

## Texas Supreme Court Advisory Committee

# Memo

**To:** Texas Supreme Court Advisory Committee

**From:** Legislative Mandates Subcommittee

**cc:** Chip Babcock, Jacqueline Daumerie, Shiva Zamen

**Date:** 8/16/2022

**Re:** Review of Judicial Bypass of Parental Notification and Consent Rules

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### I. Introduction

The U.S. Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022) triggered the implementation of HB 1280, (also known as the Human Life Protection Act of 2021) that will prohibit all abortions in Texas with limited exceptions (as described below). The Texas Supreme Court has charged the Advisory Committee to evaluate and advise whether its previously enacted Rules governing Judicial Bypass of Parental Notification and Consent in the event of an abortion for unemacipated minors should be repealed or amended in light of HB 1280.

As discussed below, although the implementation of HB 1280<sup>1</sup> (codified in The Texas Health and Safety Code Chapter 170A<sup>2</sup>) will limit the circumstances when an abortion could be obtained, Texas law allows abortions when the mother's life is at risk or there is a serious risk of impairment of a major bodily function unless the abortion is performed.

For example, this could include a minor with a significant dilation of the aorta due to Marfan Syndrome (a genetic disorder) who would be at serious risk of rupture and death as a result of becoming pregnant and carrying an unborn child. Another example would be a minor with Pregnancy Induced Hypertension (PIH) who will be at risk of pre-eclampsia, a life-threatening condition that can occur without prior notice. This person with PIH could decide to initiate the judicial bypass process early in the pregnancy so that she will have the authority to give consent

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<sup>1</sup> The enrolled version of HB 1280 is attached as Exhibit 1.

<sup>2</sup> Texas Health and Safety Code Section 170A is attached as Exhibit 2.

if her condition later causes a life threatening condition or condition that could require loss of her reproductive organs if an abortion is not performed.

An additional consideration impacting the future use of the Judicial Bypass process is the contention of the Federal Government that even if otherwise prohibited by state law, Federal Law could permit abortions if they meet a broader definition of medical emergency as defined by the Federal Emergency Medical Treatment and Labor Act (EMTALA).

Consequently, the Subcommittee has concluded that Chapter 33 of the Texas Family Code (the Parental Notification Act<sup>3</sup>) will continue to have effect following implementation of HB 1280 and the judicial bypass provisions of the Family Code conceivably will be invoked by unemancipated minors seeking court orders consenting to the minor's consent to the performance of an abortion without notification to or consent of a parent, managing conservator, or guardian.

Therefore, the Subcommittee proposes that the Advisory Committee recommend that the Rules Governing Judicial Bypass should not be repealed. As discussed below, the Subcommittee proposes that the Advisory recommend retaining the Judicial Bypass Rules with one addition/amendment to the Rules and one addition/amendment to the Instructions for Apply to the Court for a Waiver.

## **II. Parental Notification Rules and Judicial Bypass**

In 2015, the Texas Legislature passed [HB 3994](#) that amended [Chapter 33 of the Texas Family Code](#)<sup>4</sup> to require both parental notice and consent for abortions on a pregnant unemancipated minor unless specific exceptions occur. Under this statute, an unemancipated minor is a minor who is unmarried or one who has not had the disabilities of minority removed under Chapter 31 of the Family Code.

### **A. Judicial Bypass Process**

One of the statutory exceptions to this notice and consent requirement is codified in Section 33.003 of the Family Code, authorizing a court to permit a minor to consent to an abortion without notification and consent of a parent, managing conservator or guardian. The statute describes the standard the court must apply to determine whether the court may enter an order authorizing the minor to consent to the performance of the abortion without notification to and consent of a parent, managing conservator, or guardian:

(i) The court shall determine by clear and convincing evidence, as described by Section [101.007](#) [of the Family Code], whether:

(1) the minor is mature and sufficiently well informed to make the decision to have an abortion performed without notification to or consent of a parent, managing conservator, or guardian; or

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<sup>3</sup> Texas Family Code Chapter 33 is attached as Exhibit 3.

<sup>4</sup> Additional amendments were added to Chapter 33 in the 2017 and 2019 Legislative sessions but the amendments did not impact the Judicial Bypass process.

(2) the notification and attempt to obtain consent would not be in the best interest of the minor.

Section 33.003 further details the procedural requirements for a court to follow to make this determination as well as the requirements and timing of an order and findings of fact and conclusions of law. The statute anticipates that a court's determination to enter an order permitting a minor to give notice either when the court determines that the minor is sufficiently mature or when the court decides that attempting to obtain consent would not be in the interests of a minor. These situations could include cases when the parents are not reasonably available. The court's determination under this second prong could involve a younger child who has suffered trauma at the hands of a parent. In all cases, the law requires appointment of a guardian ad litem to represent the best interests of the child and a separate attorney ad litem to represent the child's desires.

To implement the judicial bypass process, the Texas Supreme Court adopted [Rules for a Judicial Bypass of Parental Notice and Consent under Chapter 33 of the Family Code](#)<sup>5</sup> and [the Instructions and Forms for Apply to the Court for a Waiver of Parental Notification and Consent](#)<sup>6</sup>. These Rules and the Forms implementing these rules are very narrowly tailored to track the specific language of the Legislative Mandate codified in Chapter 33. The Rules track verbatim the requirements of the minor's application described in Section 33.003(c) and the Rules that describe the factors the court should consider in determining whether the minor meets the requirements necessary for the court to authorize a minor to consent

## **B. Delayed Notice and Consent Under the Medical Emergency Exception**

Distinct from the Judicial Bypass provisions of Section 33.003, Section 33.022 of the Family Code permits a physician to perform an abortion on a minor without obtaining prior parental notification and consent in the event of a medical emergency. Section 22.001(3-a) incorporates the definition of Medical Emergency set out in [Chapter 171 of the Health and Safety Code](#):

"Medical emergency" means a life-threatening physical condition aggravated by, caused by, or arising from a pregnancy that, as certified by a physician, places the woman in danger of death or a serious risk of substantial impairment of a major bodily function unless an abortion is performed.

The physician making this determination is required to make a reasonable effort to inform the parent, managing conservator or guardian within 24 hours after the medical emergency abortion is performed. This notice must be by telephone or in person. This notification must notify the parent of the performance of the abortion and the basis for the physician's determination that a medical emergency existed that required the performance of the abortion without advance notice. Further, within 48 hours after the abortion the physician must send a written notice to the parent, conservator or guardian to the last known address by certified mail, restricted delivery, return receipt requested. The physician further must include an affidavit that explains

<sup>5</sup> The Rules for a Judicial Bypass of Parental Notice and Consent are attached at Exhibit 4.

<sup>6</sup> The Instructions and Forms for Applying for Judicial Bypass are attached at Exhibit 5.

the specific medical emergency that necessitate the immediate abortion into the minor's medical record.

### **III. The Texas Trigger Act**

In 2021, the Texas Legislature passed legislation that contemplated a U.S. Supreme Court decision that overturned the Court's prior precedent in *Roe v. Wade*, 410 U.S. 113 (1973) and *Planned Parenthood of Southeastern Pa. v. Casey* 505 U.S. 833 (1992). This statute, the Human Life Protection Act of 2021 ([House Bill 1280](#)) (also known as the Texas Trigger Law) codified at Texas Health and Safety Code Chapter 170A, takes effect by its terms 30 days after judgment is issued by the Supreme Court in any decision overturning, in whole or in part the *Roe* precedent.

#### **1. Effective Date**

The judgment in *Dobbs v. Jackson Women's Health Organization* was issued on July 26, 2022. Absent court intervention, the Human Life Protection Act becomes law 30 days after the date the final judgment was issued – resulting in the effective date of August 25, 2022.

#### **2. Key provisions of the Trigger Act**

Under this law, all abortions are prohibited unless, "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.

#### **3. Key definitions:**

'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.

'Fertilization' means the point in time when a male human sperm penetrates the zona pellucida of a female human ovum.

"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.

The Trigger act also incorporates [Section 245.002 of the Texas Health and Safety Code](#) to define abortion:



"Abortion" means the act of using or prescribing an instrument, a drug, a medicine, or any other substance, device, or means with the intent to cause the death of an unborn child of a woman known to be pregnant. The term does not include birth control devices or oral contraceptives. An act is not an abortion if the act is done with the intent to:

- (A) save the life or preserve the health of an unborn child;
- (B) remove a dead, unborn child whose death was caused by spontaneous abortion; or
- (C) remove an ectopic pregnancy.

#### **4. The Sole Exception**

The statute includes the following exception (that requires the existence of all three subparts):

170A.002(b) The prohibition [of abortion] 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.

Section 170A.001(4) defines "Reasonable medical judgment" as ". . . a medical judgment made by a reasonably prudent physician, knowledgeable about a case and the treatment possibilities for the medical conditions involved." The provision also states that medical treatment provided to the pregnant female that results in the accidental or unintentional injury or death of the unborn child does not constitute a violation. (Section 170A.002(d)).

#### **IV. Interplay of HB 1280 and Parental Notice – Judicial Bypass Remains as a Potential Option for Unemancipated Minors Facing a Risk of Death**

HB 1280 does not reference Chapter 33 of the Family Code but the prohibition on almost all abortions will likely have a significant practical impact on the need for parental notice or bypass process. However, even with the limited circumstances where an abortion would be permissible under Texas law, those circumstances could involve an unemancipated minor who, based on the exercise of reasonable medical judgment, faces the risk of death or serious risk of substantial impairment of a major bodily function unless the abortion is performed.

Therefore, the parental notification provisions of the Family Code would apply, requiring either advanced notification and consent from the minor's parent (or managing conservator or guardian) - unless there is a medical emergency with insufficient time for a prior notification or consent or the minor's application to the court for a waiver of parental notification and consent.

#### **V. Federal EMTALA and Potential for Court Intervention**

The Federal Government has alerted hospitals throughout the country that any state law provisions limiting the availability of abortion inconsistent with the provisions of the Federal EMTALA are preempted by the Federal Law.

##### **A. EMTALA**

The Emergency Medical Treatment and Labor Act, "EMTALA," was enacted in 1986 by Congress for the purpose of ensuring public access to emergency services, regardless of ability to pay<sup>7</sup>. Under the Act's requirements, Medicare-participating hospitals that offer emergency services (and dedicated emergency facilities) must provide a medical screening examination when a request is made for examination or treatment for an emergency medical condition ("EMCs"), including active labor. Upon examination, a hospital is then required to provide stabilizing treatment for patients with EMCs and is prohibited from transferring such patients (unless unable to do so within its capability), absent patient request, prior to doing so.

##### **1. DHH Secretary's Letter on the *Dobbs* Decision**

On July 11, 2022, the Secretary of Health and Human Services issued a letter to health care providers regarding application of EMTALA in light of the *Dobbs* decision<sup>8</sup>. The Secretary's letter reiterates that it is the requirement of EMTALA for qualified medical personnel to provide stabilizing treatment, and clarifies that where, in the medical provider's clinical judgment, abortion is the necessary stabilizing treatment for a patient presenting with an emergency medical condition, the physician must provide

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<sup>7</sup> The law is codified at [42 U.S.C. §1395dd](#).

