

STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 807

By: Coffee of the Senate

and

Morgan (Fred) of the House

COMMITTEE SUBSTITUTE

An Act relating to civil and criminal law; amending 12 O.S. 2001, Section 1053, which relates to wrongful death; making section available for death of an unborn child; providing exceptions; prohibiting certain prosecutions; amending 21 O.S. 2001, Sections 652, 713 and 715, which relate to intentional and wrongful injuries to another; referencing certain definitions; defining terms; providing exceptions; prohibiting certain prosecutions; increasing certain penalties; providing exceptions; amending 21 O.S. 2001, Section 888, as amended by Section 9, Chapter 460, O.S.L. 2002 (21 O.S. Supp. 2004, Section 888), which relates to forcible sodomy; expanding scope of crime; amending 21 O.S. 2001, Section 1040.8, as amended by Section 1, Chapter 107, O.S.L. 2002 (21 O.S. Supp. 2004, Section 1040.8), which relates to publication, distribution, or preparation of obscene material or child pornography; modifying language; prohibiting exhibition of certain materials within motor vehicle if visible outside the motor vehicle; defining terms; providing penalty; amending 21 O.S. 2001, Section 1111, as amended by Section 9, Chapter 22, O.S.L. 2002 (21 O.S. Supp. 2004, Section 1111), which relates to the crime of rape; modifying age limitation; defining terms; requiring certain persons to receive specified information; providing exceptions; specifying time limitations; requiring certification; requiring State Department of Health to publish and update certain materials; requiring maintenance of a web site; providing for emergency abortions; requiring reporting; requiring the State Department of Health to prepare certain abortion reports; providing for confidentiality and anonymity; providing for liability; authorizing certain actions; making certain acts subject to certain disciplinary action; providing exception; providing for additional remedies; providing for construction of act; enacting the Family Protection Act; providing short title; defining terms; prohibiting abortions on certain persons without certain notice; providing procedures related to the notice; specifying penalties; authorizing actual and punitive damages; providing for severability; providing for codification; and declaring an emergency.

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

SECTION 1. AMENDATORY 12 O.S. 2001, Section 1053, is amended to read as follows:

Section 1053. A. When the death of ~~one~~ a person is caused by the wrongful act or omission of another person, the personal representative of the former may maintain an action therefore against the latter, or his or her personal representative if ~~he~~ the latter is also deceased, if the former might have maintained an action, had he or she lived, against the latter, or his or her representative, for an injury for the same act or omission. The action must be commenced within two (2) years.

B. The damages recoverable in actions for a wrongful death as provided in this section shall include the following:

1. Medical and burial expenses, ~~which.~~ Such expenses shall be distributed to the person or governmental agency as defined in Section ~~200~~ 5051.1 of Title ~~56~~ 63 of the Oklahoma Statutes, who paid these expenses, or to the decedent's estate if paid by the estate;;

2. The loss of consortium and the grief of the surviving spouse, ~~which.~~ Such damages shall be distributed to the surviving spouse;;

3. The mental pain and anguish suffered by the decedent, ~~which.~~ Such damages shall be distributed to the surviving spouse and children, if any, or next of kin in the same proportion as personal property of the decedent;;

4. The pecuniary loss to the survivors based upon properly admissible evidence with regard thereto including, but not limited to, the age, occupation, earning capacity, health habits, and probable duration of the decedent's life, ~~which must.~~ Such pecuniary loss shall inure to the exclusive benefit of the surviving spouse and children, if any, or next of kin, and shall be distributed to them according to their pecuniary loss;; and

5. The grief and loss of companionship of the children and parents of the decedent, ~~which.~~ Such damages shall be distributed to them according to their grief and loss of companionship.

C. In proper cases, as provided by Section ~~9~~ 9.1 of Title 23 of the Oklahoma Statutes, punitive or exemplary damages may also be recovered against the person proximately causing the wrongful death or his or her representative if such person ~~be~~ is deceased. ~~Such~~ The damages, if recovered, shall be distributed to the surviving spouse and children, if any, or next of kin in the same proportion as personal property of the decedent.

