

FAMILY CODE

CHAPTER 33. NOTICE OF ABORTION

Sec. 33.001. DEFINITIONS. In this chapter:

(1) "Abortion" means the use of any means to terminate the pregnancy of a female known by the attending physician to be pregnant, with the intention that the termination of the pregnancy by those means will with reasonable likelihood cause the death of the fetus. This definition, as applied in this chapter, applies only to an unemancipated minor known by the attending physician to be pregnant and may not be construed to limit a minor's access to contraceptives.

(2) "Fetus" means an individual human organism from fertilization until birth.

(3) "Guardian" means a court-appointed guardian of the person of the minor.

(4) "Physician" means an individual licensed to practice medicine in this state.

(5) "Unemancipated minor" includes a minor who:

(A) is unmarried; and

(B) has not had the disabilities of minority removed under Chapter 31.

Added by Acts 1999, 76th Leg., ch. 395, Sec. 1, eff. Sept. 1, 1999.

Sec. 33.002. PARENTAL NOTICE. (a) A physician may not perform an abortion on a pregnant unemancipated minor unless:

(1) the physician performing the abortion gives at least 48 hours actual notice, in person or by telephone, of the physician's intent to perform the abortion to:

(A) a parent of the minor, if the minor has no managing conservator or guardian; or

(B) a court-appointed managing conservator or guardian;

(2) the judge of a court having probate jurisdiction,

the judge of a county court at law, the judge of a district court, including a family district court, or a court of appellate jurisdiction issues an order authorizing the minor to consent to the abortion as provided by Section 33.003 or 33.004;

(3) a probate court, county court at law, district court, including a family district court, or court of appeals, by its inaction, constructively authorizes the minor to consent to the abortion as provided by Section 33.003 or 33.004; or

(4) the physician performing the abortion:

(A) concludes that on the basis of the physician's good faith clinical judgment, a condition exists that complicates the medical condition of the pregnant minor and necessitates the immediate abortion of her pregnancy to avert her death or to avoid a serious risk of substantial and irreversible impairment of a major bodily function; and

(B) certifies in writing to the Texas Department of Health and in the patient's medical record the medical indications supporting the physician's judgment that the circumstances described by Paragraph (A) exist.

(b) If a person to whom notice may be given under Subsection (a)(1) cannot be notified after a reasonable effort, a physician may perform an abortion if the physician gives 48 hours constructive notice, by certified mail, restricted delivery, sent to the last known address, to the person to whom notice may be given under Subsection (a)(1). The period under this subsection begins when the notice is mailed. If the person required to be notified is not notified within the 48-hour period, the abortion may proceed even if the notice by mail is not received.

(c) The requirement that 48 hours actual notice be provided under this section may be waived by an affidavit of:

(1) a parent of the minor, if the minor has no managing conservator or guardian; or

(2) a court-appointed managing conservator or guardian.

(d) A physician may execute for inclusion in the minor's medical record an affidavit stating that, according to the best information and belief of the physician, notice or constructive notice has been provided as required by this section. Execution of an affidavit under this subsection creates a presumption that the requirements of this section have been satisfied.

(e) The Texas Department of Health shall prepare a form to be used for making the certification required by Subsection (a)(4).

(f) A certification required by Subsection (a)(4) is confidential and privileged and is not subject to disclosure under Chapter 552, Government Code, or to discovery, subpoena, or other legal process. Personal or identifying information about the minor, including her name, address, or social security number, may not be included in a certification under Subsection (a)(4). The physician must keep the medical records on the minor in compliance with the rules adopted by the Texas State Board of Medical Examiners under Section 153.003, Occupations Code.

(g) A physician who intentionally performs an abortion on a pregnant unemancipated minor in violation of this section commits an offense. An offense under this subsection is punishable by a fine not to exceed \$10,000. In this subsection, "intentionally" has the meaning assigned by Section 6.03(a), Penal Code.

