

STATE OF NEW YORK

5637

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IN ASSEMBLY

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Introduced by M. of A. CURRAN, FINCH, GIGLIO, GRAF, HARRIS -- Multi-Sponsored by -- M. of A. HAWLEY -- read once and referred to the Committee on Health

AN ACT to amend the public health law and the family court act, in relation to enacting the "family protection act"

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. This act shall be known and may be cited as the "family
2 protection act".
3 § 2. Legislative intent. 1. The legislature finds and declares that:
4 (a) it is the intent of this legislature by enacting this act to
5 further the important and compelling state interests of protecting
6 minors against their own immaturity, fostering the family structure and
7 preserving it as a viable social unit, protecting the rights of parents
8 to rear children who are members of their household, and protecting the
9 health of minor children.
10 (b) immature minors often lack the ability to make fully-informed
11 choices that take account of both immediate and long-range consequences
12 and that the medical, emotional and psychological consequences of
13 abortion are serious and can be lasting, particularly when the patient
14 is immature. The capacity to become pregnant and the capacity for mature
15 judgment concerning the wisdom of an abortion are not necessarily
16 related. Parents ordinarily possess information essential to a physi-
17 cian's exercise of his best medical judgment concerning the child and,
18 further, parents who are aware that their minor daughter has had an
19 abortion may better ensure that she receives adequate medical attention
20 after her abortion. The legislature concludes then, that, parental
21 consultation is usually desirable and in the best interest of the minor.
22 (c) it is essential to the psychological and physical well-being of a
23 female considering an abortion that she receive complete and accurate
24 information on her alternatives. The knowledgeable exercise of a woman's

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.

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1 decision to have an abortion depends on the extent to which the female
 2 receives sufficient information to make an informed choice between two
 3 alternatives: giving birth or having an abortion.

4 (d) over eighty percent of all abortions are performed in clinics
 5 devoted solely to providing abortions and family planning services. Most
 6 females who seek abortions at these facilities do not have any relation-
 7 ship with the physician who performs the abortion, before or after the
 8 procedure. They do not return to the facility for post-surgical care. In
 9 most instances, the female's only actual contact with the physician
 10 occurs simultaneously with the abortion procedure, with little opportu-
 11 nity to receive counseling concerning her decision.

12 (e) the decision to abort is an important, and often stressful one and
 13 it is desirable and imperative that it be made with full knowledge of
 14 its nature and consequences. The medical, emotional and psychological
 15 consequences of an abortion are serious and can be lasting.

16 (f) abortion facilities or providers offer only limited and/or imper-
 17 sonal counseling opportunities. Many abortion facilities or providers
 18 hire untrained and unprofessional "counselors" whose primary goal is to
 19 sell abortion services.

20 2. Based on the findings and declarations set forth in subdivision one
 21 of this section, it is the intent of this act to:

22 (a) provide that pregnant minors have the benefit of parental guid-
 23 ance;

24 (b) ensure that every female considering an abortion receive complete
 25 information on her alternatives and that every female submitting to an
 26 abortion do so only after giving her voluntary and informed consent to
 27 the abortion procedure;

28 (c) protect unborn children from a mother's uninformed decision to
 29 have an abortion; and

30 (d) reduce the risk that a mother may elect an abortion, only to
 31 discover later, with devastating psychological consequences, that her
 32 decision was not fully informed.

33 § 3. Article 25 of the public health law is amended by adding a new
 34 title 1-C to read as follows:

35 TITLE I-C
 36 FAMILY PROTECTION ACT

37 Section 2515-e. Definitions.

38 2515-f. Consent concerning an abortion.

39 2515-g. Limitations.

40 2515-h. Coercion prohibited.

41 2515-i. Informed consent requirement.

42 2515-j. Publication of materials.

43 2515-k. Emergency.

44 2515-l. Penalties.

45 2515-m. Anonymity.

46 § 2515-e. Definitions. For the purposes of this section, the following
 47 terms shall have the following meanings:

48 (a) "Abortion" means the use or prescription of any instrument, medi-
 49 cine, drug or any other substance or device with the intent to terminate
 50 the pregnancy of a female known to be pregnant with intent other than to
 51 increase probability of a live birth, to preserve the life or health of
 52 the child after live birth, or to remove a dead fetus.

53 (b) "Attempt to perform an abortion" means an act or omission of a
 54 statutorily required act, that, under the circumstances as the actor

1 believes them to be, constitutes a substantial step in a course of
2 conduct planned to culminate in the performance of an abortion in the
3 state of New York in violation of this title.