<sup>8</sup> The DHHS Secretary's letter is attached at Exhibit 6.

that treatment, and cannot be held liable on the basis of any conflicting state law or mandate for doing so. The Secretary’s letter provides a non-exhaustive list of qualifying pregnancy-related medical conditions, stating:

“Emergency medical conditions involving pregnant patients may include, but are not limited to, ectopic pregnancy, complications of pregnancy loss, or emergent hypertensive disorders, such as preeclampsia with severe features,”

The letter further specifically provides that:

“Thus, if a physician believes that a pregnant patient presenting at an emergency department, including certain labor and delivery departments, is experiencing an emergency medical condition as defined by EMTALA, and that abortion is the stabilizing treatment necessary to resolve that condition, the physician must provide that treatment. And when a state law prohibits abortion and does not include an exception for the life and health of the pregnant person — or draws the exception more narrowly than EMTALA’s emergency medical condition definition — that state law is preempted.”<sup>9</sup>

## **2. Emergency Medical Conditions under EMTALA**

Under EMTALA, “emergency medical condition” is defined, in relevant part, as follows:

“[A] medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that *the absence of immediate medical attention could reasonably be expected to result in—*

- (i) *placing the health of the individual* (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy,
- (ii) serious impairment to bodily functions, or
- (iii) serious dysfunction of any bodily organ or part; ...”

### **B. Potential for Federal Court Intervention**

Arguably, an emergency medical condition under EMTALA pertaining to a pregnant woman would include situations permitting (or as suggested by the DHH, requiring) an abortion even if those medical conditions were not sufficient to warrant an abortion under HB 1280<sup>10</sup>. According to the Department of

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<sup>9</sup> The Subcommittee offers no opinion whether the EMTALA preempts Texas law.

<sup>10</sup> The Texas Attorney General Ken Paxton has filed a lawsuit seeking to enjoin the Department of Health and Human Services regarding the application of EMTALA to require hospitals to perform abortions.

Health and Human Services, EMTALA would require a hospital to perform an abortion if those medical conditions exist notwithstanding contrary provisions in Texas law.

Without commenting on whether the EMTALA interpretation would preempt Texas Law, it is possible that a federal court could enjoin enforcement of aspects of Texas Law that are found to conflict. Notwithstanding the provisions of EMTALA however, the Texas requirements of notice and consent arguably continue to apply to any medical procedure undertaken pursuant to EMTALA. Therefore, if an unemancipated minor was pregnant and has an emergency medical condition under EMTALA, the minor could seek to engage the judicial bypass procedure in the Parental Notice Act.

## **VI. The Continued Applicability of the Judicial Bypass Rules**

As described above, the Subcommittee concludes that the Parental Notice provisions of Chapter 33 will continue to apply in cases involving an unemancipated minor when an abortion procedure is permitted under Chapter 170A of the Texas Health and Safety Code and arguably according to the DHHS guidance when “a physician believes that a pregnant patient presenting at an emergency department is experiencing an [Emergency Medical Condition] as defined by EMTALA, and that abortion is the stabilizing treatment necessary to resolve that condition”. Therefore, it is possible that an unemancipated minor will want to invoke the judicial bypass procedure in Chapter 33. As a result, the Rules and Forms for A Judicial Bypass continue to be used in cases involving minors who face the risk of death or serious risk of substantial impairment of a major bodily function unless an abortion is performed.

Because the rules largely track the statutory language set out in Section 33.003 of Chapter 33 of the Family Code, no changes in the procedural rules are recommended, including the Rules detailing the requirements of applications for Judicial Approval and the factors the court should consider in making its determination whether to enter an order authorizing the [unemancipated] minor to give consent. The Subcommittee does recommend consideration of a new paragraph in the General Provisions of the Rules to confirm the continued applicability of the rules in light of the applicability of HB 1280.

The Subcommittee also recommends the inclusion of an additional bullet point in the introduction explanation of the instructions to assist minors who are considering whether to apply for a waiver of parental notification.

### **A. Proposed Amendments to the Judicial Bypass Rules**

Under Rule 1, General Provisions, we recommend a new paragraph be added the provisions of Rule 1.1 - Applicability<sup>11</sup>:

These rules continue to apply and are not inconsistent with Texas Health and Safety Code Chapter 170A which defines the circumstances when an abortion may take place. The

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<sup>11</sup> The proposed amendment to the Judicial Bypass Rules are attached as Exhibit 7.

proceedings under these rules are not intended to create a judicial determination that any exception to the provisions of Chapter 170A have been satisfied and an order under these rules should not be construed as a judicial determination that in the exercise of reasonable medical judgment, the pregnant unemancipated minor on whom the abortion might be performed 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.

## **B. Proposed Amendments to the Instructions for Applying to the Court for a Waiver of Parental Notification and Consent**

In addition to the proposed amendment to the Rules, the Subcommittee also proposes that the Committee recommend an additional provision be added to the introductory comments to Court's Instructions and Forms as follows:<sup>12</sup>.

### **Your Situation and the law**

If you are younger than 18 and have not been legally "emancipated," you are "unemancipated," which means that you are legally under the custody or control of your parents (or one of your parents), a managing conservator, or a guardian. (A "managing conservator" is an adult or agency appointed by a court to have custody or control of you.)

An abortion in Texas is only available if a physician, in the exercise of reasonable medical judgment, states that you have a life-threatening physical condition aggravated by, caused by, or arising from our pregnancy that places you at risk of death or poses a serious risk of substantial impairment of one of your major bodily functions unless the abortion is performed, or induced.

If you are pregnant unemancipated, and younger than 18 you cannot get an abortion in Texas unless:

- Your doctor informs one of your parents or your managing conservator or guardian at least 48 hours before the abortion and obtains the consent of your parent, managing conservator, or guardian; *or*
- A judge issue an order that "waives" or removes the requirement that you must let a parent or your managing conservator or guardian know about your planned abortion and obtain his or her consent to it.

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<sup>12</sup> The proposed amendment to the Instructions for Applying to the Court for a Waiver of Parental Notification and Consent are attached as Exhibit 8.

**VII. Applicability of Other Abortion Related Provisions of Texas Law**

The Subcommittee does not offer any opinion on the applicability of other provisions of Texas law that could govern abortion procedures, including requirements involving informed consent requirements, written documentation requirements for abortions performed due to medical emergencies, requirements for information that must be provided to pregnant mothers prior to an abortion taking place. See e.g. Texas Health and Safety Code Sec. 171.001, et. seq.

## EXHIBIT 1

H.B. No. 1280

## 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

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

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

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

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

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

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

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

Sec. 170A.007. DISCIPLINARY ACTION. In addition to any other penalty that may be imposed under this chapter, the appropriate licensing authority shall revoke the license, permit, registration, certificate, or other authority of a physician or other health care professional who performs, induces, or attempts an abortion in violation of Section 170A.002.

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

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

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

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

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

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

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

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President of the Senate

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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.

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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.



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Secretary of the Senate

APPROVED: \_\_\_\_\_  
Date

\_\_\_\_\_  
Governor

## HEALTH AND SAFETY CODE

## TITLE 2. HEALTH

## SUBTITLE H. PUBLIC HEALTH PROVISIONS

## 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.

Added by Acts 2021, 87th Leg., R.S., Ch. 800 (H.B. 1280), Sec. 2, eff. August 25, 2022.

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

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

Added by Acts 2021, 87th Leg., R.S., Ch. 800 (H.B. 1280), Sec. 2, eff. August 25, 2022.

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

Added by Acts 2021, 87th Leg., R.S., Ch. 800 (H.B. 1280), Sec. 2, eff. August 25, 2022.

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

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

Added by Acts 2021, 87th Leg., R.S., Ch. 800 (H.B. 1280), Sec. 2, eff. August 25, 2022.

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

Added by Acts 2021, 87th Leg., R.S., Ch. 800 (H.B. [1280](#)), Sec. 2, eff. August 25, 2022.

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

Added by Acts 2021, 87th Leg., R.S., Ch. 800 (H.B. [1280](#)), Sec. 2, eff. August 25, 2022.

Sec. 170A.007. DISCIPLINARY ACTION. In addition to any other penalty that may be imposed under this chapter, the appropriate licensing authority shall revoke the license, permit, registration, certificate, or other authority of a physician or other health care professional who performs, induces, or attempts an abortion in violation of Section [170A.002](#).

Added by Acts 2021, 87th Leg., R.S., Ch. 800 (H.B. [1280](#)), Sec. 2, eff. August 25, 2022.

## FAMILY CODE

## TITLE 2. CHILD IN RELATION TO THE FAMILY

## SUBTITLE A. LIMITATIONS OF MINORITY

## CHAPTER 33. NOTICE OF AND CONSENT TO ABORTION

Sec. 33.001. DEFINITIONS. In this chapter:

- (1) "Abortion" has the meaning assigned by Section 245.002, Health and Safety Code. This definition, as applied in this chapter, 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.
- (3-a) "Medical emergency" has the meaning assigned by Section 171.002, Health and Safety Code.
- (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.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 436 (H.B. 3994), Sec. 2, eff. January 1, 2016.

Acts 2017, 85th Leg., R.S., Ch. 441 (S.B. 8), Sec. 1, eff. September 1, 2017.

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 physician who is to perform the abortion receives an order issued by a court under Section 33.003 or 33.004 authorizing the minor to consent to the abortion as provided by Section 33.003 or 33.004; or

(3) the physician who is to perform the abortion:

(A) concludes that a medical emergency exists;

(B) certifies in writing to the Department of State Health Services and in the patient's medical record the medical indications supporting the physician's judgment that a medical emergency exists; and

(C) provides the notice required by Section 33.0022.

(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 Department of State Health Services shall prepare a form to be used for making the certification required by Subsection (a) (3) (B).

(f) A certification required by Subsection (a) (3) (B) 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) (3) (B). The physician must keep the medical records on the minor in compliance with the rules adopted by the Texas Medical Board 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 proof of identity and age described by Subsection (k) 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)(3)(A), the defendant may seek a hearing before the Texas Medical Board on whether the physician's conduct was necessary because of a medical emergency. The findings of the Texas Medical Board 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.

(j) A physician shall use due diligence to determine that any woman on which the physician performs an abortion who claims to have reached the age of majority or to have had the disabilities of minority removed has, in fact, reached the age of majority or has had the disabilities of minority removed.

(k) For the purposes of this section, "due diligence" includes requesting proof of identity and age described by Section 2.005(b) or a copy of the court order removing disabilities of minority.

(l) If proof of identity and age cannot be provided, the physician shall provide information on how to obtain proof of identity and age. If the woman is subsequently unable to obtain proof of identity and age and the physician chooses to perform the abortion, the physician shall document that proof of identity and age was not obtained and report to the Department of State Health Services that proof of identity and age was not obtained for the woman on whom the abortion was performed. The department

shall report annually to the legislature regarding the number of abortions performed without proof of identity and age.

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.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 436 (H.B. 3994), Sec. 3, eff. January 1, 2016.

Sec. 33.0021. CONSENT REQUIRED. A physician may not perform an abortion in violation of Section 164.052(a)(19), Occupations Code.

Added by Acts 2015, 84th Leg., R.S., Ch. 436 (H.B. 3994), Sec. 4, eff. January 1, 2016.

Sec. 33.0022. MEDICAL EMERGENCY NOTIFICATION; AFFIDAVIT FOR MEDICAL RECORD. (a) If the physician who is to perform the abortion concludes under Section 33.002(a)(3)(A) that a medical emergency exists and that there is insufficient time to provide the notice required by Section 33.002 or obtain the consent required by Section 33.0021, the physician shall make a reasonable effort to inform, in person or by telephone, the parent, managing conservator, or guardian of the unemancipated minor within 24 hours after the time a medical emergency abortion is performed on the minor of:

(1) the performance of the abortion; and

(2) the basis for the physician's determination that a medical emergency existed that required the performance of a medical emergency abortion without fulfilling the requirements of Section 33.002 or 33.0021.

