: Mitchell

AS INTRODUCED An Act relating to public health and safety; creating the Notice Procedures for Minors Act; providing purpose; defining terms; providing for application of act; providing exceptions; requiring notification of certain persons prior to performance of an abortion upon a minor; specifying exceptions; providing for judicial proceedings in certain cases; specifying penalties; providing for liability of certain persons; providing for immunity; providing for appeals; providing procedures and time periods; providing for failures to act; providing for certain counseling and information; providing for certain presumption prohibiting certain employment, agency or remunerations; specifying procedures; making certain acts unlawful; providing for certain determinations of emancipation; 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 2625.1 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Sections 1 through 8 of this act shall be known and may be cited as the "Notice Procedures for Minors Act".

B. Recognizing that some minors lack the ability to make fully informed choices that consider both immediate and long-range consequences and that parents who are aware that their minor daughter has had or is seeking an abortion may be better able to

provide comfort to such daughter and support for her decisions and to ensure that she receives adequate medical care if she chooses or has chosen to have an abortion, it is the intent of the Legislature in enacting the Notice Procedures for Minors Act to protect minors who may be immature and to protect the interests of parents with regard to children who are members of their household.

SECTION 2. 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 Notice Procedures for Minors Act:

1. "Abortion" means the intentional interruption of a pregnancy by the application of external agents, whether chemical or physical, with an intention other than to produce a live birth or to remove a dead fetus. However, it shall not be considered an "abortion" for a licensed physician to prescribe, dispense, implant, or sell or use legal contraceptives or contraceptive devices;

2. "Counselor" means a person who is:

- a. a physician licensed pursuant to the laws of this state,
- b. a psychiatrist licensed pursuant to the laws of this state,
- c. a psychologist licensed pursuant to the laws of this state,
- d. a social worker licensed pursuant to the laws of this state,
- e. an ordained member of the clergy, or
- f. a licensed professional counselor;

3. "Minor" means a person who is sixteen (16) years of age or less; and

4. "Parent" means a natural parent, adoptive parent, or a legal guardian or other person having legal custody of a minor. A parent whose parental rights have been terminated regarding the minor shall

not be considered a parent pursuant to the provisions of the Notice Procedures for Minors Act.

SECTION 3. 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:

The Notice Procedures for Minors Act shall not apply to a minor who is married or a parent herself or who has obtained rights of majority pursuant to judicial proceedings.

SECTION 4. 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. Except as otherwise provided in the Notice Procedures for Minors Act, no abortion shall be performed upon a minor, until at least twenty-four (24) hours after written notice of the pending abortion has been delivered in the manner specified in this section.

B. The notice shall be addressed to the parent at the usual place of abode of the parent and delivered personally to the parent by the physician or an agent of the physician.

C. In lieu of the delivery required by subsection B of this section, the person who is entitled to notice may certify in writing that such person has been notified.

D. The provisions of this subsection shall not apply if:

1. The attending physician certifies in the medical record of the minor that if the abortion is not performed it will endanger the life of the minor, or the physical or mental health of the minor may be seriously impaired;

2. The minor has not resided with her parents for the previous thirty (30) days and does not receive her major support from her parents;

3. The minor is accompanied by a parent to the physician or facility in which the abortion is to take place;

4. The court pursuant to Section 6 of this act has determined that parental notification is not necessary;

5. The parent to be notified is the parent who impregnated the minor;

6. The person who impregnated the minor is a sibling or a relative to the third degree of consanguinity; or

7. a. The counselor certifies in writing that the minor has received the information and counseling required under Section 7 of this act, and

b. The attending physician has received and will make part of the medical record the written consent of the minor, and the written verification of receiving information and counseling required under Section 7 of this act.

SECTION 5. 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. Counselors who in good faith, in accordance with accepted standards of their disciplines and the procedures specified by this act, state in writing to the physician that a minor is eligible for an abortion without notifying a parent, are immune from criminal or civil liability.

B. No counselor or physician shall incur any civil or criminal liability, except for any intentional harm caused to the minor or harm caused by the negligent performance of an abortion, if:

1. The minor falsely represents she may give consent to have an abortion;

2. The minor provides false information concerning the identity or whereabouts of her parent and, based on the minor's false representation or information, a counselor certifies the minor is eligible to receive an abortion without notice to a parent;

3. A physician performs an abortion upon the minor based on the counselor's certification according to the Notice Procedures for Minors Act without notifying a parent or guardian; or

4. A physician performs an abortion upon the minor if notice is provided to the parents of the minor, as provided in Section 4 of the Notice Procedures for Minors Act.