D. Where the recovery is to be distributed according to a person's pecuniary loss or loss of companionship, the judge shall determine the proper division.

E. The ~~above-mentioned~~ distributions specified by this section shall be made after the payment of legal expenses and costs of the action.

F. 1. The provisions of this section shall also be available for the death of an unborn child, as such term is defined by Section 1-730 of Title 63 of the Oklahoma Statutes.

2. a. The provisions of this subsection shall not apply to:
- (1) acts which cause the death of an unborn child if those acts were committed during a legal abortion to which the pregnant woman consented, or
 - (2) acts which are committed pursuant to the usual and customary standards of medical practice during diagnostic testing or therapeutic treatment.
- b. Under no circumstances shall the mother of an unborn child be prosecuted or found guilty for causing the death of her unborn child.

SECTION 2. AMENDATORY 21 O.S. 2001, Section 652, is amended to read as follows:

Section 652. A. Every person who intentionally and wrongfully shoots another with or discharges any kind of firearm, with intent to kill any person including an unborn child as such term is defined by Section 1-730 of Title 63 of the Oklahoma Statutes, shall upon conviction thereof be guilty of a felony punishable by imprisonment in the State Penitentiary not exceeding life.

B. Every person who uses any vehicle to facilitate the intentional discharge of any kind of firearm, crossbow or other weapon in conscious disregard for the safety of any other person or persons including an unborn child as such term is defined by Section 1-730 of Title 63 of the Oklahoma Statutes, shall upon conviction thereof be guilty of a felony punishable by imprisonment in the State Penitentiary for a term of not less than two (2) years nor more than twenty (20) years.

C. Any person who commits any assault and battery upon another person including an unborn child, as such term is defined by Section 1-730 of Title 63 of the Oklahoma Statutes, by means of any deadly weapon, or by such other means or force as is likely to produce death, or in any manner attempts to kill another person including an unborn child as such term is defined by Section 1-730 of Title 63 of the Oklahoma Statutes, or in resisting the execution of any legal process, shall upon conviction thereof be guilty of a felony punishable by imprisonment in the State Penitentiary not exceeding twenty (20) years.

D. The provisions of this section shall not apply to:

1. Acts which cause the death of an unborn child if those acts were committed during a legal abortion to which the pregnant woman consented; or

2. Acts which are committed pursuant to usual and customary standards of medical practice during diagnostic testing or therapeutic treatment.

E. Under no circumstances may the mother of an unborn child be prosecuted or found guilty for causing the death of her unborn child.

SECTION 3. AMENDATORY 21 O.S. 2001, Section 713, is amended to read as follows:

Section 713. ~~The willful killing of an~~ A. Except as otherwise provided by law, any person who willfully kills an unborn quick child by any injury committed upon the person of the mother of such child, and not prohibited in the next following section, is manslaughter in the first degree, as such term is defined by Section 1-730 of Title 63 of the Oklahoma Statutes, shall be guilty of a felony and, upon conviction thereof, shall be punished pursuant to the provisions of Section 715 of this title.

B. 1. The provisions of this section shall not apply to:

- a. acts which cause the death of an unborn child if those acts were committed during a legal abortion to which the pregnant woman consented, or
- b. acts which are committed pursuant to usual and customary standards of medical practice during diagnostic testing or therapeutic treatment.

2. Under no circumstances may the mother of an unborn child be prosecuted or found guilty for causing the death of her unborn child.

SECTION 4. AMENDATORY 21 O.S. 2001, Section 715, is amended to read as follows:

Section 715. ~~Any~~ A. Except as provided by subsection B of this section, any person guilty of manslaughter in the first degree shall be guilty of a felony punishable by imprisonment in the State Penitentiary for not less than four (4) years.

B. Any person guilty of violating Section 713 of this title shall be guilty of a felony punishable by imprisonment in the State Penitentiary for not to exceed life.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 723 of Title 21, unless there is created a duplication in numbering, reads as follows:

Any offense committed pursuant to the provisions of Sections 652, 713 and 715 of Title 21 of the Oklahoma Statutes does not require proof that the person engaging in the conduct had knowledge or should have had knowledge that the victim of the underlying offense was pregnant or that the offender intended to cause the death or bodily injury to the unborn child.

