



The Supreme Court of Texas

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August 1, 2022

Mr. Charles L. "Chip" Babcock
Chair, Supreme Court Advisory Committee
Jackson Walker L.L.P.
cbabcock@jw.com

Re: Referral of Rules Issues

Dear Chip:

The Supreme Court requests the Advisory Committee to study and make recommendations on the following matters.

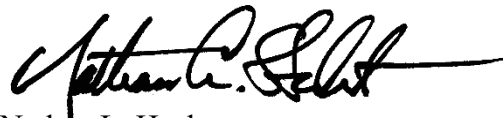
Parental Notification Rules and Forms. HB 1280, passed by the 87th Legislature, prohibits abortions, except in certain circumstances. HB 1280 does not expressly repeal or amend Chapter 33 of the Family Code, which governs parental notice of an abortion for an unemancipated minor. In 1999, following the enactment of Chapter 33, the Court promulgated rules governing proceedings to obtain a court order and forms for use in these proceedings. Those rules and forms were amended in 2015 to reflect amendments to Chapter 33. The Court ask the Committee to consider whether to repeal or amend the rules and forms in response to HB 1290 and to draft any recommended amendments. The Committee should conclude its work on this matter at the August 19, 2022 meeting.

Texas Rule of Civil Procedure 7. On May 18, 2020, in response to statutory probate court policies that prohibit executors from proceeding pro se, the Court asked the Committee to consider whether an executor has a right to proceed pro se and whether those policies impermissibly restrict that right. The Committee discussed this matter at its November 6, 2020 meeting and voted 18-3 in favor of the 1-14c subcommittee's assessment that executors have the right to proceed pro se. The Court now asks the Committee to draft amendments or a comment to Rule of Civil Procedure 7 in light of that vote. In drafting the amendments or comment, the Committee should also consider other types of pro se appearances those policies restrict, like pro se appearances by guardians and administrators.

Texas Rule of Civil Procedure 42. At least eleven states have rules or statutes that expressly address distribution of residual class action funds to legal aid. Five of those states (Indiana, Kentucky, North Carolina, Pennsylvania, and South Dakota) require a minimum distribution to legal aid. Massachusetts requires notice to legal aid before the court enters judgment or approves a settlement—similar to a 2002 proposal from the Texas Access to Justice Commission. The Court now asks the Committee to consider whether to amend Rule of Civil Procedure 42 in line with other states and to draft any recommended amendments. The Committee’s discussion at its September 21-22, 2002 meeting and *Highland Homes, Ltd. v. State*, 448 S.W.3d 403 (Tex. 2014) may inform its work.

As always, the Court is grateful for the Committee’s counsel and your leadership.

Sincerely,

A handwritten signature in black ink, appearing to read "Nathan L. Hecht", with a long horizontal flourish extending to the right.

Nathan L. Hecht
Chief Justice

Attachments

AN ACT

relating to prohibition of abortion; providing a civil penalty;
creating a criminal offense.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. This Act may be cited as the Human Life
Protection Act of 2021.

SECTION 2. Subtitle H, Title 2, Health and Safety Code, is
amended by adding Chapter 170A to read as follows:

CHAPTER 170A. PERFORMANCE OF ABORTION

Sec. 170A.001. DEFINITIONS. In this chapter:

(1) "Abortion" has the meaning assigned by Section
245.002.

(2) "Fertilization" means the point in time when a
male human sperm penetrates the zona pellucida of a female human
ovum.

(3) "Pregnant" means the female human reproductive
condition of having a living unborn child within the female's body
during the entire embryonic and fetal stages of the unborn child's
development from fertilization until birth.

(4) "Reasonable medical judgment" means a medical
judgment made by a reasonably prudent physician, knowledgeable
about a case and the treatment possibilities for the medical
conditions involved.

(5) "Unborn child" means an individual living member

of the homo sapiens species from fertilization until birth,
including the entire embryonic and fetal stages of development.

Sec. 170A.002. PROHIBITED ABORTION; EXCEPTIONS. (a) A
person may not knowingly perform, induce, or attempt an abortion.