(b) A physician who performs an abortion as described by Subsection (a), not later than 48 hours after the abortion is performed, shall send a written notice that a medical emergency occurred and the ability of the parent, managing conservator, or guardian to contact the physician for more information and medical records, to the last known address of the parent, managing conservator, or guardian by certified mail, restricted delivery, return receipt requested. The physician may rely on last known address information if a reasonable and prudent person, under similar circumstances, would rely on the information as sufficient evidence that the parent, managing conservator, or guardian resides at that address. The physician shall keep in the minor's medical record:

(1) the return receipt from the written notice; or

(2) if the notice was returned as undeliverable, the notice.



(c) A physician who performs an abortion on an unemancipated minor during a medical emergency as described by Subsection (a) shall execute for inclusion in the medical record of the minor an affidavit that explains the specific medical emergency that necessitated the immediate abortion.

Added by Acts 2015, 84th Leg., R.S., Ch. 436 (H.B. 3994), Sec. 4, eff. January 1, 2016.

Sec. 33.003. JUDICIAL APPROVAL. (a) A pregnant minor may file an application for a court order authorizing the minor to consent to the performance of an abortion without notification to and consent of a parent, managing conservator, or guardian.

(b) The application must be filed in:

(1) a county court at law, court having probate jurisdiction, or district court, including a family district court, in the minor's county of residence;

(2) if the minor's parent, managing conservator, or guardian is a presiding judge of a court described by Subdivision (1):

(A) a county court at law, court having probate jurisdiction, or district court, including a family district court, in a contiguous county; or

(B) a county court at law, court having probate jurisdiction, or district court, including a family district court, in the county where the minor intends to obtain the abortion;

(3) if the minor's county of residence has a population of less than 10,000:

(A) a court described by Subdivision (1);

(B) a county court at law, court having probate jurisdiction, or district court, including a family district court, in a contiguous county; or

(C) a county court at law, court having probate jurisdiction, or district court, including a family district court, in the county in which the facility at which the minor intends to obtain the abortion is located; or

(4) a county court at law, court having probate jurisdiction, or district court, including a family district court, in the county in which the facility at which the minor intends to obtain the abortion is located, if the minor is not a resident of this state.

(c) The application must:

(1) be made under oath;

(2) include:

(A) a statement that the minor is pregnant;

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

(C) a statement that the minor wishes to have an abortion without the notification to and consent of a parent, managing conservator, or guardian;

(D) 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; and

(E) a statement about the minor's current residence, including the minor's physical address, mailing address, and telephone number; and

(3) be accompanied by the sworn statement of the minor's attorney under Subsection (r), if the minor has retained an attorney to assist the minor with filing the application under this section.

(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 who shall represent the best interest of the minor. If the minor has not retained an attorney, the court shall appoint an attorney to represent the minor. The guardian ad litem may not also serve as the minor's attorney ad litem.

(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 Family and Protective 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.

(g-1) The pregnant minor must appear before the court in person and may not appear using videoconferencing, telephone conferencing, or other remote electronic means.

(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 fifth 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 fifth business day after the date the minor states she is ready to proceed to hearing. 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, regardless of whether the minor is granted an extension under this subsection.

(i) The court shall determine by clear and convincing evidence, as described by Section 101.007, whether:

(1) the minor is mature and sufficiently well informed to make the decision to have an abortion performed without notification to or consent of a parent, managing conservator, or guardian; or

(2) the notification and attempt to obtain consent would not be in the best interest of the minor.

(i-1) In determining whether the minor meets the requirements of Subsection (i)(1), the court shall consider the experience, perspective, and judgment of the minor. The court may:

(1) consider all relevant factors, including:

(A) the minor's age;

(B) the minor's life experiences, such as working, traveling independently, or managing her own financial affairs; and

(C) steps taken by the minor to explore her options and the consequences of those options;

(2) inquire as to the minor's reasons for seeking an abortion;

(3) consider the degree to which the minor is informed about the state-published informational materials described by Chapter 171, Health and Safety Code; and

(4) require the minor to be evaluated by a licensed mental health counselor, who shall return the evaluation to the court for review within three business days.

(i-2) In determining whether the notification and the attempt to obtain consent would not be in the best interest of the minor, the court may inquire as to:

(1) the minor's reasons for not wanting to notify and obtain consent from a parent, managing conservator, or guardian;

(2) whether notification or the attempt to obtain consent may lead to physical or sexual abuse;

(3) whether the pregnancy was the result of sexual abuse by a parent, managing conservator, or guardian; and

(4) any history of physical or sexual abuse from a parent, managing conservator, or guardian.

(i-3) The court shall enter an order authorizing the minor to consent to the performance of the abortion without notification to and consent of a parent, managing conservator, or guardian and shall execute the required forms if the court finds by clear and convincing evidence, as defined by Section 101.007, that:

(1) the minor is mature and sufficiently well informed to make the decision to have an abortion performed without notification to or consent of a parent, managing conservator, or guardian; or

(2) the notification and attempt to obtain consent would not be in the best interest of the minor.

(j) If the court finds that the minor does not meet the requirements of Subsection (i-3), the court may not authorize the minor to consent to an abortion without the notification authorized under Section 33.002(a)(1) and consent under Section 33.0021.

(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 confidentiality of the identity 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. Confidential records pertaining to a minor under this subsection may be disclosed to the minor.

(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, the physician who is to perform the abortion, 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.

(1-1) The clerk of the court, at intervals prescribed by the Office of Court Administration of the Texas Judicial System, shall submit a report to the office that includes, for each case filed under this section:

- (1) the case number and style;
- (2) the applicant's county of residence;
- (3) the court of appeals district in which the proceeding occurred;
- (4) the date of filing;
- (5) the date of disposition; and
- (6) the disposition of the case.

(1-2) The Office of Court Administration of the Texas Judicial System shall annually compile and publish a report aggregating the data received under Subsections (1-1)(3) and (6). A report submitted under Subsection (1-1) is confidential and privileged and is not subject to disclosure under Chapter 552, Government Code, or to discovery, subpoena, or other legal process. A report under this subsection must protect the confidentiality of:

- (1) the identity of all minors and judges who are the subject of the report; and
- (2) the information described by Subsection (1-1)(1).

(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.

(o) A minor who has filed an application under this section may not withdraw or otherwise non-suit her application without the permission of the court.

(p) Except as otherwise provided by Subsection (q), a minor who has filed an application and has obtained a determination by the court as described by Subsection (i) may not initiate a new application proceeding and the prior proceeding is res judicata of the issue relating to the determination of whether the minor may or may not be authorized to consent to the performance of an abortion without notification to and consent of a parent, managing conservator, or guardian.

(q) A minor whose application is denied may subsequently submit an application to the court that denied the application if the minor shows that there has been a material change in circumstances since the time the court denied the application.

(r) An attorney retained by the minor to assist her in filing an application under this section shall fully inform himself or herself of the

minor's prior application history, including the representations made by the minor in the application regarding her address, proper venue in the county in which the application is filed, and whether a prior application has been filed and initiated. If an attorney assists the minor in the application process in any way, with or without payment, the attorney representing the minor must attest to the truth of the minor's claims regarding the venue and prior applications in a sworn statement.

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.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 110 (H.B. 841), Sec. 1, eff. May 21, 2011.

Acts 2015, 84th Leg., R.S., Ch. 436 (H.B. 3994), Sec. 5, eff. January 1, 2016.

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 fifth 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 fifth business day after the date the minor states she is ready to proceed. 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, regardless of whether the minor is granted an extension under this subsection.

(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.

(c-1) Notwithstanding Subsection (c), the court of appeals may publish an opinion relating to a ruling under this section if the opinion is written in a way to preserve the confidentiality of the identity of the pregnant minor.

(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 application to authorize the minor to consent to the performance of an abortion without notification to or consent of a parent, managing conservator, or guardian.

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

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 436 (H.B. 3994), Sec. 6, eff. January 1, 2016.

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 107.009(b)(1)-(3).

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

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 7.001, eff. September 1, 2021.

Sec. 33.0065. RECORDS. The clerk of the court shall retain the records for each case before the court under this chapter in accordance with rules for civil cases and grant access to the records to the minor who is the subject of the proceeding.

Added by Acts 2015, 84th Leg., R.S., Ch. 436 (H.B. 3994), Sec. 7, eff. January 1, 2016.

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) If a minor claims to have been physically or sexually abused or a physician or physician's agent has reason to believe that a minor has been physically or sexually abused, the physician or physician's agent shall immediately report the suspected abuse and the name of the abuser to the Department of Family and Protective Services and to a local law enforcement agency and shall refer the minor to the department for services or intervention that may be in the best interest of the minor. The local law enforcement agency shall respond and shall write a report within 24 hours of being notified of the alleged abuse. A report shall be made regardless of whether the local law



enforcement agency knows or suspects that a report about the abuse may have previously been made.

(b) The appropriate local law enforcement agency and the Department of Family and Protective Services shall investigate suspected abuse reported under this section and, if warranted, shall refer the case to the appropriate prosecuting authority.

(c) When the local law enforcement agency responds to the report of physical or sexual abuse as required by Subsection (a), a law enforcement officer or appropriate agent from the Department of Family and Protective Services may take emergency possession of the minor without a court order to protect the health and safety of the minor as described by Chapter 262.

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

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 110 (H.B. 841), Sec. 2, eff. May 21, 2011.

Acts 2015, 84th Leg., R.S., Ch. 436 (H.B. 3994), Sec. 8, eff. January 1, 2016.

Sec. 33.0085. DUTY OF JUDGE OR JUSTICE TO REPORT ABUSE OF MINOR. (a) Notwithstanding any other law, a judge or justice who, as a result of court proceedings conducted under Section 33.003 or 33.004, has reason to believe that a minor has been or may be physically or sexually abused shall:

(1) immediately report the suspected abuse and the name of the abuser to the Department of Family and Protective Services and to a local law enforcement agency; and

(2) refer the minor to the department for services or intervention that may be in the best interest of the minor.

(b) The appropriate local law enforcement agency and the Department of Family and Protective Services shall investigate suspected abuse reported under this section and, if warranted, shall refer the case to the appropriate prosecuting authority.

Added by Acts 2015, 84th Leg., R.S., Ch. 436 (H.B. 3994), Sec. 9, eff. January 1, 2016.

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 21.02, 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 Family and Protective 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.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 593 (H.B. 8), Sec. 3.27, eff. September 1, 2007.

Sec. 33.010. CONFIDENTIALITY. Notwithstanding any other law, information obtained by the Department of Family and Protective Services or another entity under Section 33.008, 33.0085, or 33.009 is confidential except to the extent necessary to prove a violation of Section 21.02, 22.011, 22.021, or 25.02, Penal Code.

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

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 593 (H.B. 8), Sec. 3.28, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 436 (H.B. 3994), Sec. 10, eff. January 1, 2016.

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.

Sec. 33.012. CIVIL PENALTY. (a) A person who is found to have intentionally, knowingly, recklessly, or with gross negligence violated

this chapter is liable to this state for a civil penalty of not less than \$2,500 and not more than \$10,000.

(b) Each performance or attempted performance of an abortion in violation of this chapter is a separate violation.

(c) A civil penalty may not be assessed against:

(1) a minor on whom an abortion is performed or attempted; or

(2) a judge or justice hearing a court proceeding conducted under Section 33.003 or 33.004.

(d) It is not a defense to an action brought under this section that the minor gave informed and voluntary consent.

(e) The attorney general shall bring an action to collect a penalty under this section.

Added by Acts 2015, 84th Leg., R.S., Ch. 436 (H.B. 3994), Sec. 11, eff. January 1, 2016.

Sec. 33.013. CAPACITY TO CONSENT. An unemancipated minor does not have the capacity to consent to any action that violates this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 436 (H.B. 3994), Sec. 11, eff. January 1, 2016.

Sec. 33.014. ATTORNEY GENERAL TO ENFORCE. The attorney general shall enforce this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 436 (H.B. 3994), Sec. 11, eff. January 1, 2016.