(h) It is a defense to prosecution under this section that the minor falsely represented her age or identity to the physician to be at least 18 years of age by displaying an apparently valid governmental record of identification such that a reasonable person under similar circumstances would have relied on the representation. The defense does not apply if the physician is shown to have had independent knowledge of the minor's actual age or identity or failed to use due diligence in determining the minor's age or identity. In this subsection, "defense" has the

meaning and application assigned by Section 2.03, Penal Code.

(i) In relation to the trial of an offense under this section in which the conduct charged involves a conclusion made by the physician under Subsection (a)(4), the defendant may seek a hearing before the Texas State Board of Medical Examiners on whether the physician's conduct was necessary to avert the death of the minor or to avoid a serious risk of substantial and irreversible impairment of a major bodily function. The findings of the Texas State Board of Medical Examiners under this subsection are admissible on that issue in the trial of the defendant. Notwithstanding any other reason for a continuance provided under the Code of Criminal Procedure or other law, on motion of the defendant, the court shall delay the beginning of the trial for not more than 30 days to permit a hearing under this subsection to take place.

Added by Acts 1999, 76th Leg., ch. 395, Sec. 1, eff. Sept. 1, 1999.

Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.741, eff. Sept. 1, 2001.

Sec. 33.003. JUDICIAL APPROVAL. (a) A pregnant minor who wishes to have an abortion without notification to one of her parents, her managing conservator, or her guardian may file an application for a court order authorizing the minor to consent to the performance of an abortion without notification to either of her parents or a managing conservator or guardian.

(b) The application may be filed in any county court at law, court having probate jurisdiction, or district court, including a family district court, in this state.

(c) The application must be made under oath and include:

- (1) a statement that the minor is pregnant;
- (2) a statement that the minor is unmarried, is under 18 years of age, and has not had her disabilities removed under Chapter 31;

(3) a statement that the minor wishes to have an abortion without the notification of either of her parents or a managing conservator or guardian; and

(4) a statement as to whether the minor has retained an attorney and, if she has retained an attorney, the name, address, and telephone number of her attorney.

(d) The clerk of the court shall deliver a courtesy copy of the application made under this section to the judge who is to hear the application.

(e) The court shall appoint a guardian ad litem for the minor. If the minor has not retained an attorney, the court shall appoint an attorney to represent the minor. If the guardian ad litem is an attorney admitted to the practice of law in this state, the court may appoint the guardian ad litem to serve as the minor's attorney.

(f) The court may appoint to serve as guardian ad litem:

(1) a person who may consent to treatment for the minor under Sections 32.001(a)(1)-(3);

(2) a psychiatrist or an individual licensed or certified as a psychologist under Chapter 501, Occupations Code;

(3) an appropriate employee of the Department of Protective and Regulatory Services;

(4) a member of the clergy; or

(5) another appropriate person selected by the court.

(g) The court shall fix a time for a hearing on an application filed under Subsection (a) and shall keep a record of all testimony and other oral proceedings in the action. The court shall enter judgment on the application immediately after the hearing is concluded.

(h) The court shall rule on an application submitted under this section and shall issue written findings of fact and conclusions of law not later than 5 p.m. on the second business day

after the date the application is filed with the court. On request by the minor, the court shall grant an extension of the period specified by this subsection. If a request for an extension is made, the court shall rule on an application and shall issue written findings of fact and conclusions of law not later than 5 p.m. on the second business day after the date the minor states she is ready to proceed to hearing. If the court fails to rule on the application and issue written findings of fact and conclusions of law within the period specified by this subsection, the application is deemed to be granted and the physician may perform the abortion as if the court had issued an order authorizing the minor to consent to the performance of the abortion without notification under Section 33.002. Proceedings under this section shall be given precedence over other pending matters to the extent necessary to assure that the court reaches a decision promptly.

(i) The court shall determine by a preponderance of the evidence whether the minor is mature and sufficiently well informed to make the decision to have an abortion performed without notification to either of her parents or a managing conservator or guardian, whether notification would not be in the best interest of the minor, or whether notification may lead to physical, sexual, or emotional abuse of the minor. If the court finds that the minor is mature and sufficiently well informed, that notification would not be in the minor's best interest, or that notification may lead to physical, sexual, or emotional abuse of the minor, the court shall enter an order authorizing the minor to consent to the performance of the abortion without notification to either of her parents or a managing conservator or guardian and shall execute the required forms.

