

1                   **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2                               STATE OF OKLAHOMA

3                               1st Session of the 54th Legislature (2013)

4   HOUSE BILL 1361

                              By: Grau and Ritze

7                               AS INTRODUCED

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

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

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

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

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

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

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

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

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

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

1 addressee. Time of delivery shall be deemed to occur at 12 noon on  
2 the next day on which regular mail delivery takes place, subsequent  
3 to mailing. The information concerning the address of the parent  
4 shall be that which a reasonable and prudent person, under similar  
5 circumstances, would have relied upon as sufficient evidence that  
6 the parent resides at that address.

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

21 b. The physician shall keep a copy of the proof of  
22 identification of the parent and the certified  
23 statement in the medical file of the minor for five  
24

1 (5) years past the majority of the minor, but in no  
2 event less than seven (7) years.

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

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

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

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

1 enforcement or the Department of Human Services about the alleged  
2 sexual abuse.

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

21 2. If the unemancipated minor gives notice to the attending  
22 physician, or an agent of the physician, of her intent to seek a  
23 judicial waiver pursuant to Section 1-740.3 of this title, the  
24 physician, or an agent of the physician, shall file a notice with

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

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

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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13 COMMITTEE REPORT BY: COMMITTEE ON PUBLIC HEALTH, dated 02/18/2013 -  
14 DO PASS, As Coauthored.

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