

1 STATE OF OKLAHOMA

2 1st Session of the 54th Legislature (2013)

3 HOUSE BILL 1361

By: Grau

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6 AS INTRODUCED

7 An Act relating to public health and safety; amending
8 63 O.S. 2011, Section 1-740.2, which relates to
9 notification and consent of a parent prior to
10 performance of abortion; adding certain requirements
11 to parental notice and consent; requiring certain
12 notice to be filed with certain district court;
13 permitting court to require evaluation and counseling
14 session prior to judicial waiver hearing; stating
15 purpose; amending 63 O.S. 2011, Section 1-740.3,
16 which relates to judicial authorization prior to
17 abortion; providing certain factors the court may and
18 may not consider in assessing certain minor;
19 providing for codification; and providing an
20 effective date.

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

22 SECTION 1. AMENDATORY 63 O.S. 2011, Section 1-740.2, is
23 amended to read as follows:

24 Section 1-740.2 A. Except in the case of a medical emergency,
a physician may not perform an abortion on a pregnant female unless
the physician has:

1. Obtained proof of age demonstrating that the female is not a
minor;

1 2. Obtained proof that the female, although a minor, is
2 emancipated; or

3 3. Complied with Section 1-740.3 of this title.

4 B. No abortion shall be performed upon an unemancipated minor
5 or upon a female for whom a guardian has been appointed pursuant to
6 Section 1-113 of Title 30 of the Oklahoma Statutes because of a
7 finding of incompetency, except in a medical emergency or where a
8 judicial waiver was obtained pursuant to Section 1-740.3 of this
9 title, until at least forty-eight (48) hours after written notice of
10 the pending abortion has been delivered in the manner specified in
11 this subsection and the attending physician has secured proof of
12 identification and the written informed consent of one parent.

13 1. The notice and request for written informed consent of one
14 parent shall be addressed to the parent at the usual place of abode
15 of the parent and delivered personally to the parent by the
16 physician or an agent.

17 2. In lieu of the delivery required by paragraph 1 of this
18 subsection, the notice and request for written informed consent of
19 one parent shall be made by certified mail addressed to the parent
20 at the usual place of abode of the parent with return-receipt
21 requested and restricted delivery to the addressee, which means a
22 postal employee can only deliver the mail to the authorized
23 addressee. Time of delivery shall be deemed to occur at 12 noon on
24 the next day on which regular mail delivery takes place, subsequent

1 to mailing. The information concerning the address of the parent
2 shall be that which a reasonable and prudent person, under similar
3 circumstances, would have relied upon as sufficient evidence that
4 the parent resides at that address.

5 3. a. The parent entitled to notice and consent shall
6 provide to the physician a copy of a government-issued
7 proof of identification, and written documentation
8 that establishes that he or she is the lawful parent
9 of the pregnant female. The parent shall certify in a
10 signed, dated, ~~and~~ notarized statement, initialed on
11 each page, that he or she has been notified and
12 consents to the abortion. The signed, dated, and
13 notarized statement shall include: "I certify that I,
14 (insert name of parent), am the parent of (insert name
15 of minor daughter) and give consent for (insert name
16 of physician) to perform an abortion on my daughter.
17 I understand that any person who knowingly makes a
18 fraudulent statement in this regard commits a felony."

19 b. The physician shall keep a copy of the proof of
20 identification of the parent and the certified
21 statement in the medical file of the minor for five
22 (5) years past the majority of the minor, but in no
23 event less than seven (7) years.

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1 c. A physician receiving parental consent under this
2 section shall execute for inclusion in the medical
3 record of the minor an affidavit stating: "I, (insert
4 name of physician), certify that according to my best
5 information and belief, a reasonable person under
6 similar circumstances would rely on the information
7 presented by both the minor and her parent as
8 sufficient evidence of identity."

9 C. No notice or request for written informed consent of one
10 parent shall be required under this section if one of the following
11 conditions is met:

12 1. The attending physician certifies in the medical records of
13 the pregnant unemancipated minor that a medical emergency exists;
14 provided, however, that the attending physician or an agent shall,
15 within twenty-four (24) hours after completion of the abortion,
16 notify one of the parents of the minor in the manner provided in
17 this section that an emergency abortion was performed on the minor
18 and of the circumstances that warranted invocation of this
19 paragraph; or

20 2. The unemancipated minor declares that she is the victim of
21 sexual abuse, as defined in Section 1-1-105 of Title 10A of the
22 Oklahoma Statutes and the attending physician has notified local law
23 enforcement or the Department of Human Services about the alleged
24 sexual abuse.