(j) If the court finds that the minor does not meet the requirements of Subsection (i), the court may not authorize the minor to consent to an abortion without the notification authorized

under Section 33.002(a)(1).

(k) The court may not notify a parent, managing conservator, or guardian that the minor is pregnant or that the minor wants to have an abortion. The court proceedings shall be conducted in a manner that protects the anonymity of the minor. The application and all other court documents pertaining to the proceedings are confidential and privileged and are not subject to disclosure under Chapter 552, Government Code, or to discovery, subpoena, or other legal process. The minor may file the application using a pseudonym or using only her initials.

(l) An order of the court issued under this section is confidential and privileged and is not subject to disclosure under Chapter 552, Government Code, or discovery, subpoena, or other legal process. The order may not be released to any person but the pregnant minor, the pregnant minor's guardian ad litem, the pregnant minor's attorney, another person designated to receive the order by the minor, or a governmental agency or attorney in a criminal or administrative action seeking to assert or protect the interest of the minor. The supreme court may adopt rules to permit confidential docketing of an application under this section.

(m) The clerk of the supreme court shall prescribe the application form to be used by the minor filing an application under this section.

(n) A filing fee is not required of and court costs may not be assessed against a minor filing an application under this section.

Added by Acts 1999, 76th Leg., ch. 395, Sec. 1, eff. Sept. 1, 1999.

Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.742, eff. Sept. 1, 2001.

Sec. 33.004. APPEAL. (a) A minor whose application under Section 33.003 is denied may appeal to the court of appeals having jurisdiction over civil matters in the county in which the

application was filed. On receipt of a notice of appeal, the clerk of the court that denied the application shall deliver a copy of the notice of appeal and record on appeal to the clerk of the court of appeals. On receipt of the notice and record, the clerk of the court of appeals shall place the appeal on the docket of the court.

(b) The court of appeals shall rule on an appeal under this section not later than 5 p.m. on the second business day after the date the notice of appeal is filed with the court that denied the application. On request by the minor, the court shall grant an extension of the period specified by this subsection. If a request for an extension is made, the court shall rule on the appeal not later than 5 p.m. on the second business day after the date the minor states she is ready to proceed. If the court of appeals fails to rule on the appeal within the period specified by this subsection, the appeal is deemed to be granted and the physician may perform the abortion as if the court had issued an order authorizing the minor to consent to the performance of the abortion without notification under Section 33.002. Proceedings under this section shall be given precedence over other pending matters to the extent necessary to assure that the court reaches a decision promptly.

(c) A ruling of the court of appeals issued under this section is confidential and privileged and is not subject to disclosure under Chapter 552, Government Code, or discovery, subpoena, or other legal process. The ruling may not be released to any person but the pregnant minor, the pregnant minor's guardian ad litem, the pregnant minor's attorney, another person designated to receive the ruling by the minor, or a governmental agency or attorney in a criminal or administrative action seeking to assert or protect the interest of the minor. The supreme court may adopt rules to permit confidential docketing of an appeal under this section.



(d) The clerk of the supreme court shall prescribe the notice of appeal form to be used by the minor appealing a judgment under this section.

(e) A filing fee is not required of and court costs may not be assessed against a minor filing an appeal under this section.

(f) An expedited confidential appeal shall be available to any pregnant minor to whom a court of appeals denies an order authorizing the minor to consent to the performance of an abortion without notification to either of her parents or a managing conservator or guardian.

Added by Acts 1999, 76th Leg., ch. 395, Sec. 1, eff. Sept. 1, 1999.

Sec. 33.005. AFFIDAVIT OF PHYSICIAN. (a) A physician may execute for inclusion in the minor's medical record an affidavit stating that, after reasonable inquiry, it is the belief of the physician that:

(1) the minor has made an application or filed a notice of an appeal with a court under this chapter;

(2) the deadline for court action imposed by this chapter has passed; and

(3) the physician has been notified that the court has not denied the application or appeal.