(b) The prohibition under Subsection (a) does not apply if:

(1) the person performing, inducing, or attempting the
abortion is a licensed physician;

(2) in the exercise of reasonable medical judgment,
the pregnant female on whom the abortion is performed, induced, or
attempted has a life-threatening physical condition aggravated by,
caused by, or arising from a pregnancy that places the female at
risk of death or poses a serious risk of substantial impairment of a
major bodily function unless the abortion is performed or induced;
and

(3) the person performs, induces, or attempts the
abortion in a manner that, in the exercise of reasonable medical
judgment, provides the best opportunity for the unborn child to
survive unless, in the reasonable medical judgment, that manner
would create:

(A) a greater risk of the pregnant female's
death; or

(B) a serious risk of substantial impairment of a
major bodily function of the pregnant female.

(c) A physician may not take an action authorized under
Subsection (b) if, at the time the abortion was performed, induced,
or attempted, the person knew the risk of death or a substantial
impairment of a major bodily function described by Subsection

1 (b)(2) arose from a claim or diagnosis that the female would engage
2 in conduct that might result in the female's death or in substantial
3 impairment of a major bodily function.

4 (d) Medical treatment provided to the pregnant female by a
5 licensed physician that results in the accidental or unintentional
6 injury or death of the unborn child does not constitute a violation
7 of this section.

8 Sec. 170A.003. CONSTRUCTION OF CHAPTER. This chapter may
9 not be construed to authorize the imposition of criminal, civil, or
10 administrative liability or penalties on a pregnant female on whom
11 an abortion is performed, induced, or attempted.

12 Sec. 170A.004. CRIMINAL OFFENSE. (a) A person who
13 violates Section 170A.002 commits an offense.

14 (b) An offense under this section is a felony of the second
15 degree, except that the offense is a felony of the first degree if
16 an unborn child dies as a result of the offense.

17 Sec. 170A.005. CIVIL PENALTY. A person who violates
18 Section 170A.002 is subject to a civil penalty of not less than
19 \$100,000 for each violation. The attorney general shall file an
20 action to recover a civil penalty assessed under this section and
21 may recover attorney's fees and costs incurred in bringing the
22 action.

23 Sec. 170A.006. CIVIL REMEDIES UNAFFECTED. The fact that
24 conduct is subject to a civil or criminal penalty under this chapter
25 does not abolish or impair any remedy for the conduct that is
26 available in a civil suit.

27 Sec. 170A.007. DISCIPLINARY ACTION. In addition to any

1 other penalty that may be imposed under this chapter, the
2 appropriate licensing authority shall revoke the license, permit,
3 registration, certificate, or other authority of a physician or
4 other health care professional who performs, induces, or attempts
5 an abortion in violation of Section 170A.002.

6 SECTION 3. Section 2 of this Act takes effect, to the extent
7 permitted, on the 30th day after:

8 (1) the issuance of a United States Supreme Court
9 judgment in a decision overruling, wholly or partly, *Roe v. Wade*,
10 410 U.S. 113 (1973), as modified by *Planned Parenthood v. Casey*, 505
11 U.S. 833 (1992), thereby allowing the states of the United States to
12 prohibit abortion;

13 (2) the issuance of any other United States Supreme
14 Court judgment in a decision that recognizes, wholly or partly, the
15 authority of the states to prohibit abortion; or

16 (3) adoption of an amendment to the United States
17 Constitution that, wholly or partly, restores to the states the
18 authority to prohibit abortion.

19 SECTION 4. The legislature finds that the State of Texas
20 never repealed, either expressly or by implication, the state
21 statutes enacted before the ruling in *Roe v. Wade*, 410 U.S. 113
22 (1973), that prohibit and criminalize abortion unless the mother's
23 life is in danger.

24 SECTION 5. The provisions of this Act are hereby declared
25 severable, and if any provision of this Act or the application of
26 such provision to any person or circumstance is declared invalid
27 for any reason, such declaration shall not affect the validity of

H.B. No. 1280

1 the remaining portions of this Act.

2 SECTION 6. This Act takes effect September 1, 2021.

H.B. No. 1280

President of the Senate

Speaker of the House

I certify that H.B. No. 1280 was passed by the House on May 6, 2021, by the following vote: Yeas 81, Nays 61, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 1280 was passed by the Senate on May 25, 2021, by the following vote: Yeas 19, Nays 12.

Secretary of the Senate

APPROVED: _____

Date

Governor