SECTION 6. AMENDATORY 21 O.S. 2001, Section 888, as amended by Section 9, Chapter 460, O.S.L. 2002 (21 O.S. Supp. 2004, Section 888), is amended to read as follows:

Section 888. A. Any person who forces another person to engage in the detestable and abominable crime against nature, pursuant to Section 886 of this title, upon conviction, is guilty of a felony punishable by imprisonment in the State Penitentiary for a period of not more than twenty (20) years. Any person convicted of a second violation of this section, where the victim of the second offense is a person under sixteen (16) years of age, shall not be eligible for probation, suspended or deferred sentence. Any person convicted of a third or subsequent violation of this section, where the victim of the third or subsequent offense is a person under sixteen (16) years of age, shall be punished by imprisonment in the State Penitentiary for a term of life or life without parole, in the discretion of the jury, or in case the jury fails or refuses to fix punishment then the same shall be pronounced by the court. Any person convicted of a violation of this subsection after having been twice convicted of a violation of subsection A of Section 1114 of this title, a violation of Section 1123 of this title or sexual abuse of a child pursuant to Section 7115 of Title 10 of the Oklahoma Statutes, or of any attempt to commit any of these offenses or any combination of

said offenses, shall be punished by imprisonment in the State Penitentiary for a term of life or life without parole.

B. The crime of forcible sodomy shall include:

1. Sodomy committed by a person over eighteen (18) years of age upon a person under sixteen (16) years of age; or

2. Sodomy committed upon a person incapable through mental illness or any unsoundness of mind of giving legal consent regardless of the age of the person committing the crime; or

3. Sodomy accomplished with any person by means of force, violence, or threats of force or violence accompanied by apparent power of execution regardless of the age of the victim or the person committing the crime; or

4. Sodomy committed by a state, county, municipal or political subdivision employee or a contractor or an employee of a contractor of the state, a county, a municipality or political subdivision of this state upon a person who is under the legal custody, supervision or authority of a state agency, a county, a municipality or a political subdivision of this state; or

5. Sodomy committed upon a person who is at least sixteen (16) years of age but less than twenty (20) years of age and is a student of any public or private secondary school, junior high or high school, or public vocational school, with a person who is eighteen (18) years of age or older and is employed by the same school system.

SECTION 7. AMENDATORY 21 O.S. 2001, Section 1040.8, as amended by Section 1, Chapter 107, O.S.L. 2002 (21 O.S. Supp. 2004, Section 1040.8), is amended to read as follows:

Section 1040.8 No person shall knowingly photograph, act in, pose for, model for, print, sell, offer for sale, give away, exhibit, publish, offer to publish, or otherwise distribute, display, or exhibit any book, magazine, story, pamphlet, paper, writing, card, advertisement, circular, print, picture, photograph,

motion picture film, electronic video game or recording, image, cast, slide, figure, instrument, statue, drawing, presentation, or other article which is obscene material or child pornography, as defined in Section 1024.1 of this title. In the case of any unsolicited mailing of any of the material listed in this section, the offense is deemed complete from the time ~~such~~ the material is deposited in any post office or delivered to any person with intent that it shall be forwarded. Also, unless preempted by federal law, no unsolicited mail which is harmful to minors pursuant to Section 1040.75 of this title shall be mailed to any person. The party mailing the materials specified in this section may be indicted and tried in any county wherein ~~such~~ the material is deposited or delivered, or in which it is received by the person to whom it is addressed. Any person who violates any provision of this section shall, upon conviction, ~~shall~~ be guilty of a misdemeanor ~~and shall be punished~~ punishable by imprisonment in the county jail for not more than one (1) year or by a fine of not more than One Thousand Dollars (\$1,000.00), or by both such fine and imprisonment.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1040.55 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. No material which is harmful to minors shall be exhibited on a television, monitor, or other viewing screen or surface, located within or on a motor vehicle, in any manner visible to any person outside the vehicle. As used in this subsection, "material" and "harmful to minors" shall have the same meaning as provided for in Section 1040.75 of Title 21 of the Oklahoma Statutes.

