

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 372

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

AN ACT

RELATING TO HEALTH; ENACTING THE PARENTAL NOTIFICATION ACT;
ESTABLISHING PROCEDURES WHEN CERTAIN FEMALES REQUEST AN
ABORTION; PROVIDING FOR JUDICIAL HEARINGS; PRESCRIBING
PENALTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the
"Parental Notification Act".

Section 2. DEFINITIONS.--As used in the Parental
Notification Act:

A. "abortion" means the intentional termination of
the pregnancy of a female by a person who knows the female is
pregnant;

B. "fetus" means the biological offspring of human
parents;

1 C. "parent" means one parent of the pregnant
2 female or a guardian or conservator of the pregnant female;
3 and

4 D. "physician" means a person licensed to practice
5 in the state as a licensed physician pursuant to the Medical
6 Practice Act or an osteopathic physician licensed pursuant to
7 Chapter 61, Article 10 NMSA 1978.

8 Section 3. NOTIFICATION CONCERNING ABORTION. --

9 A. An abortion shall not be performed upon a
10 female less than sixteen years of age, until at least forty-
11 eight hours after written notice of the pending operation has
12 been delivered in the manner specified in Sections 3, 4 and 5
13 of the Parental Notification Act.

14 B. The notice shall be addressed to the parent by
15 the physician or an agent. The notice shall be addressed to
16 the parent at the usual abode of the parent and shall be sent
17 by certified mail with return receipt requested and restricted
18 delivery to the addressee. Time of delivery shall be deemed
19 to occur at twelve o'clock noon on the next day on which
20 regular mail delivery takes place, subsequent to mailing.

21 Section 4. LIMITATIONS. --

22 A. A notice shall not be required pursuant to the
23 provisions of the Parental Notification Act if:

24 (1) the attending physician certifies in the
25 pregnant female's medical record that the abortion is

1 necessary to preserve the pregnant female's life or physical
2 health and there is insufficient time to provide the required
3 notice;

4 (2) the person who is entitled to notice
5 informs the physician that he has been notified; or

6 (3) if a pregnant female elects not to allow
7 the notification of her parent, a judge of a court of
8 competent jurisdiction shall, upon petition or motion, and
9 after a hearing, authorize a physician to perform the abortion
10 if the judge determines that the pregnant female is capable of
11 giving informed consent to the proposed abortion, or if the
12 judge determines that the performance of an abortion upon her
13 without notification of her parent would be in her best
14 interest.

15 B. A pregnant female may participate in
16 proceedings in the court on her own behalf, and the court may
17 appoint a guardian ad litem for her. The court shall,
18 however, advise her that she has a right to court appointed
19 counsel, and shall, upon her request, provide her with
20 counsel.

21 C. Proceedings in the court pursuant to this
22 section shall be confidential and shall be held within forty-
23 eight hours of the filing of the petition or motion. The
24 court shall enter its decision within twenty-four hours of the
25 hearing. A judge of the court who conducts proceedings

1 pursuant to this section shall make findings of fact and legal
2 conclusions on the record to support the decision.

3 D. An expedited confidential appeal shall be
4 available to a pregnant female for whom the court denies an
5 order authorizing an abortion without notification. An order
6 authorizing an abortion without notification shall not be
7 subject to appeal. Filing fees shall not be required of a
8 pregnant female at either the trial or the appellate level.
9 Access to the trial court for the purposes of a petition or
10 motion, and access to the appellate courts for purposes of
11 making an appeal from denial of the same, shall be afforded to
12 a pregnant female twenty-four hours a day, seven days a week.

13 Section 5. PREGNANCY--PRENATAL, DELIVERY AND POSTNATAL
14 TREATMENT FOR A FEMALE MINOR--CAPACITY TO CONSENT.--A
15 physician or health care provider shall have the authority,
16 within the limits of his license, to provide prenatal,
17 delivery and postnatal care to a female less than sixteen
18 years of age. A female less than sixteen years of age shall
19 have the capacity to consent to prenatal, delivery and
20 postnatal care by a licensed physician or health care
21 provider.

22 Section 6. PENALTY.--Performance of an abortion in
23 knowing violation of the Parental Notification Act shall be a
24 misdemeanor and the offender shall be sentenced pursuant to
25 Section 31-19-1 NMSA 1978. A person shall not be held

1 criminally liable pursuant to this section if the person
2 establishes that the person relied upon evidence sufficient to
3 convince a reasonable person that the representations of the
4 pregnant female were bona fide and true, or if the person
5 attempted with reasonable diligence to deliver notice, but was
6 unable to do so.

7 Section 7. SEVERABILITY.--If any part or application of
8 the Parental Notification Act is held invalid, the remainder
9 or its application to other situations or persons shall not be
10 affected.

11 Section 8. EFFECTIVE DATE.--The effective date of the
12 provisions of this act is July 1, 2001.

underscored material = new
[bracketed material] = delete