(b) A physician who in good faith has executed an affidavit under Subsection (a) may rely on the affidavit and may perform the abortion as if the court had issued an order granting the application or appeal.

Added by Acts 1999, 76th Leg., ch. 395, Sec. 1, eff. Sept. 1, 1999.

Sec. 33.006. GUARDIAN AD LITEM IMMUNITY. A guardian ad litem appointed under this chapter and acting in the course and scope of the appointment is not liable for damages arising from an act or omission of the guardian ad litem committed in good faith. The immunity granted by this section does not apply if the conduct of the guardian ad litem is committed in a manner described by

Sections 107.003(b)(1)-(4).

Added by Acts 1999, 76th Leg., ch. 395, Sec. 1, eff. Sept. 1, 1999.

Sec. 33.007. COSTS PAID BY STATE. (a) A court acting under Section 33.003 or 33.004 may issue an order requiring the state to pay:

(1) the cost of any attorney ad litem and any guardian ad litem appointed for the minor;

(2) notwithstanding Sections 33.003(n) and 33.004(e), the costs of court associated with the application or appeal; and

(3) any court reporter's fees incurred.

(b) An order issued under Subsection (a) must be directed to the comptroller, who shall pay the amount ordered from funds appropriated to the Texas Department of Health.

Added by Acts 1999, 76th Leg., ch. 395, Sec. 1, eff. Sept. 1, 1999.

Sec. 33.008. PHYSICIAN'S DUTY TO REPORT ABUSE OF A MINOR; INVESTIGATION AND ASSISTANCE. (a) A physician who has reason to believe that a minor has been or may be physically or sexually abused by a person responsible for the minor's care, custody, or welfare, as that term is defined by Section 261.001, shall immediately report the suspected abuse to the Department of Protective and Regulatory Services and shall refer the minor to the department for services or intervention that may be in the best interest of the minor.

(b) The Department of Protective and Regulatory Services shall investigate suspected abuse reported under this section and, if appropriate, shall assist the minor in making an application with a court under Section 33.003.

Added by Acts 1999, 76th Leg., ch. 395, Sec. 1, eff. Sept. 1, 1999.

Sec. 33.009. OTHER REPORTS OF SEXUAL ABUSE OF A MINOR. A court or the guardian ad litem or attorney ad litem for the minor shall report conduct reasonably believed to violate Section 22.011, 22.021, or 25.02, Penal Code, based on information obtained during

a confidential court proceeding held under this chapter to:

- (1) any local or state law enforcement agency;
- (2) the Department of Protective and Regulatory Services, if the alleged conduct involves a person responsible for the care, custody, or welfare of the child;
- (3) the state agency that operates, licenses, certifies, or registers the facility in which the alleged conduct occurred, if the alleged conduct occurred in a facility operated, licensed, certified, or registered by a state agency; or
- (4) an appropriate agency designated by the court.

Added by Acts 1999, 76th Leg., ch. 395, Sec. 1, eff. Sept. 1, 1999.

Sec. 33.010. CONFIDENTIALITY. Notwithstanding any other law, information obtained by the Department of Protective and Regulatory Services or another entity under Section 33.008 or 33.009 is confidential except to the extent necessary to prove a violation of Section 22.011, 22.021, or 25.02, Penal Code.

Added by Acts 1999, 76th Leg., ch. 395, Sec. 1, eff. Sept. 1, 1999.

Sec. 33.011. INFORMATION RELATING TO JUDICIAL BYPASS. The Texas Department of Health shall produce and distribute informational materials that explain the rights of a minor under this chapter. The materials must explain the procedures established by Sections 33.003 and 33.004 and must be made available in English and in Spanish. The material provided by the department shall also provide information relating to alternatives to abortion and health risks associated with abortion.

Added by Acts 1999, 76th Leg., ch. 395, Sec. 1, eff. Sept. 1, 1999.