

# STATE OF NEW YORK

5637

2017-2018 Regular Sessions

## IN ASSEMBLY

February 14, 2017

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.