1 D. 1. Unless the unemancipated minor gives notice of her
2 intent to seek a judicial waiver pursuant to Section 1-740.3 of this
3 title, the attending physician, or the agent of the physician, shall
4 verbally inform the parent of the minor within twenty-four (24)
5 hours after the performance of a medical emergency abortion or an
6 abortion that was performed to prevent her death that an abortion
7 was performed on the unemancipated minor. The attending physician,
8 or the agent of the attending physician, shall also inform the
9 parent of the basis for the certification of the physician required
10 under paragraph 1 or 2 of subsection C of this section. The
11 attending physician, or the agent of the attending physician, shall
12 also send a written notice of the performed abortion via the United
13 States Post Office to the last-known address of the parent,
14 restricted delivery, return receipt requested. The information
15 concerning the address of the parent shall be that which a
16 reasonable and prudent person, under similar circumstances, would
17 have relied upon as sufficient evidence that the parent resides at
18 that address.

19 2. If the unemancipated minor gives notice to the attending
20 physician, or an agent of the physician, of her intent to seek a
21 judicial waiver pursuant to Section 1-740.3 of this title, the
22 physician, or an agent of the physician, shall file a notice with
23 any judge of a district court of competent jurisdiction in the
24 county in which the pregnant unemancipated minor resides that the

1 minor has given such notice and shall provide the information the
2 physician, or the agent of the physician, would have been required
3 to provide the parent under paragraph 1 of this subsection if the
4 unemancipated minor had not given notice of her intent to seek a
5 judicial waiver. The court shall expeditiously schedule a
6 conference with notice to the minor and the physician. If the minor
7 is able to participate in the proceedings, the court shall advise
8 the minor that she has the right to court-appointed counsel and
9 shall, upon her request, provide the minor with such counsel. If
10 the minor is unable to participate, the court shall appoint counsel
11 on behalf of the minor. After an appropriate hearing, the court,
12 taking into account the medical condition of the minor, shall set a
13 deadline by which the minor must file a petition or motion pursuant
14 to Section 1-740.3 of this title. The court may subsequently extend
15 the deadline in light of the medical condition of the minor or other
16 equitable considerations. If the minor does not file a petition or
17 motion by the deadline, ~~either in that court or in another court of~~
18 ~~competent jurisdiction with a copy filed in that court,~~ the court
19 shall direct that the court clerk provide the notice to a parent.

20 E. The State Board of Health shall adopt the forms necessary
21 for physicians to obtain the certifications required by this
22 section.

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1 SECTION 2. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1-740.2A of Title 63, unless
3 there is created a duplication in numbering, reads as follows:

4 A. Prior to the court hearing for judicial waiver pursuant to
5 Section 1-740.3 of Title 63 of the Oklahoma Statutes, the court may
6 require the pregnant unemancipated minor to participate in an
7 evaluation and counseling session with a mental health professional
8 from the State Department of Health. Such evaluation shall be
9 confidential and scheduled expeditiously.

10 B. Such evaluation and counseling session shall be for the
11 purpose of developing trustworthy and reliable expert opinion
12 concerning the pregnant unemancipated minor's sufficiency of
13 knowledge, insight, judgment, and maturity with regard to her
14 abortion decision in order to aid the court in its decision and to
15 make the resources of the state available to the court for this
16 purpose. Persons conducting such sessions may employ the
17 information and printed materials referred to in Sections 1-738.2
18 and 1-738.3 of Title 63 of the Oklahoma Statutes in examining how
19 well the pregnant unemancipated minor is informed about pregnancy,
20 fetal development, abortion risks and consequences, and abortion
21 alternatives, and should also endeavor to verify that the pregnant
22 unemancipated minor is seeking an abortion of her own free will and
23 is not acting under coercion, intimidation, threats, abuse, undue
24 pressure, or extortion by any other persons.

1 C. The results of such evaluation and counseling shall be
2 reported to the court by the most expeditious means, commensurate
3 with security and confidentiality, to assure receipt by the court
4 prior to a hearing on the petition of the pregnant unemancipated
5 minor.