C. Consent of the minor or the written statement of eligibility of a counselor acting at the request of a minor shall not be subject to later disaffirmance or revocation by the minor, her parents or her guardian because of her minority.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2625.6 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. If the minor elects not to allow the notification of her parent, any district judge of the county of the residence of the minor or of the county in which the minor desires to have an abortion, upon petition and after a hearing, shall authorize a physician to perform the abortion if said judge determines that:

1. The minor is mature and capable of giving informed consent to the proposed abortion; or

2. The minor is not sufficiently mature, or the minor does not claim to be mature, but the judge determines that authorization of the performance of an abortion without notification of a parent would be in the best interests of the minor.

B. Proceedings in the court pursuant to this section shall be confidential and shall be given such precedence over other pending matters so that the court may reach a decision promptly and without delay and in no instance longer than three (3) days after the filing of the petition so as to serve the best interests of the minor.

1. The minor may participate in proceedings in the court on her own behalf and the court may appoint a guardian ad litem to assist her. The court shall also advise her that she has a right to court-

appointed counsel and shall provide her with such counsel upon request.

2. The judge of the court who conducts proceedings pursuant to this section shall make in writing specific factual findings and legal conclusions supporting the decision made by the judge and shall order a record of the evidence to be maintained including the judge's own findings and conclusions.

C. The application to the court shall be accompanied by a non-notarized verification stating that the information therein is true and correct to the best of the applicant's knowledge, and the application shall set forth the following facts:

- a. the initials of the minor,
- b. the age of the minor,
- c. the names and addresses of each parent, guardian or, if the minor's parents are deceased and no guardian has been appointed, any other person standing in loco parentis to the minor,
- d. whether the minor is mature and capable of giving informed consent to the abortion, and
- e. the signature of the minor.

D. 1. An expedited confidential appeal shall be available to any minor for whom the court refuses to grant an order authorizing an abortion within the time specified in this section. Any court to which an appeal is taken under this section shall give prompt and confidential attention thereto and shall rule thereon within five (5) business days of the filing of the appeal. The Oklahoma Supreme Court may issue such rules as may further assure that the process provided in this section is conducted in such a manner as will ensure confidentiality and sufficient precedence over other pending matters to ensure promptness of disposition.

2. An order authorizing an abortion without notification shall not be subject to appeal.

E. The court shall act within the time periods specified by this section. No extensions or further notice or waiting periods shall be required by the court.

F. The name of the minor shall not be entered on any docket which is subject to public inspection. All persons shall be excluded from hearings under this section except the applicant and such other persons whose presence is specifically requested by the applicant or ordered by the judge.

G. No filing fees shall be required of any such minor at either the trial or the appellate level.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2625.7 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Any counselor providing pregnancy information and counseling under this section shall:

1. Explain that the information specified in this section being given to the minor is not intended to coerce, persuade or induce the minor to choose either to have an abortion or to carry the pregnancy to term;

2. Explain that the minor may withdraw a decision to have an abortion at any time before the abortion is performed or may reconsider a decision not to have an abortion at any time within the time period during which an abortion may legally be performed;

3. Explore with the minor the alternative choices available for managing the pregnancy, including:

- a. carrying the pregnancy to term and keeping the child,
- b. carrying the pregnancy to term and placing the child for adoption, and
- c. having an abortion;

4. Explain that public and private agencies are available to provide adoption and birth control information and adoption

assistance and that a list of such agencies and the services available from each shall be provided;

5. Discuss the possibility of involving the minor's parents, guardian or other adult family members in the minor's decision-making concerning the pregnancy and explore whether the involvement of a parent would be in the minor's best interests; and

6. Provide opportunity for the minor to ask any questions concerning the pregnancy, abortion, child care and adoption, and provide the information the minor seeks or, if the person cannot provide the information, indicate where the minor can receive the information.

B. 1. After the counselor provides the information and counseling to a minor as required by subsection A of this section, the counselor shall have the minor sign and date a form stating that the minor has received information required by this subsection.

2. The counselor providing the information and counseling shall also sign and date the form, and include the counselor's address and telephone number. The counselor shall keep a file copy of the form and shall give the form to the minor or, if the minor requests, transmit the form to the minor's attending physician.

C. Consent which is evidenced in writing containing information required by this section and which is signed by the minor shall be presumed to be a valid consent. This presumption may be subject to rebuttal only upon proof that the consent was obtained through fraud, deception or misrepresentation of material fact.

D. Any counselor providing information and counseling to the minor pursuant to this section shall not be the attending physician of the minor, nor be employed by or an agent of, or receive any remuneration for such services from, the attending physician.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2625.8 of Title 63, unless there is created a duplication in numbering, reads as follows:

Except in a medical emergency, no parent, guardian or other person standing in loco parentis shall coerce a minor to undergo an abortion. Any minor who is threatened with such coercion may apply to the district court for relief. The court shall provide the minor with counsel, give the matter expedited consideration and grant such relief as may be necessary to prevent such coercion. Should a minor be denied the financial support of her parents by reason of her refusal to undergo abortion, she shall be considered emancipated for purposes of eligibility for assistance benefits.

SECTION 9. This act shall become effective September 1, 1994.

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