B. No person shall exhibit on a television, monitor, or other viewing screen or surface, located within or on a motor vehicle, in any manner visible to any person outside the vehicle any motion picture depicting:

1. Any person, whether nude or clad, in an act or simulation of an act of sexual intercourse, unnatural copulation or other sexual activity including the showing of human genitals in a state of sexual stimulation or arousal, acts of human masturbation, or fondling or other erotic touching of human genitals, pubic region, buttock or female breast; or

2. Nude or partially denuded figures including less than completely and opaquely covered human genitals, pubic regions, buttock and female breast below a point immediately above the top of the areola and including human male genitals in a discernibly turgid state, even if completely and opaquely covered.

C. Any person convicted of violating the provisions of this section shall be guilty of a misdemeanor and subject to a fine of not more than Five Hundred Dollars (\$500.00).

SECTION 9. AMENDATORY 21 O.S. 2001, Section 1111, as amended by Section 9, Chapter 22, O.S.L. 2002 (21 O.S. Supp. 2004, Section 1111), is amended to read as follows:

Section 1111. A. Rape is an act of sexual intercourse involving vaginal or anal penetration accomplished with a male or female who is not the spouse of the perpetrator and who may be of the same or the opposite sex as the perpetrator under any of the following circumstances:

1. Where the victim is under sixteen (16) years of age;

2. Where the victim is incapable through mental illness or any other unsoundness of mind, whether temporary or permanent, of giving legal consent;

3. Where force or violence is used or threatened, accompanied by apparent power of execution to the victim or to another person;

4. Where the victim is intoxicated by a narcotic or anesthetic agent, administered by or with the privity of the accused as a means of forcing the victim to submit;

5. Where the victim is at the time unconscious of the nature of the act and this fact is known to the accused;

6. Where the victim submits to sexual intercourse under the belief that the person committing the act is a spouse, and this belief is induced by artifice, pretense, or concealment practiced by the accused or by the accused in collusion with the spouse with intent to induce that belief. In all cases of collusion between the accused and the spouse to accomplish such act, both the spouse and the accused, upon conviction, shall be deemed guilty of rape;

7. Where the victim is under the legal custody or supervision of a state agency, a federal agency, a county, a municipality or a political subdivision and engages in sexual intercourse with a state, federal, county, municipal or political subdivision employee or an employee of a contractor of the state, the federal government, a county, a municipality or a political subdivision that exercises authority over the victim; or

8. Where the victim is at least sixteen (16) years of age and is less than ~~eighteen (18)~~ twenty (20) years of age and is a student, or under the legal custody or supervision of any public or private elementary or secondary school, junior high or high school, or public vocational school, and engages in sexual intercourse with a person who is eighteen (18) years of age or older and is an employee of the same school system.

B. Rape is an act of sexual intercourse accomplished with a male or female who is the spouse of the perpetrator if force or violence is used or threatened, accompanied by apparent power of execution to the victim or to another person.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 724 of Title 21, unless there is created a duplication in numbering, reads as follows:

As used in Sections 10 through 16 of this act:

1. "Abortion" means the intentional use or prescription of any instrument, medicine, drug, or any other substance or device to terminate intentionally the pregnancy of a woman known to be pregnant for a purpose other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead fetus who died as the result of spontaneous miscarriage;

2. "Attempt to perform an abortion" means an act, or an omission of a statutorily required act, that, under the circumstances as the actor believes them to be, constitutes a substantial step in a course of conduct planned to culminate in the performance of an abortion in this state in violation of this act;

3. "Department" means the State Department of Health;

4. "Medical emergency" means any condition which, on the basis of the good faith clinical judgment of the physician, 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;

5. "Physician" means a person licensed to practice medicine in this state pursuant to Chapter 11 and Chapter 14 of Title 59 of the Oklahoma Statutes;

6. "Probable gestational age of the unborn child" means what, in the judgment of the physician, will be with reasonable probability the gestational age of the unborn child at the time the abortion is planned to be performed;

7. "Stable Internet web site" means a web site that, to the extent reasonably practicable, is safeguarded from having its content altered other than by the State Department of Health; and

8. "Unborn child" means a child as that term is defined in Section 1-730 of Title 63 of the Oklahoma Statutes.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 724.1 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. No abortion shall be performed in this state except with the voluntary and informed consent of the woman upon whom the abortion is to be performed.