6 SECTION 3. AMENDATORY 63 O.S. 2011, Section 1-740.3, is
7 amended to read as follows:

8 Section 1-740.3 A. If a pregnant unemancipated minor elects
9 not to allow the notification and request for written informed
10 consent of her parent, any judge of a ~~of competent jurisdiction~~
11 district court in the county in which the pregnant unemancipated
12 minor resides shall, upon petition or motion, and after an
13 appropriate hearing, authorize a physician to perform the abortion
14 if the judge determines, by clear and convincing evidence, that the
15 pregnant unemancipated minor is mature and capable of giving
16 informed consent to the proposed abortion based upon her experience
17 level, perspective, and judgment. If the judge determines that the
18 pregnant unemancipated minor is not mature, or if the pregnant
19 unemancipated minor does not claim to be mature, the judge shall
20 determine, by clear and convincing evidence, whether the performance
21 of an abortion upon her without notification and written informed
22 consent of her parent would be in her best interest and shall
23 authorize a physician to perform the abortion without notification
24 and written informed consent if the judge concludes that the best

1 interests of the pregnant unemancipated minor would be served
2 thereby.

3 In assessing the experience level of the pregnant unemancipated
4 minor, the court may consider, among other relevant factors, the age
5 of the pregnant unemancipated minor and experiences working outside
6 the home, living away from home, traveling on her own, handling
7 personal finances, and making other significant decisions. In
8 assessing the perspective of the pregnant unemancipated minor, the
9 court may consider, among other relevant factors, what steps the
10 pregnant unemancipated minor took to explore her options and the
11 extent to which she considered and weighed the potential
12 consequences of each option. In assessing the judgment of the
13 pregnant unemancipated minor, the court may consider, among other
14 relevant factors, the conduct of the pregnant unemancipated minor
15 since learning of her pregnancy and her intellectual ability to
16 understand her options and to make an informed decision. In
17 assessing whether, by clear and convincing evidence, obtaining the
18 notification and written informed consent of the parent of the
19 pregnant unemancipated minor is not in her best interest, a court
20 may not consider the potential financial impact on the pregnant
21 unemancipated minor or the family of the pregnant unemancipated
22 minor if she does not have an abortion.

23 B. If the unemancipated minor, upon whom a medical emergency
24 abortion or an abortion to prevent her death was performed, elects

1 not to allow the notification of her parent, any judge of a district
2 court in the county ~~of competent jurisdiction~~ in which the pregnant
3 unemancipated minor resides shall, upon petition or motion and after
4 an appropriate hearing, authorize the waiving of the required notice
5 of the performed abortion if the judge determines, by clear and
6 convincing evidence, that the unemancipated minor is mature and
7 capable of determining whether notification should be given, or that
8 the waiver would be in the best interest of the unemancipated minor.

9 C. A pregnant unemancipated minor may participate in
10 proceedings in the court on her own behalf, and the court may
11 appoint a guardian ad litem for her. The court shall advise the
12 pregnant unemancipated minor that she has a right to court-appointed
13 counsel and, upon her request, shall provide her with counsel.

14 D. Proceedings in the court under this section shall be
15 confidential and shall be given precedence over other pending
16 matters so that the court may reach a decision promptly and without
17 delay so as to serve the best interests of the pregnant
18 unemancipated minor. A judge of the court who conducts proceedings
19 under this section shall make, in writing, specific factual findings
20 and legal conclusions supporting the decision and shall order a
21 record of the evidence to be maintained, including the findings and
22 conclusions of the court.

23 E. An expedited confidential appeal shall be available to any
24 pregnant unemancipated minor for whom the court denies an order

1 authorizing an abortion without notification and written informed
2 consent of one parent. An order authorizing an abortion without
3 notification and written informed consent of one parent shall not be
4 subject to appeal. No filing fees shall be required of any pregnant
5 unemancipated minor at either the trial or the appellate level.
6 Access to the trial court for the purpose of a petition or motion,
7 and access to the appellate courts for the purpose of making an
8 appeal from the denial of same, shall be afforded a pregnant
9 unemancipated minor twenty-four (24) hours a day, seven (7) days a
10 week.

11 SECTION 4. This act shall become effective November 1, 2013.

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