4 (c) "Unemancipated minor" means a female who has not attained the age
5 of eighteen years and is not an emancipated minor as defined in subdivi-
6 sion (d) of this section.

7 (d) "Emancipated minor" means a female who is or has been lawfully
8 married or has by court order or otherwise been freed from the care,
9 custody and control of her parents.

10 (e) "Medical emergency" means any condition which, on the basis of the
11 physician's good faith clinical judgment, so complicates the medical
12 condition of a pregnant female as to necessitate the immediate abortion
13 of her pregnancy to avert her death or for which delay will create seri-
14 ous risk of substantial or irreversible impairment of a major bodily
15 function.

16 (f) "Parent" means one parent of the pregnant female, or guardian or
17 conservator if the pregnant female has one.

18 (g) "Conception" means the fusion of a human spermatozoon with a human
19 ovum.

20 (h) "Gestational age" means the time that has elapsed since the first
21 day of a female's last menstrual period.

22 (i) "Physician" means any person licensed to practice medicine in this
23 state. The term includes medical doctors and doctors of osteopathy.

24 (j) "Pregnant" or "pregnancy" means the female reproductive condition
25 of having an unborn child in the female's body.

26 (k) "Agent" means an agent of the physician who is a psychologist,
27 licensed social worker, licensed professional counselor, registered
28 nurse or physician.

29 (l) "Unborn child" means the offspring of human beings from conception
30 until birth.

31 (m) "Viability" and "viable" means that stage in fetal development
32 when the life of the unborn child may be continued indefinitely outside
33 the womb by natural or artificial life-supportive systems.

34 (n) "Female" means any person of the female gender.

35 § 2515-f. Consent concerning an abortion. No person shall knowingly
36 perform an abortion upon an unemancipated minor or upon a female for
37 whom a guardian or conservator has been appointed because of a finding
38 of incompetency, unless the attending physician has secured the written
39 consent of one parent or guardian or conservator if the pregnant female
40 has one. In obtaining the consent of the unemancipated minor's parent
41 or the female's guardian or conservator, the physician shall provide the
42 information and materials specified in section twenty-five hundred
43 fifteen-i of this title and shall obtain from them the certification
44 required by subdivision (c) of section twenty-five hundred fifteen-i of
45 this title.

46 (a) The written consent shall be addressed to the parent or guardian
47 at the usual place of abode of the parent or guardian and delivered
48 personally to the parent or guardian by the physician or an agent.

49 (b) In lieu of the delivery required by subdivision (a) of this
50 section, notice shall be made by certified mail addressed to the parent
51 or guardian at the usual place of abode of the parent or guardian with
52 return receipt requested with restricted delivery to the addressee. Time
53 of delivery shall be deemed to occur at twelve o'clock noon on the third
54 day after mailing.

55 § 2515-g. Limitations. No consent shall be required under this title
56 if:

1 (a) the attending physician certifies in the pregnant minor's medical
2 record that the abortion is necessary to prevent the minor's death and
3 there is insufficient time to obtain the required consent; or

4 (b) the person who is entitled to consent certifies in writing that
5 he/she has consented; or

6 (c) the minor elects not to obtain consent of her parent or guardian
7 or conservator and obtains an order issued by a judge of the family
8 court as provided in article ten-D of the family court act, or by any
9 other judge or justice of this state having jurisdiction, dispensing
10 with such consent.

11 § 2515-h. Coercion prohibited. No parent, guardian or other person
12 shall coerce any female to undergo an abortion. Any female who is
13 threatened with such coercion may apply to a court of competent juris-
14 isdiction for relief. The court shall provide a minor with counsel, give
15 the matter expedited consideration and grant such relief as may be
16 necessary to prevent such coercion. Should a minor be denied financial
17 support of her parents by reason of her refusal to undergo an abortion,
18 she shall be considered emancipated for purposes of eligibility for
19 assistance benefits.

