

STATE OF OKLAHOMA

1st Session of the 47th Legislature (1999)

HOUSE BILL NO. 1708

By: Graves

AS INTRODUCED

An Act relating to public health and safety; creating the Oklahoma Parental Notification Act; defining terms; prohibiting certain abortions; requiring certain consent; specifying certain conditions; providing for eligibility; providing for appointment of a guardian and counsel in certain cases; requiring confidentiality; providing for application; providing for content; providing procedures; providing for hearing; requiring certain determinations; prohibiting certain actions; prohibiting filing fees; providing for appeals; providing for suspension of certain licenses; providing for exemplary damages or other damages; providing for certain rights; 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 2631 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 Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2632 of Title 63, unless there is created a duplication in numbering, reads as follows:

For purposes of the Oklahoma Parental Notification Act:

1. "Abortion" means the purposeful termination of a human pregnancy by any person with an intention other than to produce a live birth or to remove a dead unborn child;

2. "Unborn child" means the unborn offspring of human beings from the moment of conception through pregnancy and until live birth

including the human conceptus, zygote, morula, blastocyst, embryo and fetus;

3. "Conception" means the fertilization of the ovum of a female individual by the sperm of a male individual;

4. "Health" means physical or mental health;

5. "Performing an abortion" means the administration by any person, including the pregnant woman, of any substance designed or intended to cause an expulsion of the unborn child, effecting an abortion; and

6. "Medical emergency" means that condition which, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2633 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Except in the case of a medical emergency, or except as provided in this section, if a pregnant woman is less than eighteen (18) years of age and not emancipated, or if she has been adjudged incapacitated pursuant to the Oklahoma Guardianship and Conservatorship Act, a physician shall not perform an abortion upon her unless, in the case of a woman who is less than eighteen (18) years of age, the physician first obtains the informed consent both of the pregnant woman and of one of her parents; or, in the case of a woman who has been adjudicated incapacitated pursuant to the Oklahoma Guardianship and Conservatorship Act, the physician first obtains the informed consent of her guardian. In deciding whether to grant such consent, a pregnant woman's parent or guardian shall consider only their child's or ward's best interest. In the case of a pregnancy that is the result of incest where the father is a party

to the incestuous act, the pregnant woman need only obtain the consent of her mother.

B. If both parents have died or are otherwise unavailable to the physician within a reasonable time and in a reasonable manner, consent of the pregnant woman's guardian or guardians shall be sufficient. If the pregnant woman's parents are divorced, consent of the parent having custody shall be sufficient. If neither a parent nor a legal guardian is available to the physician within a reasonable time and in a reasonable manner, consent of any adult person standing in loco parentis shall be sufficient.

C. If both of the parents or guardians of the pregnant woman refuse to consent to the performance of an abortion or if she elects not to seek the consent of either of her parents or her guardian, the district court of the county in which the applicant resides or in which the abortion is sought shall, upon petition or motion, after an appropriate hearing, authorize a physician to perform the abortion if the court determines that the pregnant woman is mature and capable of giving informed consent to the proposed abortion, and has, in fact, given such consent.

D. If the court determines that the pregnant woman is not mature and capable of giving informed consent or if the pregnant woman does not claim to be mature and capable of giving informed consent, the court shall determine whether the performance of an abortion upon her would be in her best interest. If the court determines that the performance of an abortion would be in the best interest of the woman, it shall authorize a physician to perform the abortion.

E. The pregnant woman 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, however, advise her that she has a right to court-appointed counsel and shall provide her with

such counsel unless she wishes to appear with private counsel or has knowingly and intelligently waived representation by counsel.

F. 1. Court proceedings under this section shall be confidential and shall be given such precedence over other pending matters as will ensure that the court may reach a decision promptly and without delay in order to serve the best interests of the pregnant woman. In no case shall the court fail to rule within three (3) business days of the date of application. A court which conducts proceedings under this section shall make, in writing, specific factual findings and legal conclusions supporting its decision and shall, upon the initial filing of the minor's petition for judicial authorization of an abortion, order a sealed record of the petition, pleadings, submissions, transcripts, exhibits, orders, evidence and any other written material to be maintained which shall include its own findings and conclusions.

2. 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 pregnant woman,
- b. the age of the pregnant woman,
- 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. that the pregnant woman has been fully informed of the risks and consequences of the abortion,
- e. whether the pregnant woman is of sound mind and has sufficient intellectual capacity to consent to the abortion,
- f. a prayer for relief asking the court to either grant the pregnant woman full capacity for the purpose of

personal consent to the abortion, or to give judicial consent to the abortion under subsection D of this section based upon a finding that the abortion is in the best interest of the pregnant woman,

- g. that the pregnant woman is aware that any false statements made in the application are punishable by law, and
- h. the signature of the pregnant woman.

3. The name of the pregnant woman 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 her guardian.

4. At the hearing, the court shall hear evidence relating to the emotional development, maturity, intellect and understanding of the pregnant woman, the fact and duration of her pregnancy, the nature, possible consequences and alternatives to the abortion and any other evidence that the court may find useful in determining whether the pregnant woman should be granted full capacity for the purpose of consenting to the abortion or whether the abortion is in the best interest of the pregnant woman. The court shall also notify the pregnant woman at the hearing that it must rule on her application within three (3) business days of the date of its filing and that, should the court fail to rule in favor of her application within the allotted time, she has the right to appeal to the Oklahoma Supreme Court.

G. Except in a medical emergency, no parent, guardian or other person standing in loco parentis shall coerce a minor or incompetent woman to undergo an abortion. Any minor or incompetent woman who is threatened with such coercion may apply to the district court for relief. The court shall provide the minor or incompetent woman 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 an abortion, she shall be considered emancipated for purposes of eligibility for assistance benefits.

H. No filing fees shall be required of any woman availing herself of the procedures provided by this section. An expedited confidential appeal shall be available to any pregnant woman whom the court fails 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.

I. Any person who performs an abortion upon a woman who is an unemancipated minor or incompetent to whom this section applies either with knowledge that she is a minor or incompetent to whom this section applies, or with reckless disregard or negligence as to whether she is a minor or incapacitated to whom this section applies, and who intentionally, knowingly or recklessly fails to conform to any requirement of this section is guilty of "unprofessional conduct" and his license for the practice of medicine and surgery shall be suspended in accordance with procedures specified by the State Board of Medical Licensure and Supervision or the Oklahoma Osteopathic Medicine Act, for a period of at least three (3) months. Failure to comply with the requirements of this section is prima facie evidence of failure to obtain informed consent and of interference with family relations in appropriate civil actions. The laws of this state shall not be construed to preclude the award of exemplary damages or damages for

emotional distress even if unaccompanied by physical complications in any appropriate civil action relevant to violations of this section. Nothing in this section shall be construed to limit the common law rights of parents.

SECTION 4. This act shall become effective November 1, 1999.

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