B. Except in the case of a medical emergency, consent to an abortion is voluntary and informed if and only if:

1. a. Not less than twenty-four (24) hours prior to the performance of the abortion, the woman is told the following, by telephone or in person, by the physician who is to perform the abortion, or by a referring physician:

(1) the name of the physician who will perform the abortion,

(2) the medical risks associated with the particular abortion procedure to be employed,

(3) the probable gestational age of the unborn child at the time the abortion is to be performed, and

(4) the medical risks associated with carrying her child to term.

b. The information required by this paragraph may be provided by telephone without conducting a physical examination or tests of the woman. If the information is supplied by telephone, the information may be based both on facts supplied to the physician by the woman and on whatever other relevant information is reasonably available to the physician.

c. The information required by this paragraph shall not be provided by a tape recording, but shall be provided during a consultation in which the physician is able

to ask questions of the woman and the woman is able to ask questions of the physician.

- d. If a physical examination, tests, or other new information subsequently indicates, in the medical judgment of the physician, the need for a revision of the information previously supplied to the woman, that revised information may be communicated to the woman at any time prior to the performance of the abortion.
- e. Nothing in subparagraph a of this paragraph may be construed to preclude provision of the required information in a language understood by the woman through a translator;

2. Not less than twenty-four (24) hours prior to the abortion, the woman is informed, by telephone or in person, by the physician who is to perform the abortion, by a referring physician, or by an agent of either physician:

- a. that medical assistance benefits may be available for prenatal care, childbirth, and neonatal care,
- b. that the father is liable to assist in the support of her child, even in instances in which the father has offered to pay for the abortion,
- c. that:
 - (1) she has the option to review the printed materials described in Section 12 of this act,
 - (2) those materials have been provided by the State of Oklahoma, and
 - (3) they describe the unborn child and list agencies that offer alternatives to abortion, and
- d. (1) if the woman chooses to exercise her option to view the materials in a printed form, they shall be mailed to her, by a method chosen by the woman, or

- (2) if the woman chooses to exercise her option to view the materials via the Internet, the woman shall be informed at least twenty-four (24) hours before the abortion of the specific address of the Internet web site where the material can be accessed.

The information required by this paragraph may be provided by a tape recording if provision is made to record or otherwise register specifically whether the woman does or does not choose to review the printed materials given;

3. The woman certifies in writing, prior to the abortion, that the information described in paragraphs 1 and 2 of this subsection has been furnished to her and that she has been informed of her option to review the information; and

4. Prior to the abortion, the physician who is to perform the abortion, or the agent of the physician, receives a copy of the written certification prescribed by paragraph 3 of this subsection.

C. The State Board of Medical Licensure and Supervision and the State Board of Osteopathic Examiners shall promulgate rules to ensure that physicians who perform abortions and referring physicians or agents of either physician comply with all the requirements of this section.

D. Before the abortion procedure is performed, the physician shall confirm with the patient that she has received information regarding:

1. The medical risks associated with the particular abortion procedure to be employed;

2. The probable gestational age of the unborn child at the time the abortion is to be performed; and

3. The medical risks associated with carrying the unborn child to term.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 724.2 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. Within one hundred twenty (120) days of the effective date of this act, the State Department of Health shall cause to be published, in English and in Spanish, and shall update on an annual basis, the following printed materials in such a way as to ensure that the information is easily comprehensible:

1. a. geographically indexed materials designed to inform the woman of public and private agencies which have notified the Department of their services, including adoption agencies, that are available to assist a woman through pregnancy, upon childbirth, and while the child is dependent, including:
 - (1) a comprehensive list of the agencies available,
 - (2) a description of the services they offer, and
 - (3) a description of the manner, including telephone numbers, in which they might be contacted, or
- b. printed materials including a toll-free, twenty-four-hour-a-day telephone number which may be called to obtain, in a mechanical, automated, or auditory format, a list and description of agencies which have notified the Department of their services in the locality of the caller and of the services they offer; and
2. a. materials designed to inform the woman of the probable anatomical and physiological characteristics of the unborn child at two-week gestational increments from the time when a woman can be known to be pregnant to full term, including:
 - (1) any relevant information on the possibility of the survival of the unborn child, and

- (2) pictures or drawings representing the development of unborn children at two-week gestational increments; provided, that the pictures or drawings shall describe the dimensions of the unborn child and shall be realistic and appropriate for the stage of pregnancy depicted,
- b. materials that are objective, nonjudgmental, and designed to convey only accurate scientific information about the unborn child at the various gestational ages, and
- c. material also containing objective information describing:
 - (1) the methods of abortion procedures commonly employed,
 - (2) the medical risks commonly associated with each of those procedures,
 - (3) the possible detrimental psychological effects of abortion, and
 - (4) the medical risks commonly associated with carrying a child to term.

B. 1. The materials referred to in subsection A of this section shall be printed in a typeface large enough to be clearly legible.

2. The materials required under this section shall be available at no cost from the State Department of Health and shall be distributed upon request in appropriate numbers to any person, facility, or hospital.

C. 1. The Department shall provide on its stable Internet web site the information described under subsection A of this section.

2. The web page provided for in this subsection shall be maintained at a minimum resolution of 72 PPI.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 724.3 of Title 21, unless there is created a duplication in numbering, reads as follows:

When a medical emergency compels the performance of an abortion, the physician shall inform the female, prior to the abortion if possible, of the medical indications supporting the judgment of the physician that an abortion is necessary to avert her death or that a delay will create serious risk of substantial and irreversible impairment of a major bodily function.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 724.4 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. The State Department of Health shall develop and promulgate rules regarding reporting requirements.

B. The Department shall ensure that all information collected by the Department regarding abortions performed in this state shall be available to the public in printed form and on a twenty-four-hour basis on the web site of the Department, provided that in no case shall the privacy of a patient or doctor be compromised.

C. The information collected by the Department regarding abortions performed in this state shall be updated annually.

D. 1. By June 30 of each year, the Department shall issue a public report providing statistics on the number of women provided information and materials pursuant to this act during the previous calendar year.

2. Each report shall also provide the information presently collected by the Department for all previous calendar years, adjusted to reflect any additional information received after the deadline.

3. The Department shall take care to ensure that none of the information included in the public reports could reasonably lead to

the identification of any individual providing or provided information pursuant to the provisions of this act.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 724.5 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. Any physician who knowingly or recklessly performs or attempts to perform an abortion in violation of the provisions of this act is guilty of a misdemeanor. Any physician who knowingly or recklessly performs or attempts to perform an abortion in violation of this act shall be subject to disciplinary action by the State Board of Medical Licensure and Supervision or the State Board of Osteopathic Examiners.

B. No penalty may be assessed against the woman upon whom the abortion is performed or attempted to be performed.

C. No penalty or civil liability may be assessed for failure to comply with Section 11 of this act unless the State Department of Health has made the printed materials available at the time the physician or the agent of the physician is required to inform the woman of her right to review them.

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2106 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. In every civil or criminal proceeding or action brought pursuant to the provisions of this act, the court shall rule whether the identity of any woman upon whom an abortion has been performed or attempted shall be preserved from public disclosure if she does not give her consent to such disclosure. Court rulings shall comply with rules issued pursuant to the Health Insurance Portability and Accountability Act (HIPAA) of 1996 with regard to privacy of medical records.

B. If the court rules that her identity should be preserved, the court shall issue orders to the parties, witnesses, and counsel

to preserve her identity and shall direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to safeguard her identity from public disclosure.