20 § 2515-i. Informed consent requirement. No abortion shall be performed
21 or induced without the voluntary and informed consent of the female upon
22 whom the abortion is to be performed or induced. Except in the case of a
23 medical emergency, consent to an abortion is voluntary and informed if
24 and only if:

25 (a) at least twenty-four hours prior to the abortion, the physician
26 who is to perform the abortion or the referring physician has informed
27 the female, by telephone or in person, of:

- 28 1. the name of the physician who will perform the abortion;
- 29 2. the nature of the proposed abortion method and of those risks and
30 alternatives to the method that a reasonable patient would consider
31 material to the decision or whether or not to undergo the abortion;
- 32 3. the probable gestational age of the unborn child at the time the
33 abortion is to be performed, and, if the unborn child is viable or has
34 reached the gestational age of twenty-two weeks, that (i) the unborn
35 child may be able to survive outside the womb; (ii) the woman has the
36 right to request the physician to use the form of treatment that is most
37 likely to preserve the life of the unborn child; and (iii) if the unborn
38 child is born alive, the attending physician has the legal obligation to
39 take all reasonable steps necessary to maintain the life and health of
40 the child;
- 41 4. the probable anatomical and physiological characteristics of the
42 unborn child at the time the abortion is to be performed;
- 43 5. the medical risks associated with carrying her child to term;
- 44 6. the medical and psychological risks associated with abortion; and
- 45 7. any need for anti-Rh immune globulin therapy, if she is Rh nega-
46 tive, the likely consequences of refusing such therapy and the cost of
47 the therapy.

48 The information required by this subdivision may be provided by tele-
49 phone without conducting a physical examination or tests of the patient,
50 in which case the information required to be provided may be based on
51 facts supplied to the physician by the female and whatever other rele-
52 vant information is reasonably available to the physician. It may not be
53 provided by a tape recording, but shall be provided during a consulta-
54 tion in which the physician is able to ask questions of the female and
55 the female is able to ask questions of the physician. If a physical
56 examination, tests, or the availability of other information to the

1 physician subsequently indicates in the medical judgment of the physi-
2 cian, a revision of the information previously supplied to the patient,
3 that revised information may be communicated to the patient at any time
4 prior to the performance of the abortion. Nothing in this section may be
5 construed to preclude provision of required information in a language
6 understood by the patient through a translator.

7 (b) at least twenty-four hours prior to the abortion, the physician
8 who is to perform the abortion, the referring physician, or an agent of
9 either physician shall inform the female, by telephone or in person,
10 that:

11 1. medical assistance benefits may be available for prenatal care,
12 childbirth and neonatal care;

13 2. the father of the unborn child is liable to assist in the support
14 of her child, even in the instances where he has offered to pay for the
15 abortion. In the case of forcible rape, this information may be omit-
16 ted;

17 3. she has the right to review the printed materials published pursu-
18 ant to section twenty-five hundred fifteen-j of this title. The physi-
19 cian or physician's agent shall orally inform the woman the materials
20 have been provided by the state of New York and that they describe the
21 unborn child and list agencies which offer alternatives to abortion. If
22 the female chooses to view the materials, they shall either be given to
23 her at least twenty-four hours before the abortion or mailed to her at
24 least seventy-two hours before the abortion by certified mail,
25 restricted delivery to addressee. The information required by this
26 paragraph may be provided by a tape recording if the provision is made
27 to record or otherwise register whether the woman does or does not
28 choose to review the printed materials;

29 4. the state encourages her to view an ultrasound image of her unborn
30 child before she decides to have an abortion. If she chooses to view an
31 ultrasound image of her unborn child, the physician who is to perform
32 the abortion or the referring physician shall issue a medical order for
33 the ultrasound service at any medical facility that provides ultrasound
34 imaging services. If the female does not have private health insurance
35 coverage for the ultrasound service, she shall be presumptively eligible
36 for medical assistance coverage for the ultrasound service;

37 5. she is free to withhold or withdraw her consent to the abortion at
38 any time before or during an abortion without affecting her right to
39 future care or treatment and without the loss of any state or federal-
40 ly-funded benefits to which she might otherwise be entitled.

41 (c) the female certifies in writing, prior to the abortion, that the
42 information required to be provided under subdivisions (a) and (b) of
43 this section has been provided.

44 (d) prior to the performance of the abortion, the physician who is to
45 perform the abortion or his agent receives a copy of the written certif-
46 ication prescribed by subdivision (c) of this section.

47 (e) the female is not required to pay any amount for the abortion
48 procedure until the twenty-four hour waiting period has expired.