## Rules and Forms for a Judicial Bypass of Parental Notice and Consent Under Chapter 33 of the Family Code

### Explanatory Statement

Chapter 33 of the Texas Family Code provides for judicial authorization of an unemancipated minor to consent to an abortion in Texas without notice to, or the consent of, a parent, managing conservator, or guardian. Sections 33.003 and 33.004, which govern proceedings in the trial and appellate courts, authorize the Court to make rules to ensure that judicial bypass applications are decided confidentially and promptly. *See* TEX. FAM. CODE §§ 33.003(l), 33.004(c). The statute also directs the Court to make forms for use in judicial bypass proceedings. *Id.* §§ 33.003(m), 33.004(d).

The Court approved the first set of rules and forms in 1999, following the enactment of Chapter 33. *See* Misc. Docket No. 99-9247 (Dec. 22, 1999); Act of May 25, 1999, 76th Leg., R.S., ch. 395, 1999 Tex. Gen. Laws 2466 (S.B. 30) (codified at TEX. FAM. CODE § 33.001 *et seq.*). The rules and forms have been amended to reflect the 2015 amendments to Chapter 33. *See* Act of June 1, 2015, 84th Leg., R.S., ch. 436 (H.B. 3994). The rules and forms track the statutory requirements. They do not reflect any judgment by the Court that Chapter 33, or any part of it, is constitutional. Constitutional questions should be resolved in an adversarial proceeding with full briefing and argument. Nor do the rules imply that abortion is—or is not—permitted in any specific situation. *See, e.g., Roe v. Wade*, 410 U.S. 113 (1973); TEX. HEALTH & SAFETY CODE § 170.002 (restrictions on third trimester abortions of viable fetuses).

The notes and comments appended to the rules are intended to inform their construction and application by courts and practitioners.

### Rule 1. General Provisions

**1.1 Applicability of These Rules.** These rules govern proceedings for obtaining a court order authorizing a minor to consent to an abortion without notice to, or the consent of, a parent, managing conservator, or guardian under Chapter 33, Family Code. All references in these rules to “minor” refer to the minor applicant. Other Texas court rules—including the Rules of Civil Procedure, Rules of Evidence, Rules of Appellate Procedure, Rules of Judicial Administration, and local rules approved by the Supreme Court—also apply, but when the application of another rule would be inconsistent with the general framework or policy of Chapter 33, Family Code, or these rules, these rules control.

**1.2 Expedition Required.**

- (a) ***Proceedings.*** A court must give proceedings under these rules precedence over all other pending matters to the extent necessary to ensure that applications and appeals are adjudicated as soon as possible and within the time required by Chapter 33, Family Code, and these rules.
- (b) ***Prompt actual notice required.*** Without compromising the confidentiality required by statute and these rules, courts and clerks must serve orders, decisions, findings, and notices required under these rules in a manner designed to give prompt actual notice in order that the deadlines imposed by Chapter 33, Family Code, can be met.

### **1.3 Identity of Minor Protected.**

- (a) ***Generally.*** Proceedings under these rules must be conducted in a way that protects the confidentiality of the identity of the minor.
- (b) ***No reference to minor's identity in proceeding.*** With the exception of the verification page required under Rule 2.1(c)(2) and the communications required under Rule 2.2(e), no reference may be made in any order, decision, finding, or notice, or on the record, to the name of the minor, her address, or other information by which she might be identified by persons not participating in the proceedings. Instead, the minor must be referred to as "Jane Doe" in a numbered cause.
- (c) ***Notice.*** With the exception of orders and rulings released under Rule 1.4(b), all notices and communications from the court to the minor must be directed to the minor's attorney with a copy to the guardian ad litem. The minor's attorney must immediately serve on the guardian ad litem a copy of any document filed with the court. These requirements take effect when an attorney appears for the minor or when the clerk has notified the minor of the appointment of an attorney or a guardian ad litem.

### **1.4 Confidentiality of Proceedings Required; Exceptions.**

- (a) ***Generally.*** All officials and court personnel involved in the proceedings must ensure that the minor's contact with the clerk and the court is confidential and expeditious. Except as permitted by law, officials and court personnel must never disclose to anyone outside the proceeding—including the minor's parent, managing conservator, or legal guardian—that the minor is or has ever been pregnant, or that she wants or has ever wanted an abortion.
- (b) ***Documents and information pertaining to the proceeding.***

- (1) *General rule; disclosure prohibited.* As required by Chapter 33, Family Code, the application and all other court documents and information 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.
- (2) *Exception; disclosure to minor permitted.* The application and any other document in the court file may be disclosed to the minor.
- (3) *Exception; disclosure of order to certain persons.* An order, ruling, opinion, or clerk's certificate may be released to:
  - the minor;
  - the minor's guardian ad litem;
  - the minor's attorney;
  - the physician who is to perform the abortion;
  - a person designated in writing by the minor to receive the order, ruling, opinion, or certificate;
  - a governmental agency or governmental attorney, in connection with a criminal or administrative action seeking to assert or protect the minor's interests; or
  - another court, judge, or clerk in the same or related proceedings.
- (c) ***Filing of court reporter's notes required.*** To ensure confidentiality, the court reporter's notes, in whatever form, must be filed with other court documents in the proceeding.
- (d) ***Duty to report possible abuse.***
  - (1) *Duty of the court.* A judge or justice who, as a result of a court proceeding governed by these rules, has reason to believe that a minor has been or may be physically or sexually abused must report the suspected abuse in accordance with Sections 33.0085 and 33.009, Family Code, and other law.

- (2) *Duty of an attorney or guardian ad litem.* An attorney or a guardian ad litem who, as a result of a court proceeding governed by these rules, has reason to believe that a minor has been or may be physically or sexually abused must report the suspected abuse in accordance with Section 33.009, Family Code, and other law.
- (e) *Department of Family and Protective Services or local law enforcement agency to disclose certain information in proceeding.* The Department of Family and Protective Services or a local law enforcement agency may disclose to the court, the minor's attorney, and the guardian ad litem any information obtained under Sections 33.008, 33.0085, and 33.009, Family Code, without being ordered to do so. The court may order the Department or a local law enforcement agency to disclose the information to the court, the minor's attorney, and the guardian ad litem, and the Department or agency must comply.

### **1.5 Methods of Transmitting Documents; Hearings Conducted By Remote Electronic Means; Electronic Record Allowed When Necessary.**

- (a) *Electronic filing through statewide portal prohibited.* Documents must not be filed through the electronic filing manager established by the Office of Court Administration.
- (b) *Paper, fax, or email filing permitted.* Documents may be filed in paper form, by fax, or by email. The clerk of a court must designate an email address or a fax number for the filing of documents in proceedings governed by these rules and must take all reasonable steps to maintain the confidentiality of the filings. An attorney must notify the clerk by telephone before filing a document by email or fax.
- (c) *Fax and email transmission by court and clerk.* The court and clerk may transmit orders, rulings, notices, and other documents by fax or email. But before the transmission is initiated, the sender must take all reasonable steps to maintain the confidentiality of the transmission. The time and date of a transmission by the court is the time and date when it was initiated.
- (d) *Participation in hearings by electronic means.* Consistent with the confidentiality requirements of these rules, with the court's permission, a witness may participate in a hearing under these rules by video conferencing, telephone, or other remote electronic means. But the minor must appear before the court in person.

- (e) ***Record of hearing made by electronic means if necessary.*** If the court determines that a court reporter is unavailable for a hearing, the court may have a record of the hearing made by audio recording or other electronic means. If a notice of appeal is filed, the court must have the recording transcribed if possible. The person transcribing the recording must certify to the accuracy of the transcription. The court must transmit both the recording and the transcription to the court of appeals.

## 1.6 Disqualification, Recusal, or Objection to a Judge.

- (a) ***Time for filing and ruling.*** A motion to recuse or disqualify a trial judge or an objection to a trial judge under Section 74.053, Government Code, must be filed before 10 a.m. of the first business day after an application is filed or promptly after the assignment of a judge to hear the case is made known to the minor's attorney, whichever is later. A motion to recuse or disqualify an appellate judge or an objection to an appellate judge under Section 75.551, Government Code, must be filed before 10 a.m. of the first business day after a notice of appeal is filed or promptly after the assignment of a judge is made known to the minor's attorney, whichever is later. A judge who chooses to withdraw voluntarily must do so immediately. A motion to disqualify or recuse or an objection to an assigned judge does not extend the deadline for ruling on the minor's application.
- (b) ***Voluntary disqualification or recusal; objection.*** A judge who removes himself or herself voluntarily—whether in response to a motion or on the judge's own initiative—or to whom objection is made under Sections 74.053 or 75.551, Government Code, must immediately notify the appropriate authority under rule or statute for assigning another judge. That authority must immediately assign a judge or justice to the proceeding.
- (c) ***Involuntary disqualification or recusal.*** A judge who refuses to remove himself or herself voluntarily from a proceeding in response to a motion must immediately refer the motion to the appropriate judge under rule or statute for determination. The judge to whom the motion is referred must rule on it as soon as possible and may do so with or without a hearing. If the motion is granted, the judge to whom the motion was referred must immediately assign another judge to the proceeding.
- (d) ***Restrictions on the number of motions and objections.*** A minor who objects under Section 74.053 or Section 75.551, Government Code, to a judge assigned to the proceeding may not thereafter file a motion to recuse the judge assigned to replace the judge to whom the objection was made. A minor who files a motion to recuse or disqualify a judge may not thereafter



object under Section 74.053 or Section 75.551, Government Code, to another judge assigned to the proceeding.

- (e) ***Issues on appeal.*** Any error in the denial of a motion to recuse or disqualify, any error in the disallowance of an objection, or any challenge to a judge that a minor is precluded from making by subsections (a) or (d), may be raised only on appeal from the court's denial of the application.

## **1.7 Rules and Forms to be Made Available.**

- (a) ***Online.*** A complete set of these rules and forms must be posted on the Texas Judiciary website at [www.txcourts.gov](http://www.txcourts.gov). Forms 1A, 2A, and 2B must be translated into Spanish.
- (b) ***In clerks' offices.*** The clerk of a court in which an application or appeal may be filed must make the rules and forms—including the Spanish version of Form 1A, 2A, and 2B—and any applicable local rules available to a minor without charge.

## **1.8 Duties of Attorneys Ad Litem.** An attorney ad litem must represent the minor in the trial court in the proceeding in which the attorney is assigned and in any appeal under these rules to the court of appeals or the Supreme Court. But an attorney ad litem is not required to represent the minor in any other court or any other proceeding.

## **1.9 Fees and Costs.**

- (a) ***No fees or costs charged to minor.*** No filing fee or court cost may be assessed against a minor for any proceeding in a trial or appellate court.
- (b) ***State ordered to pay fees and costs.***
  - (1) ***Fees and costs that may be paid.*** The State may be ordered to pay the reasonable and necessary fees and expenses of the attorney ad litem, the reasonable and necessary fees and expenses of the guardian ad litem, the court reporter's fee as certified by the court reporter, and trial court filing fees and costs as certified by the clerk. Court costs include the expenses of an interpreter (Form 2H) and an evaluation by a licensed mental health counselor but do not include the fees or expenses of a witness. Court costs do not include fees that must be remitted to the state treasury.