C. Each order to preserve the woman's identity shall be accompanied by specific written findings explaining:

1. Why the identity of the woman should be preserved from public disclosure;
2. Why the order is essential to that end;
3. How the order is narrowly tailored to serve that interest; and
4. Why no reasonable less restrictive alternative exists.

D. In the absence of written consent of the woman upon whom an abortion has been performed or attempted, anyone, other than a public official, who brings an action pursuant to this act shall do so under a pseudonym. This section shall not be construed to conceal the identity of the plaintiff or witnesses from the defendant.

SECTION 17. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2107 of Title 21, unless there is created a duplication in numbering, reads as follows:

Sections 17 through 22 of this act shall be known and may be cited as the "Family Protection Act".

SECTION 18. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2108 of Title 21, unless there is created a duplication in numbering, reads as follows:

As used in the Family Protection Act:

1. "Abortion" means the intentional use or prescription of any instrument, medicine, drug, or any other substance or device to terminate the pregnancy of a woman known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead fetus who died as a result of spontaneous miscarriage;

2. "Parent" means one parent of the pregnant unemancipated minor or guardian if the pregnant unemancipated minor has one; and

3. "Unemancipated minor" means any person under eighteen (18) years of age who is not or has not been married or who is under the care, custody, and control of the person's parent or parents, guardian, or juvenile court of competent jurisdiction.

SECTION 19. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2109 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. No abortion shall be performed upon an unemancipated minor or upon a female for whom a guardian has been appointed pursuant to Section 1-113 of Title 30 of the Oklahoma Statutes because of a finding of incompetency, until at least forty-eight (48) hours after written notice of the pending operation has been delivered in the manner specified in this subsection.

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

2. In lieu of the delivery required by paragraph 1 of this subsection, notice shall be made by certified mail addressed to the parent at the usual place of abode of the parent with return-receipt requested and restricted delivery to the addressee, which means a postal employee can only deliver the mail to the authorized addressee. Time of delivery shall be deemed to occur at 12 o'clock noon on the next day on which regular mail delivery takes place, subsequent to mailing.

B. No notice shall be required under this section if one of the following conditions are met:

1. The attending physician certifies in the pregnant unemancipated minor's medical records that the abortion is necessary to prevent the death of the minor and there is insufficient time to provide the required notice; or

2. The attending physician certifies that a medical emergency exists and that a delay will create serious or substantial and irreversible impairment of a major bodily function.

SECTION 20. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2110 of Title 21, unless there is created a duplication in numbering, reads as follows:

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

B. A pregnant unemancipated minor 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 advise the pregnant unemancipated minor that she has a right to court-appointed counsel and upon her request, shall provide her with such counsel.

C. Proceedings in the court under 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 so as to serve the best interests of the pregnant unemancipated minor. 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 findings and conclusions of the court.

D. An expedited confidential appeal shall be available to any such pregnant unemancipated minor 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 unemancipated minor at either the trial or the appellate level. Access to the trial court for the purpose of such a petition or motion, and access to the appellate courts for the purpose of making an appeal from the denial of the same, shall be afforded such a pregnant unemancipated minor twenty-four (24) hours a day, seven (7) days a week.

SECTION 21. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2111 of Title 21, unless there is created a duplication in numbering, reads as follows:

Performance of an abortion in knowing or reckless violation of the Family Protection Act shall be a misdemeanor and shall be grounds for actual and punitive damages in a civil action by a person wrongfully denied notification. A person shall not be held liable under the Family Protection Act 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 unemancipated minor 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 22. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2112 of Title 21, unless there is created a duplication in numbering, reads as follows:

If any one or more provision, section, subsection, sentence, clause, phrase or word of Sections 10 through 21 of this act or the application thereof to any person or circumstance is found to be

unconstitutional, the same is hereby declared to be severable and the balance of the Family Protection Act shall remain effective notwithstanding such unconstitutionality. The Legislature hereby declares that it would have passed the Family Protection Act, and each provision, section, subsection, sentence, clause, phrase or word thereof, irrespective of the fact that any one or more provision, section, subsection, sentence, clause, phrase, or word be declared unconstitutional.

SECTION 23. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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