49 § 2515-j. Publication of materials. (a) The department shall cause to
50 be published in English and Spanish, within one hundred two days after
51 the effective date of this title, and shall update on an annual basis,
52 the following easily comprehensible printed materials:

53 1. geographically indexed materials designed to inform the woman of
54 public and private agencies and services available to assist a female
55 through pregnancy, upon childbirth and while her child is dependent,
56 including but not limited to, adoption agencies. The materials shall

1 include a comprehensive list of the agencies, a description of the
2 services they offer, and the telephone numbers and addresses of the
3 agencies; and inform the woman about available medical assistance bene-
4 fits for prenatal care, childbirth, and neonatal care and about the
5 support obligations of the father of the child who is born alive. The
6 department shall ensure that the materials described in this section are
7 comprehensive and do not directly or indirectly promote, exclude or
8 discourage the use of any agency or service described in this section.
9 The materials should also contain a toll-free twenty-four hour a day
10 telephone number which may be called to obtain, orally, such a list and
11 description of agencies in the locality of the caller and of the
12 services they offer. The materials shall state that it is unlawful for
13 any individual to coerce a female to undergo an abortion, that any
14 physician who performs an abortion without her informed consent may be
15 liable to her for damages in a civil action at law and that the law
16 permits adoptive parents to pay costs of prenatal care, childbirth and
17 neonatal care. The material shall include the following statement:
18 "There are many public and private agencies willing and able to help you
19 to carry your child to term, and to assist you and your child after
20 your child is born, whether you choose to keep your child or place your
21 child for adoption. The state of New York strongly urges you to contact
22 them before making a final decision about abortion. The law requires
23 that your physician or his agent give you the opportunity to call agen-
24 cies like these before you undergo an abortion."

25 2. materials that inform the pregnant female of the probable anatom-
26 ical and physiological characteristics of the unborn child at two-week
27 gestational increments from fertilization to full term, including
28 pictures or drawings representing the development of unborn children at
29 two-week gestational increments, and any relevant information on the
30 possibility of the unborn child's survival; provided that any such
31 pictures or drawings shall contain the dimensions of the unborn child
32 and shall be realistic. The materials shall be objective and nonjudg-
33 mental and designed to convey only accurate scientific information about
34 the unborn child at the various gestational ages. The material shall
35 also contain objective information describing the methods of abortion
36 procedures commonly employed, the medical risks commonly associated with
37 each such procedure, and the medical risks associated with carrying a
38 child to term.

39 (b) The materials shall be printed in a typeface large enough to be
40 clearly legible.

41 (c) The materials required under this section shall be available at no
42 cost from the department upon request and in appropriate number to any
43 person, facility or hospital.

44 § 2515-k. Emergency. Where a medical emergency compels the performance
45 of an abortion, the physician shall inform the female, before the
46 abortion, of the medical indications supporting his judgment that an
47 abortion is necessary to avert her death or to avert substantial and
48 irreversible impairment of a major bodily function.

49 § 2515-l. Penalties. (a) Any person who knowingly or recklessly
50 performs or attempts to perform an abortion in violation of this title
51 shall be guilty of a felony. No penalty shall be assessed against the
52 female upon whom the abortion is performed or attempted to be performed.
53 No penalty or civil liability shall be assessed for failure to comply
54 with paragraph three of subdivision (b) or subdivision (c) of section
55 twenty-five hundred fifteen-i of this title unless the department has
56 made the printed materials available at the time the physician or the

1 physician's agent is required to inform the woman of her right to review
2 them.

3 (b) In addition to whatever remedies are available under the common or
4 statutory law of this state, any person upon whom an abortion has been
5 performed without complying with the provisions of this title, the
6 father of the unborn child who was the subject of such an abortion, or
7 the grandparent of such an unborn child may maintain an action against
8 the person who performed the abortion in knowing or reckless violation
9 of this title for actual and punitive damages. Any person upon whom an
10 abortion has been attempted without complying with this title may main-
11 tain an action against the person who attempted to perform the abortion
12 in knowing or reckless violation of this title for actual and punitive
13 damages. If judgment is rendered in favor of the plaintiff in any action
14 described in this section, the court shall also render judgment for a
15 reasonable attorney's fee in favor of the plaintiff against the defend-
16 ant. If judgment is rendered in favor of the defendant and the court
17 finds that the plaintiff's suit was frivolous and brought in bad faith,
18 the court shall also render judgment for a reasonable attorney's fee in
19 favor of the defendant against the plaintiff.

20 § 2515-m. Anonymity. In every civil or criminal proceeding or action
21 brought under this title, the court shall rule whether the anonymity of
22 any female upon whom an abortion has been performed or attempted shall
23 be preserved from public disclosure if she does not give her consent to
24 such disclosure. The court, upon motion sua sponte, shall make such a
25 ruling and upon determining that her anonymity should be preserved,
26 shall issue orders to their parties, witnesses, and counsel and shall
27 direct the sealing of the record and exclusion of individuals from the
28 courtrooms or hearing rooms to the extent necessary to safeguard her
29 identity from public disclosure. Each such order shall be accompanied by
30 specific written findings explaining why the anonymity of the female
31 should be preserved from public disclosure, why the order is essential
32 to that end, how the order is narrowly tailored to serve that interest,
33 and why no reasonable less restrictive alternative exists. In the
34 absence of written consent of the female upon whom an abortion has been
35 performed or attempted, anyone, other than a public official who brings
36 an action under subdivision (b) of section twenty-five hundred fifteen-1
37 of this title shall do so under a pseudonym.