- (2) *To whom order directed and sent.* The order must be directed to the Comptroller of Public Accounts and sent to the Director, Fiscal Division, of the Texas Department of Health.
- (3) *Form and contents of the order.* The order must state the amounts to be awarded the attorney ad litem and the guardian ad litem. The order must be separate from any other order in the proceeding and must not address any subject other than the assessment of fees, expenses, and costs. A trial court may use Forms 2F and 2G, but it is not required to do so.
- (4) *Time for signing and sending order.* The order must be signed by the judge and sent by the clerk to the Department of Health not later than the ninetieth day after the date of the final ruling in a proceeding.
- (c) ***Motion to reconsider; time for filing.*** Within thirty days of actual receipt of the order, the Comptroller or any other person adversely affected by the order may file a motion in the trial court to reconsider the assessment of fees, expenses, or costs. The trial court retains jurisdiction of the case to hear and determine any timely filed motion to reconsider.
- (d) ***Appeal.*** The Comptroller or any other person adversely affected by the order may appeal from the trial court's ruling on the motion to reconsider as from any other final judgment of the court.
- (e) ***Report to the Office of Court Administration.*** The Department of Health must transmit to the Office of Court Administration a copy of every order assessing fees, expenses, or costs in a proceeding under Chapter 33, Family Code. Orders assessing fees, expenses, or costs are not subject to any order of the Supreme Court of Texas requiring mandatory reports of judicial appointments and fees or to the reporting requirements of Chapter 36, Government Code.
- (f) ***Confidentiality.*** When transmitting an order awarding costs to the Department of Health, the clerk must take reasonable steps to preserve its confidentiality. The confidentiality of an order awarding costs—as prescribed by Chapter 33, Family Code—is not affected by its transmission to the Comptroller, Texas Department of Health, or the Office of Court Administration, nor is the order subject to public disclosure in response to a request under any statute, rule, or other law. But these rules do not preclude the Comptroller, the Texas Department of Health, or the Office of Court

Administration from disclosing summary information from orders assessing costs for statistical or other such purposes.

**1.10 Amicus Briefs.** Amicus briefs may be submitted and received by a court—but not filed—under either of the following procedures.

- (a) ***Confidential, case-specific briefs.*** A non-party who is authorized to attend or participate in a particular proceeding under Chapter 33, Family Code, may submit an amicus brief addressing matters, including confidential matters, specific to the proceeding. The brief and the manner in which it is submitted must comply with Rules 1.3 and 1.4 and be directed to the court in which the proceeding is pending. If the brief is filed in paper form, the person must submit the original brief and the same number of copies required for other paper submissions to the court. The person must serve a copy of the brief on the minor’s attorney and guardian ad litem. The court to which the brief is submitted must maintain the brief as part of the confidential case file in accordance with Rule 1.4.
- (b) ***Public or general briefs.*** Any person may submit a brief addressing any matter relating to proceedings under Chapter 33, Family Code. The brief must not contain any information in violation of Rules 1.3 and 1.4. If the brief is filed in paper form, the person must submit the original brief and the same number of copies required for other paper submissions to the court. If the brief is submitted to a court of appeals, one copy of the brief must also be submitted to the Supreme Court of Texas. Upon receipt of an amicus brief submitted under this subsection, the Clerk of the Supreme Court must, as soon as practicable, have the brief posted on the Texas Judiciary website.

### Notes and Comments

1. Rule 1.1 contemplates that other court rules of procedure and administration remain as a “default” governing matters not addressed in these rules. Thus, for example, these rules do not state a deadline for filing notices of appeal, so the ordinary 30-day deadline controls, *see* Tex. R. App. P. 26.1, but these rules control over inconsistent provisions in the appellate rules governing the docketing statement, the record, and briefing.
2. Rule 1.1 also contemplates that individual jurisdictions may enact local rules pursuant to Tex. R. Civ. P. 3a, Tex. R. App. P. 1.2, or Tex. R. Jud. Admin. 10, to the extent consistent with Chapter 33, Family Code, and with these rules, to tailor the implementation of the statute and these rules to local needs and preferences. Local rules may address, for example, the specific location or office where

applications are to be filed, how applications are to be assigned for hearing, and whether an appellate court will permit or require briefing or oral argument. *See also* Rule 2, Comment 1.

3. Any judge involved in a proceeding—whether as the judge assigned to hear and decide the application; the judge assigned to hear and decide any disqualification, recusal, or objection; a judge authorized to transfer the application or assign another judge to it; or an appellate judge—may have access to all information (including the verification page) in the proceeding or any related proceeding, such as a prior filing by the minor. Similarly, a minor’s attorney and guardian ad litem must, of course, have access to the case file to the extent necessary to perform their respective duties.
4. Sections 33.008, 33.0085, and 33.009, Family Code, require physicians, judges, attorneys, and guardians ad litem to report suspected physical or sexual abuse to the Texas Department of Family and Protective Services and to a local law enforcement agency. Section 33.010 makes confidential—“[n]otwithstanding any other law”—all information obtained by the Department or a law enforcement agency under Sections 33.008, 33.0085, and 33.009 except to the extent necessary to prove certain criminal conduct. Rule 1.4(e) construes Section 33.010 in harmony with Section 33.003(i-2), which makes past or potential future abuse relevant to a claim that notifying or attempting to obtain the consent of a parent, managing conservator, or guardian would not be in the minor’s best interest.
5. Rule 1.6 controls to the extent that it conflicts with other provisions regarding the disqualification or recusal of judges, such as Tex. R. Civ. P. 18a, Tex. R. App. P. 16, and Tex. Gov’t Code 25.00255.
6. The archival requirements relating to proceedings under Chapter 33, Family Code, and these rules is governed by Sections 441.158 and 441.185, Government Code, and the schedules promulgated by the Texas State Library and Archives Commission pursuant to those authorities.
7. Orders awarding fees, expenses, and costs contain information that is made confidential by Chapter 33, Family Code. The confidentiality of the information should not be affected by the transmission of the order to the Texas Department of Health and to the Comptroller, which is necessary to effectuate payment, or to the Office of Court Administration, which is necessary to oversee the costs associated with the proceedings. Rule 1.9(f) does not preclude either the Comptroller, the Texas Department of Health, or the Office of Court Administration from disclosing total amounts paid for all proceedings, the average amount awarded per proceeding, or other statistical summaries or analyses that do not impair the confidentiality of the proceedings.

8. Rule 1.10 adds a procedure for filing amicus curiae briefs uniquely designed for the expedited and confidential nature of judicial bypass cases.

## RULE 2. PROCEEDINGS IN THE TRIAL COURT

### 2.1 Where to File an Application; Court Assignment and Transfer; Application Form; Effect of a Nonsuit or Prior Determination.

- (a) ***Counties in which an application may be filed.*** An application for an order under Section 33.003, Family Code, must be filed in the minor's county of residence, unless one of the following exceptions applies.
  - (1) ***Minor's parent is a presiding judge.*** If the minor's parent, managing conservator, or guardian is a presiding judge of a court described in (b)(1) in the county of the minor's residence, the application must be filed in:
    - (A) a contiguous county; or
    - (B) the county where the minor intends to obtain the abortion.
  - (2) ***Residence in a county with a population of less than 10,000.*** If the minor's county of residence has a population of less than 10,000, the application must be filed in:
    - (A) the minor's county of residence;
    - (B) a contiguous county; or
    - (C) the county where the minor intends to obtain the abortion.
  - (3) ***Nonresident minor.*** If the minor is not a Texas resident, the application must be filed in the county where the minor intends to obtain the abortion.
- (b) ***Courts in which an application may be filed; assignment and transfer.***
  - (1) ***Courts with jurisdiction.*** An application may be filed in a district court (including a family district court), a county court at law, or a court having probate jurisdiction.

- (2) *Application filed with district or county clerk.* An application must be filed with either the district clerk or the county clerk, who will assign the application to a court as provided by local rule or these rules. The clerk to whom the application is tendered cannot refuse to accept it because of any local rule or other rule or law that governs the filing and assignment of applications or cases. The clerk must accept the application and transfer it immediately to the proper clerk, advising the person tendering the application where it is being transferred.
- (3) *Court assignment and transfer by local rule.* The courts in a county that have jurisdiction to hear applications may determine by local rule how applications will be assigned between or among them. A local rule must be approved by the Supreme Court under Rule 3a, Texas Rules of Civil Procedure.
- (4) *Initial court assignment if no local rule.* Absent a local rule, the clerk who files an application—whether the district clerk or the county clerk—must assign it as follows:
  - (A) to a district court, if the active judge of the court, or a judge assigned to it, is available;
  - (B) if the application cannot be assigned under (A), then to a statutory county or probate court, if the active judge of the court, or a judge assigned to it, is available;
  - (C) if the application cannot be assigned under (A) or (B), then to the constitutional county court, if it has probate jurisdiction, and if the active judge of the court, or a judge assigned to it, is available;
  - (D) if the application cannot be assigned under (A), (B), or (C), then to the district court.
- (5) *Judges who may hear and determine applications.* An application may be heard and determined by the active judge of the court to which the application is assigned, by any judge authorized to sit for the active judge, or by any judge who may be assigned to the court in which the application is pending. An application may not be heard or determined, or any proceedings under these rules conducted, by a master or magistrate.

- (c) ***Application form.*** An application consists of two pages—a cover page and a separate verification page—if the minor is not represented by an attorney at the time of filing. If the minor is represented by an attorney at the time of filing, the application must include a third page, the attorney’s sworn statement or declaration made under penalty of perjury.
- (1) *Cover page.* The cover page may be submitted on Form 2A, but use of the form is not required. The cover page must be styled “In re Jane Doe” and must not disclose the name of the minor or any information from which the minor’s identity could be derived. The cover page must state:
- (A) that the minor is pregnant;
  - (B) that the minor is unmarried, is under 18 years of age, and has not had her disabilities removed under Chapter 31, Family Code;
  - (C) that the minor wishes to have an abortion without notifying or obtaining consent from either of her parents or a managing conservator or guardian, and the statutory ground or grounds on which she relies;
  - (D) that venue is proper in the county in which the application has been filed;
  - (E) whether the minor has retained an attorney, and if so, the attorney’s name, email address, mailing address, and telephone number;
  - (F) whether the minor requests the court to appoint a particular person as her guardian ad litem; and
  - (G) that, concerning her current pregnancy, the minor has not previously filed an application that was denied; or
  - (H) if the minor has filed a previous application with respect to the current pregnancy that was denied, that this application is being filed in the same court that denied the previous application and that there has been a material change in circumstances since the time the previous application was denied.

- (2) *Verification page.* The verification page may be submitted on Form 2B, but use of the form is not required. The verification page must be separate from the cover page, must be signed by the minor under oath or under penalty of perjury, and must state:
  - (A) the minor's full name, date of birth, physical address, mailing address, and telephone number;
  - (B) the name, address, telephone number, and relationship to the minor of any person the minor requests the court to appoint as her guardian ad litem;
  - (C) if the minor has not retained an attorney, a telephone number—whether that of the minor or someone else (such as a physician, friend, or relative)—at which the minor may be contacted immediately and confidentially until an attorney is appointed to represent her; and
  - (D) that all information contained in the application, including both the cover page and the verification page, is true.
- (3) *Attorney's statement.* The minor's attorney must file with the application a sworn statement or unsworn declaration made under penalty of perjury that attests to the truth of the minor's claims regarding venue and prior applications.
- (d) *Time of filing.* An application is filed when it is actually received by the district or county clerk.
- (e) *Nonsuit requires permission.* A minor may not withdraw or nonsuit an application without permission of the court.
- (f) *Res judicata effect of prior determination.*
  - (1) *General rule.* A minor who has filed an application and obtained a determination by the court under Rule 2.5 may not initiate a new application proceeding with respect to the same pregnancy, and the prior determination is res judicata on the issue whether the minor may consent to an abortion without notification to, or consent of, a parent, managing conservator, or guardian.
  - (2) *Exception for material change in circumstances.* A minor whose application is denied may submit a new application to the court that



denied the application if the minor shows that there has been a material change in circumstances since the prior application was denied.