38 § 4. The family court act is amended by adding a new article 10-D to
39 read as follows:

40 ARTICLE 10-D
41 PROCEEDING TO OBTAIN AN ORDER WAIVING
42 PARENTAL CONSENT

- 43 Section 1097. Purposes.
44 1098. Definitions.
45 1099. Jurisdiction.
46 1100. Procedure.

47 § 1097. Purposes. This article is intended to establish procedures to
48 implement the provisions contained in title one-C of article twenty-five
49 of the public health law.

50 § 1098. Definitions. When used in this article, the term abortion
51 shall have the same meanings as set forth in subdivision (a) of section
52 twenty-five hundred fifteen-e of the public health law and the term
53 "mature minor" shall mean a person under the age of eighteen who is
54 unemancipated as that term is defined in subdivision (c) of section
55 twenty-five hundred fifteen-e of the public health law and who is able

1 to make an informed, reasoned and considered judgment in connection with
2 a decision whether or not to proceed with the abortion.

3 § 1099. Jurisdiction. The family court has exclusive original juris-
4 isdiction over proceedings under this article to obtain an order waiving
5 parental consent of an abortion.

6 § 1100. Procedure. Notwithstanding any other provision of law:

7 1. the waiver of parental consent to an abortion upon or with respect
8 to an unemancipated minor may be obtained by order of a judge of the
9 family court in the county where such person resides or if she is not a
10 resident of this state in the county where the abortion is to be
11 performed, on application by such person or by a relative of such person
12 or other interested party.

13 2. such court proceedings shall be commenced ex parte and may be
14 commenced and continued without the payment of any fees. The court shall
15 advise the minor that she has a right to court-appointed counsel and
16 shall provide her with such counsel upon her request.

17 3. such application shall be given immediate consideration and a hear-
18 ing shall be held immediately at which the person upon or with respect
19 to whom the abortion is to be performed shall be present. The court
20 shall issue written and specific factual findings and legal conclusions
21 supporting its decision and shall order that a confidential record of
22 the evidence be maintained. All proceedings with respect to such appli-
23 cation, including an appeal therefrom, shall protect the anonymity of
24 the minor. Such proceedings shall be sealed and no other person shall be
25 allowed access to such sealed records except upon an order of a judge of
26 the court in which the application was processed or of a justice of the
27 supreme court of the judicial district, and no such order shall be
28 granted except for good cause shown.

29 4. an order shall issue only upon a finding by the court (a) that such
30 person desires to submit to such abortion; (b) that such person is
31 either a mature minor or that such abortion is in the best interest of
32 such person; and (c) that a previous application for such order has not
33 been made and denied upon the same grounds. If the court so finds the
34 order shall issue.

35 5. in the event that the court shall deny the application for the
36 order, an expedited anonymous appeal shall be available to such appli-
37 cant to the appellate division of the supreme court of the judicial
38 department in which the court which rendered the decision is located.
39 The notice of intent to appeal shall be filed within twenty-four hours
40 from the date of issuance of the order. The record on appeal shall be
41 completed and the appeal shall be perfected within five days from the
42 filing of the notice to appeal. Because time may be of the essence
43 regarding the performance of the abortion, the supreme court shall, by
44 court rule, provide for expedited appellate review of cases appealed
45 under this section.

46 6. the office of court administration shall promulgate any rules and
47 regulations necessary to ensure that proceedings under this section are
48 handled in an expeditious and anonymous matter.

49 7. the supreme court, in its discretion, may issue such other and
50 further lawful orders as it deems necessary to protect such person.

51 § 5. Severability. If any clause, sentence, paragraph, section or part
52 of this act shall be adjudged by any court of competent jurisdiction to
53 be invalid and after exhaustion of all further judicial review, the
54 judgment shall not affect, impair or invalidate the remainder thereof,
55 but shall be confined in its operation to the clause, sentence, para-

1 graph, section or part of this act directly involved in the controversy
2 in which the judgment shall have been rendered.
3 § 6. This act shall take effect on the ninetieth day after it shall
4 have become a law.