## 2.2 Clerk's Duties.

- (a) ***Assistance in filing.*** The clerk must give prompt assistance—in a manner designed to protect the minor's confidentiality—to persons seeking to file an application. If requested, the clerk must administer the oath for the verification page or provide a person authorized to do so. The clerk must also redact from the cover page any information identifying the minor. The clerk must ensure that both the cover page and the separate verification page are completed in full.
- (b) ***Filing procedure.*** The clerk must assign the application a cause number that does not identify the assigned judge and affix it to both the cover page and the verification page. The clerk must then provide a certified copy of the verification page to the person filing the application. The clerk must file the verification page under seal in a secure place where access is limited to essential court personnel.
- (c) ***Distribution.*** When an application is filed, the clerk must distribute the cover page and verification page, or a copy of them, to the appropriate court immediately. If appointment of a specific person as guardian ad litem has been requested, the clerk must also communicate the information to the appropriate court immediately.
- (d) ***If judge of assigned court not available.*** The clerk must determine immediately whether the judge of the court to which the application is assigned is available to hear the application within the prescribed time period. If that judge is not available, the clerk must immediately notify the local administrative judge or judges and the presiding judge of the administrative judicial region and must send them any information requested, including the cover page and verification page.
- (e) ***Notice of hearing and appointments.*** When the clerk is advised by the court of a time for the hearing or of the appointment of a guardian ad litem or an attorney ad litem, the clerk must immediately give notice—as directed in the verification page and to each appointee—of the hearing time or appointment. A court coordinator or other court personnel may give notice instead of the clerk.

- (f) **Orders.** The clerk must provide the minor's attorney and the guardian ad litem with copies of all court orders, including findings of fact and conclusions of law.
- (g) ***Certificate of court's failure to rule within time prescribed by statute.*** If the court fails to rule on an application within the time required by Section 33.003(h), Family Code, then, upon the minor's request, the clerk must immediately issue a certificate to that effect, stating that the application is deemed to be denied. The clerk may use Form 2E but is not required to do so.

**2.3 Court's Duties.** Upon receipt of an application from the clerk, the court must promptly:

- (a) appoint a qualified person to serve as guardian ad litem for the minor applicant;
- (b) unless the minor has a retained attorney, appoint an attorney ad litem for the minor, who must not be the same person appointed as guardian ad litem;
- (c) set a hearing on the application; and
- (d) advise the clerk of the appointments and the hearing time.

**2.4 Hearing.**

- (a) ***Time.***
  - (1) ***General rule.*** The court must conduct a hearing in time to rule on the application by the deadline stated in Rule 2.5(f).
  - (2) ***Minor may request postponement.*** The minor may postpone the hearing by written request to the clerk. The request may be submitted on Form 2C, but use of the form is not required. The request must either specify a date on which the minor will be ready for the hearing or state that the minor will later provide a date on which she will be ready for the hearing. Once the minor determines when she will be ready for the hearing, she must notify the clerk of that time in writing. The postponed hearing must be conducted in time for the court to rule on the application by the deadline stated in Rule 2.5(f).

- (b) ***Place.*** The hearing should be held in a location, such as a judge's chambers, that will ensure confidentiality. The hearing may be held away from the courthouse.
- (c) ***Persons attending.*** The hearing must be closed to the public. Only the judge, the court reporter, other essential court personnel, the minor, her attorney, her guardian ad litem, and witnesses on the minor's behalf may be present.
- (d) ***Record.*** The court, the minor, the minor's attorney, or the guardian ad litem may request that the record—the clerk's record and reporter's record—be prepared. A request by the minor, the minor's attorney, or the guardian ad litem must be in writing and may be, but is not required to be, on Form 2I (if an appeal will be taken) or 2J (if an appeal will not be taken). The court reporter must provide an original and two copies of the reporter's record to the clerk. When the record has been prepared, the clerk must contact the minor, if she has requested the record; the minor's attorney; and the guardian ad litem at the telephone numbers shown on Form 2I or 2J and make it available to them. The record must be prepared and made available immediately if it has been requested for appeal or to demonstrate the past or potential abuse of the minor. When a notice of appeal is filed, the clerk must forward the record to the court of appeals in accordance with Rule 3.2(b).
- (e) ***Hearing to be informal.*** The court should attempt to rule on the application without regard to technical defects in the application or the evidence. Affidavits of persons other than the minor are admissible. Statements in the application cannot be offered as evidence to support the application. If necessary, the court may assist the minor in remedying technical defects in the application and in presenting relevant and material facts.

## 2.5 Ruling.

- (a) ***Form of ruling.*** The court's ruling on the application must include a signed order and written findings of fact and conclusions of law. The findings and conclusions may be included in the order. The court may use Form 2D, but it is not required to do so.
- (b) ***Grounds for granting application.*** The court must grant the application if the minor establishes, by clear and convincing evidence:

- (1) that the minor is mature and sufficiently well informed to make the decision to have an abortion performed without notice to, or consent of, a parent, managing conservator, or guardian; or
  - (2) that the notification or attempt to obtain consent would not be in the minor's best interest.
- (c) ***The mature-and-informed inquiry.*** In determining whether the minor meets the requirements of (b)(1), the court must consider the experience, perspective, and judgment of the minor. The court may:
  - (1) consider all relevant factors, including:
    - (A) the minor's age;
    - (B) the minor's life experiences, such as working, traveling independently, or managing her own financial affairs; and
    - (C) steps taken by the minor to explore her options and the consequences of those options;
  - (2) inquire as to the minor's reasons for seeking an abortion;
  - (3) consider the degree to which the minor is informed about the state-published informational materials described by Chapter 171, Health and Safety Code; and
  - (4) require the minor to be evaluated by a licensed mental health counselor, who must return the evaluation to the court for review within three business days.
- (d) ***The best-interest inquiry.*** In determining whether the minor meets the requirements of (b)(2), the court may inquire as to:
  - (1) the minor's reasons for not wanting to notify and obtain consent from a parent, managing conservator, or guardian;
  - (2) whether notification or the attempt to obtain consent may lead to physical or sexual abuse;
  - (3) whether the pregnancy was the result of sexual abuse by a parent, managing conservator, or guardian; and

- (4) any history of physical or sexual abuse from a parent, managing conservator, or guardian.
- (e) ***Grounds for denying the application.*** The court must deny the application if:
  - (1) the minor does not establish either ground in (b) by clear and convincing evidence; or
  - (2) the minor does not attend the hearing; and
    - (A) the minor had actual knowledge of the setting; or
    - (B) diligent attempts were made to notify the minor of the setting.
- (f) ***Time for ruling.*** The court must rule on an application as soon as possible after it is filed, subject to any postponement requested by the minor, and immediately after the hearing is concluded. Section 33.003(h), Family Code, states that a court must rule on an application by 5 p.m. on the fifth business day after the day the application is filed, or if the minor requests a postponement, by 5 p.m. on the fifth business day after the date the minor states she is ready for the hearing.
- (g) ***Failure to timely rule.*** If the court fails to timely rule on an application, the application is deemed to be denied.
- (h) ***Notification of the right to appeal.*** If the court denies the application, it must inform the minor of her right to appeal under Rule 3 and furnish her with the notice of appeal form, Form 3A.

### Notes and Comments

1. Section 33.003(b), Family Code, permits an application to be filed in “a county court at law, court having probate jurisdiction, or district court, including a family district court, in the minor’s county of residence” or, if an exception applies, in a contiguous county or the county where the abortion would be performed. The initial assignment of an application to a specific court in a county is made by the clerk with whom the application is filed (not by the minor). Given the diversity of needs and circumstances among Texas courts, these rules allow the courts in each county to tailor the procedures for filing, handling, and assigning applications prescribed by these rules to best meet those needs and circumstances. Chapter 74, Subchapter C, Government Code, affords the presiding judge of an administrative judicial region broad discretion to assign active judges within the region, as well

as visiting judges, to hear matters pending in courts within the region. *See* Tex. Govt. Code §§ 74.054, 74.056; *see also id.* § 74.056(b) (presiding judges may request judges from other judicial regions for assignment); § 74.057 (Chief Justice may assign judges from one judicial region to another). Section 25.0022, Government Code, provides for assignment of probate judges. Furthermore, Chapter 74, Subchapter D, Government Code, authorizes district and statutory county court judges within a county to hear matters pending in any district or statutory county court in the county. *Id.* § 74.094(a). Finally, Section 74.121, Government Code, permits courts within a county to transfer cases among courts having jurisdiction over the case. If no local rule governs assignments, then Rule 2.1(b)(4) controls.

2. Because an application is considered filed when it is actually received by the clerk, the timing provisions relating to filing by mail of Tex. R. Civ. P. 21a are inapplicable.
3. Section 33.003(f), Family Code, provides that a guardian ad litem may be (1) a person who may consent to treatment for the minor under Sections 32.001(a)(1)-(3), Family Code; (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 Family and Protective Services; (4) a member of the clergy; or (5) another appropriate person selected by the court. The trial court may also consider appointing a qualified person requested by the minor. Although not directly applicable to these proceedings, the standards embodied in Chapter 107, Family Code, reflect legislative intent that competent and qualified persons be appointed to serve as ad litem and may provide general guidance concerning the nature of those qualifications. Appointment of an employee of the Department of Family and Protective Services to serve as guardian ad litem may give rise to a conflict of interest not immediately apparent at the time since the Department may be involved with the minor's family due to an abuse or neglect investigation, or may be party to a suit affecting the parent-child relationship, or may already be serving as the child's managing conservator.
4. The duties of guardians ad litem are not susceptible of precise definition. Generally, a guardian ad litem should interview the minor and conduct any investigation the guardian believes to be appropriate, without violating Rules 1.3 and 1.4, to assist the court in arriving at an opinion whether the minor is mature and sufficiently well informed to make the decision to have an abortion performed without notification to, or consent of, either of her parents or a managing conservator or guardian or whether notification or the attempt to obtain consent would not be in the best interest of the minor. Rule 2.5(c) and (d) list some nonexclusive factors outlined in Section 33.003(i-1)-(i-2), Family Code, that a court may consider in deciding whether the statutory criteria for a bypass have

been met. Factors that have been considered in other jurisdictions with similar parental notification and consent statutes include:

- whether the minor has been examined by a doctor of medicine, doctor of osteopathy, or registered nurse—who is licensed to practice in Texas—and has given that health care provider an accurate and complete statement of her medical history;
- whether the minor has been provided with information or counseling bearing on her decision to have an abortion;
- whether the minor desires further counseling;
- whether, based on the information or counseling provided to the minor, she is able to give informed consent;
- whether the minor is attending school, or is or has been employed;
- whether the minor has previously filed an application that was denied;
- whether the minor lives with her parents;
- whether the minor desires an abortion or has been threatened, intimidated, or coerced into having an abortion;
- whether the pregnancy resulted from sexual assault, sexual abuse, or incest;
- whether there is a history or pattern of family violence; and
- whether the minor fears for her safety.

These considerations may not be relevant in every case, are not exclusive, and may not be sufficient to discharge the guardian ad litem's responsibilities in every case. Use of these factors as a basis for civil liability or as a statement of the standard of care is contrary to their intended purpose. Nothing in this comment alters existing standards of conduct under the Texas Disciplinary Rules of Professional Conduct, the Texas Rules of Disciplinary Procedure, or the Code of Judicial Conduct.

In addition to these general guidelines, Chapter 107, Family Code, sets forth duties of guardians and attorneys ad litem appointed in suits affecting the parent-child relationship. These duties are not directly applicable to proceedings under Chapter

33, Family Code, and may be incompatible with the confidential and expeditious nature of such proceedings, but they reflect general legislative intent concerning the responsibilities of ad litem.

5. Under Rule 2.5(b), once a court concludes that an application should be granted on a single ground, it need not address other grounds. But in addressing any ground, the court should attempt to ascertain, among other factors, whether the pregnancy resulted from sexual assault, sexual abuse, or incest. The legislative history of Chapter 33, Family Code, indicates that one of the principal purposes of the statute was to screen for sexual crimes and abuse of minors so as to protect them against further victimization.

### **RULE 3. APPEAL FROM DENIAL OF APPLICATION**

- 3.1 How to Appeal.** To appeal the denial of an application, the minor must file a notice of appeal with the clerk of the court that denied the application, file a copy of the notice of appeal with the clerk of the court of appeals to which an appeal is to be taken, and advise the clerk of the court of appeals by telephone that an appeal is being taken under Chapter 33, Family Code. The minor may use Form 3A but is not required to do so. The notice of appeal must:

- (a) be styled “In re Jane Doe”;
- (b) state the number of the cause in the trial court;
- (c) be addressed to a court of appeals with jurisdiction in the county in which the application was filed;
- (d) state an intention to appeal; and
- (e) be signed by the minor’s attorney.

- 3.2 Clerk’s Duties.**

- (a) ***Assistance in filing.*** The trial court clerk must give prompt assistance—in a manner designed to protect the minor’s confidentiality—to persons seeking to file an appeal. The clerk must ensure that the notice of appeal is addressed to the proper court of appeals and that the minor’s name and identifying information are not disclosed.
- (b) ***Forwarding record to court of appeals.*** Upon receipt of a notice of appeal, the trial court clerk must immediately forward to the clerk of the court of appeals the notice of appeal, the clerk’s record excluding the verification



page, and the reporter's record. The trial court clerk must deliver the record to the clerk of the court of appeals by hand or send it by fax or email. The clerk must not send the record by mail.

- (c) ***Certificate of court's failure to rule within time prescribed by statute.*** If the court of appeals fails to rule on an application within the time required by Section 33.004(b), Family Code, then, upon the minor's request, the clerk of the court of appeals must immediately issue a certificate to that effect, stating that the trial court's order is affirmed. The clerk may use Form 3D but is not required to do so.

### 3.3 Proceedings in the Court of Appeals.

- (a) ***Briefing and argument.*** A minor may request to be allowed to submit a brief and to present oral argument, but the court may decide to rule without a brief or oral argument.
- (b) ***Ruling.*** The court of appeals—sitting in a three-judge panel—must issue a judgment affirming or reversing the trial court's order denying the application. The court may use Form 3C but is not required to do so.
- (c) ***Time for ruling.*** The court of appeals must rule on an appeal as soon as possible, subject to any postponement requested by the minor. Section 33.004(b), Family Code, states that a court must rule on an appeal by 5 p.m. on the fifth business day after the notice of appeal is filed with the court that denied the application, or if the minor requests a postponement, by 5 p.m. on the fifth business day after the date the minor states she is ready to proceed.
- (d) ***Postponement by minor.*** The minor may postpone the time of ruling by written request filed either with the trial court clerk at the time she files the notice of appeal or thereafter with the court of appeals clerk. The request may be submitted on Form 3B, but use of the form is not required. The request must either specify a date on which the minor will be ready to proceed to ruling, or state that the minor will later provide a date on which she will be ready to proceed to ruling. Once the minor determines when she will be ready to proceed to ruling, she must notify the court of appeals clerk of that date in writing.
- (e) ***Opinion.***
  - (1) ***Opinion optional; must preserve confidentiality.*** A court of appeals may issue an opinion explaining its ruling, but it is not required to do

so. An opinion that is designated for publication or public release must be written in a way to preserve the confidentiality of the identity of the minor.

(2) *Time.* Any opinion must issue not later than:

(A) ten business days after the day on which a notice of appeal is filed in the Supreme Court, if an appeal is taken to the Supreme Court; or

(B) sixty days after the day on which the court of appeals issued its judgment, if no appeal is taken to the Supreme Court.

(3) *Transmission to Supreme Court and trial court.* When the court of appeals issues an opinion, the clerk must transmit it immediately to the Supreme Court and to the trial court. If the opinion is not designated for publication or public release, the transmission must be confidential.

(f) *Failure to timely rule.* If the court of appeals fails to timely rule on the appeal, the trial court's judgment is deemed to be affirmed.

### Notes and Comments

1. Chapter 33, Family Code, provides for no appeal from an order granting an application.
2. A request to postpone the ruling of the court of appeals may be used in conjunction with a request for oral argument or to submit briefing.
3. Neither Chapter 33, Family Code, nor these rules prescribe the appellate standard of review.
4. The 2015 amendments to Chapter 33, Family Code, permit the court of appeals to publish an opinion "if the opinion is written in a way to preserve the confidentiality of the identity of the pregnant minor." TEX. FAM. CODE § 33.004(c-1). Any opinion that is released to the public must not only omit the minor's name and other directly identifying information but it must also describe the facts in a way that those who know the minor would not be able to recognize her.

**RULE 4. APPEAL TO THE SUPREME COURT**

**4.1 How to Appeal to the Supreme Court.** To appeal from the court of appeals to the Supreme Court, the minor must file a notice of appeal with the clerk of the Supreme Court, file a copy of the notice of appeal with the clerk of the court of appeals, and advise the clerk of each court by telephone that an appeal is being taken under Chapter 33, Family Code. The minor may use Form 4A but is not required to do so. The notice of appeal must:

- (a) be styled “In re Jane Doe”;
- (b) state the number of the cause in the court of appeals;
- (c) state an intention to appeal; and
- (d) be signed by the minor’s attorney.

**4.2 Clerk’s Duties.**

- (a) ***Assistance in filing.*** The clerk of the Supreme Court must give prompt assistance—in a manner designed to protect the minor’s confidentiality—to any person seeking to file an appeal. The clerk must ensure that the notice of appeal is addressed to the Supreme Court and that the minor’s name and identifying information are not disclosed.
- (b) ***Forwarding record to Supreme Court.*** Upon receipt of a notice of appeal to the Supreme Court, the clerks of the court of appeals and Supreme Court must immediately forward to the Supreme Court the record that was before the court of appeals.

**4.3 Proceedings in the Supreme Court.** A minor may request to be allowed to submit a brief and to present oral argument, but the Court may decide to rule without a brief or oral argument. The Court must rule as soon as possible.

## Instructions for Applying to the Court for a Waiver of Parental Notification and Consent (Form 1A)

### Your situation and the law

If you are younger than 18 and have not been legally “emancipated,” you are “unemancipated,” which means that you are legally under the custody or control of your parents (or one of your parents), a managing conservator, or a guardian. (A “managing conservator” is an adult or agency appointed by a court to have custody or control of you.)

If you are pregnant, unemancipated, and younger than 18, you cannot get an abortion in Texas unless:

- your doctor informs one of your parents or your managing conservator or guardian at least 48 hours before the abortion and obtains the consent of your parent, managing conservator, or guardian; *or*
- a judge issues an order that “waives” or removes the requirement that you must let a parent or your managing conservator or guardian know about your planned abortion and obtain his or her consent to it.

### How to get a waiver of parental notification and consent

#### *Fill out the application*

To get a court order waiving the requirements that you tell a parent or your managing conservator or guardian about your planned abortion and obtain his or her consent, you must complete Forms 2A and 2B, ***Confidential Application for Waiver of Parental Notification***. Form 2A is the “Cover Page” for the Application; it requests basic information about why you are seeking the order. Form 2B is the “Verification Page,” which requests information about you.

On the Verification Page, you will be asked to tell the court how you may be contacted quickly and confidentially. It is very important that you provide this information because the court may later need to contact you about your application. If you cannot be contacted, your application will be denied. You may list a phone number, email address, or any other way that you can be contacted. You can but need not give your own number—instead, you can ask the court to contact you through someone who is helping you or acting on your behalf. You may also list a second person who may be contacted on your behalf.

You or someone acting on your behalf must deliver the forms to the clerk in the district court, county court at law, county court, or probate court to be filed. The court clerk can help you complete and file the application, and can help you get a hearing on your request. However, the clerk cannot give you legal advice or counsel you about abortion.

All of the information you put on the application is confidential. You do not have to pay a fee to file this application.

### ***Your hearing***

The court will tell you when to come to the courthouse for your “hearing.” In your hearing, you will meet with a judge to discuss your request. The court will hold your hearing within five days (not counting weekends and holidays) after you file your application.

After you file your application, the court will appoint a person to meet with you before the hearing and help the judge decide your application. The person is called a “guardian ad litem.” In your application you may ask the court to appoint someone you want to be your guardian ad litem (who can be a relative, clergy, counselor, psychiatrist or psychologist, or other adult), but the court is not required to appoint this person.

You must also have a lawyer with you at your hearing. You may hire your own lawyer, or you may ask the court to appoint one to represent you for free.

### ***Keeping it confidential***

Your hearing will be confidential and private. The only persons allowed to be there are you, your guardian ad litem, your lawyer, court staff, and any person whom you request to be there.

You already know that your application stays confidential. So will everything from your hearing: all testimony, documents and other evidence presented to the court, and any order given by the judge. The court will keep everything sealed. No one else can inspect the evidence.

### ***The court’s decision***

The court must “rule”—issue a decision on your application—before 5 p.m. on the fifth day after the day you filed your application, not counting weekends and holidays.

If the court fails to rule within that time, then your request is automatically denied. You can get a certificate from the court clerk that says that your request is “deemed denied.” If you choose to appeal, the certificate will be sent to the appellate court to explain what happened in your case.

If the court *does* rule within the required time, the court issues an order that does one of the following three things:

- (1) approves your request because the court finds that you are mature enough and know enough to choose on your own to have an abortion;

- (2) approves your request because it is in your best interests *not* to notify or to attempt to obtain the consent of your parent or your managing conservator or guardian before getting the abortion; or
- (3) denies your request because the court does not find (1) or (2).

If you say, or if there is evidence, that you have been or may be sexually abused, the court must treat your claim as a very serious matter and may be required to refer it to the police or other authorities for investigation.

### ***Appealing the court's decision***

If the court denies your request, you may ask another court to hear your case. This request is called an “appeal,” and the new court will be the court of appeals.

To appeal the first court's decision, have your lawyer fill out Form 3A, ***Notice of Appeal in Parental Notification Proceeding***. The lawyer must file it with the clerk of the court that denied your request for a waiver of parental notification.

You will *not* have to go to the court of appeals in person. Instead, the court of appeals will review the written record and will issue a written ruling on your appeal no later than 5 p.m. on the fifth day after the day you file the *Notice of Appeal*, not counting weekends and holidays.

The court of appeals will provide its ruling to you, your lawyer, your guardian ad litem, or any other person designated by you to receive the ruling.

The same guardian ad litem and lawyer who helped you with your first hearing can help with your appeal.

### ***Getting the forms you need***

Forms 2A and 2B, the Cover Page and Verification Page to the *Confidential Application for Waiver of Parental Notification*, and Form 3A, *Notice of Appeal in Parental Notification Proceeding*, should all be attached to these instructions.

If these forms are not attached to these instructions, you can get them from the clerk of the district, county court at law, county, or probate court or from the clerk of the court of appeals. These forms are also available on the Texas Judiciary website at [www.txcourts.gov](http://www.txcourts.gov).

**Attention Clerk: Please Expedite**

**Confidential Application for Waiver of  
Parental Notification and Consent: Cover Page (Form 2A)**

As prescribed by the Clerk of the Supreme Court of Texas pursuant to Tex. Fam. Code § 33.003(m).

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**(Do not complete this section. Court staff will complete this section.)**

CAUSE NO. \_\_\_\_\_

IN RE JANE DOE

IN THE \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ COUNTY, TEXAS

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**Important: Your Application has two parts: (1) this cover sheet (Form 2A), which asks for basic information about your application; and (2) a separate verification page (Form 2B), which asks for information about you and for you to swear to the truth of everything you say in the cover sheet and verification page. You must complete both of these forms.**

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1. I ask the court for an order that allows me to have an abortion without first telling and obtaining the consent of my parent, managing conservator, or guardian. I swear or affirm that **(place a check mark in all the blanks for which you answer “yes”)**:
  - ☐ I am pregnant.
  - ☐ I am unmarried and younger than 18 years of age.
  - ☐ I do not have an order from a Texas court that gives me the same legal rights and responsibilities as an adult.
2. I request this order for one of the following reasons **(place a check mark beside any that apply)**:

- ☐ I am mature enough to decide to have an abortion without telling and obtaining the consent of my parent, managing conservator, or guardian. I also know enough about abortion to make this decision.
- ☐ Telling my parent, managing conservator, or guardian that I want an abortion and attempting to obtain his or her consent is not in my best interest.
- ☐ Telling my parent, managing conservator, or guardian that I want an abortion may lead to physical or emotional abuse of me.
- ☐ Telling my parent, managing conservator, or guardian that I want an abortion may lead to sexual abuse of me.

3. Please check all that apply:

- ☐ I live in the county where this application is being filed.
- ☐ My parent, managing conservator, or guardian is a presiding judge of a district court, a county court at law, or a court having probate jurisdiction in the county where I live, and **(check any that apply)**:
  - ☐ The county where I live is contiguous to (shares a border with) this one.
  - ☐ I intend to obtain the abortion in this county.
- ☐ The population of the county where I live has a population of less than 10,000, and **(check any that apply)**:
  - ☐ The county where I live is contiguous to (shares a border with) this one.
  - ☐ I intend to obtain the abortion in this county.
- ☐ I am not a Texas resident, but I intend to obtain the abortion in this county.

4. Please check one of the following statements:

- ☐ I do **not** have a lawyer. (The court will appoint one for you).
- ☐ I have a lawyer, who is:

Lawyer's name: \_\_\_\_\_

Lawyer's email address: \_\_\_\_\_

Lawyer's address: \_\_\_\_\_



Lawyer's phone: \_\_\_\_\_

5. The court must appoint a “guardian ad litem” for you. A guardian ad litem meets with you before the hearing and helps the judge decide your application. Please state whether you want the court to appoint someone you know as your guardian ad litem. This person could be a relative, a member of the clergy, a counselor, a psychiatrist or psychologist, or another adult. You do not have to ask the court to appoint someone you know. Keep in mind that the court may appoint the person you request, but it does not have to.
- ☐ I am requesting that the court appoint someone I know as my guardian ad litem. (You will identify this person on your verification page.)
  - ☐ I am not requesting the court to appoint someone I know as my guardian ad litem. (The court will appoint someone it chooses.)
6. Please state whether you have filed a Confidential Application for Waiver of Parental Notification and Consent other than this one with respect to your current pregnancy.
- ☐ I have filed another Confidential Application for Waiver of Parental Notification and Consent with respect to my current pregnancy.
  - ☐ I have **not** filed another Confidential Application for Waiver of Parental Notification and Consent with respect to my current pregnancy.
7. If you have filed another Confidential Application for Waiver of Parental Notification and Consent with respect to your current pregnancy, please answer the following questions. If you have not filed another Application with respect to your current pregnancy, do not answer these questions.

What court ruled on your previous application? \_\_\_\_\_

Has there been a material change in circumstances since the time your previous application was denied? (Write “yes” or “no.”) \_\_\_\_\_

CAUSE NO. \_\_\_\_\_

(Do not fill in the blank above. Court staff will fill in the blank.)

**Confidential Application for Waiver of Parental  
Notification and Consent: Verification Page (Form 2B)**

As prescribed by the Clerk of the Supreme Court of Texas pursuant to Tex. Fam. Code  
§ 33.003(m)

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**Important: Your Application has two parts: (1) the cover sheet (Form 2A), which asks for basic information about your application; and (2) this verification page (Form 2B), which asks for information about you and for you to swear to the truth of everything you say in the cover sheet and verification page. You must complete both of these forms.**

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1. Please provide the following information.

Your full name: \_\_\_\_\_

Your date of birth: \_\_\_\_\_

Your address (if the place you receive mail is different than the place you actually live, list both addresses): \_\_\_\_\_

Your telephone number: \_\_\_\_\_

2. If you are requesting the court to appoint someone you know as your guardian ad litem (*see* Question 5 on the Cover Sheet, Form 2A), please identify them:

Name: \_\_\_\_\_

Relationship: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

3. If you do not have a lawyer, please complete the two blanks below. Tell us how the court, the lawyer appointed by the court, and the guardian ad litem appointed by the court can quickly contact you. If you cannot be contacted, your application will be denied. You can choose to be contacted by telephone or any other method by which you can be contacted immediately and confidentially. If you share a telephone number with another person, or there is another reason why you do not

want to be contacted at the telephone number you provided above, you can have us contact someone else who helps you.

Person to be contacted (you or another person): \_\_\_\_\_

Phone number or other contact information: \_\_\_\_\_

Another person to be contacted (optional): \_\_\_\_\_

Phone number or other contact information: \_\_\_\_\_

**Important:** Please complete either Option 1 or Option 2 below. You do not have to complete both. If you complete Option 1, you must sign your name before a notary public, court clerk, or another person authorized to give oaths. If you complete Option 2, you do not have to sign your name before a notary public or any other person, but you must swear that the information in your Application is true “under penalty of perjury.” “Perjury” means lying to a judge, and it is a crime. If you swear that a statement is true “under penalty of perjury,” and you make the statement knowing that it is false, you could be prosecuted in criminal court.

**Option 1**

I swear or affirm that the information in my Application (both the Cover Sheet and this Verification Page) is true and correct.

\_\_\_\_\_  
Signature of minor

\_\_\_\_\_  
Name of minor printed or typed

\_\_\_\_\_  
Minor’s date of birth

Sworn to or affirmed in my presence this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Signature of notary public, clerk, or other person authorized to give oaths

**(Option 2 is on the next page)**

**Option 2**

My name is \_\_\_\_\_ (*First*) \_\_\_\_\_ (*Middle*) \_\_\_\_\_ (*Last*), my date of birth is \_\_\_\_\_, and my address is \_\_\_\_\_ (*Street*), \_\_\_\_\_ (*City*), \_\_\_\_\_ (*State*), \_\_\_\_\_ (*Zip Code*), and \_\_\_\_\_ (*Country*). I declare under penalty of perjury that the information in my Application (both the Cover Sheet and the Verification Page) is true and correct.

Executed in \_\_\_\_\_ (*County*), State of \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_ (*Month*), \_\_\_\_\_ (*Year*).

\_\_\_\_\_  
Signature of minor

**Request to Postpone Trial Court Hearing in Proceeding to Waive Parental  
Notification and Consent; Designation of Alternate Time for Hearing  
(Form 2C)**

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CAUSE NO. \_\_\_\_\_

IN RE JANE DOE

IN THE \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_ COUNTY, TEXAS

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Please check and complete any questions below that apply:

- ☐ I request that the court postpone its hearing on my application. The hearing currently is due to be held on or by \_\_\_\_\_ at \_\_\_\_\_ a.m./p.m.
- ☐ Please rule on my application by 5 p.m. on the fifth business day after (please state a date after which you will be ready to have a hearing) \_\_\_\_\_. The clerk will notify you concerning the specific time of the hearing.
- ☐ I will contact you at a later time to determine a time for the hearing.

Attorney's Signature: \_\_\_\_\_

Attorney's Name, Printed: \_\_\_\_\_

Attorney's State Bar No.: \_\_\_\_\_

Attorney's Address: \_\_\_\_\_

Attorney's Telephone: \_\_\_\_\_

Attorney's Email Address: \_\_\_\_\_

Attorney's Fax No.: \_\_\_\_\_

**Judgment and Findings of Fact and Conclusions of Law on Application in  
Proceeding to Waive Parental Notification and Consent (Form 2D)**

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CAUSE NO. \_\_\_\_\_

IN RE JANE DOE

IN THE \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_ COUNTY, TEXAS

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This matter was heard on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. Based on the testimony and evidence presented, this court finds:

1. The applicant is pregnant.
2. The applicant is unmarried and under 18 years of age.
3. The applicant has not had her disabilities as a minor removed under Chapter 31 of the Texas Family Code.
4. The applicant wishes to have an abortion without her doctor notifying and obtaining the consent of either of her parents, her managing conservator, or her guardian.
5. Clear and convincing evidence supports the following: [State “yes” beside an issue for which the court finds in favor of the applicant by clear and convincing evidence. If any one issue is decided in favor of the applicant, the court need not consider the other issues.]

- The applicant is mature and sufficiently well informed to make the decision to have an abortion performed without notification to, or the consent of, either of her parents, her managing conservator, or her guardian.

Finding of Facts and Conclusions of Law:

\_\_\_\_\_  
\_\_\_\_\_

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- Notifying and attempting to obtain the consent of either of the applicant's parents, her managing conservator, or her guardian would not be in her best interest.

Findings of Facts and Conclusions of Law:

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THEREFORE, IT IS ORDERED:

- The application is GRANTED and the applicant is authorized to consent to the performance of an abortion without notifying and obtaining the consent of either of her parents or a managing conservator or guardian.
- The application is DENIED. The applicant is advised of her right to appeal under Rule 3 of the Rules for a Judicial Bypass of Parental Notice and Consent Under Chapter 33 of the Family Code and will be furnished a Notice of Appeal form, Form 3A.

All costs shall be paid by the State of Texas pursuant to Family Code Chapter 33.

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Judge Presiding

**Certificate of Deemed Denial of Application in Proceeding to Waive Parental  
Notification and Consent (Form 2E)**

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CAUSE NO. \_\_\_\_\_

IN RE JANE DOE

IN THE \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_ COUNTY, TEXAS

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This will certify that on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, Jane Doe filed an application for a court order authorizing her to consent to an abortion without the parental notice and consent required by Sections 33.002 and 33.0021, Family Code. The court did not rule on the application by 5 p.m. on the fifth business day after the day the application was filed. Accordingly, under Rule 2.5(g) of the Rules for a Judicial Bypass of Parental Notice and Consent Under Chapter 33, Family Code, the application is deemed to be DENIED.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Judge Presiding or Clerk



**Order that Costs in Proceeding to Waive Parental Notification and Consent Be  
Paid by the State Pursuant to Texas Family Code § 33.007 (Form 2F)**

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**Notice: To guarantee reimbursement, this Order must be served on the Director,  
Fiscal Division, Texas Department of Health, within the deadlines imposed by Rule  
1.9(b) of the Rules for a Judicial Bypass of Notice and Consent Under Chapter 33 of  
the Family Code.**

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CAUSE NO. \_\_\_\_\_

IN RE JANE DOE

IN THE \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ COUNTY, TEXAS

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**ORDER**

In this proceeding filed under Texas Family Code § 33.003, the court heard evidence on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, concerning court costs. Based on the evidence presented, pursuant to Texas Family Code § 33.007, the State of Texas is ordered to pay:

1. Reasonable and necessary attorney ad litem fees and expenses of \$\_\_\_\_\_ to:

Name:

State Bar No.

Address:

Telephone:

Federal Tax ID:

2. Reasonable and necessary guardian ad litem fees and expenses of \$\_\_\_\_\_ to:

Name:

Address:

Telephone:

Federal Tax ID:

3. Court reporter's fees certified by the court reporter to:

Name:

Address:

Telephone:

Federal Tax ID:

4. All court costs certified by the clerk.

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Judge Presiding

**Clerk's Certification of Court Costs and Fees and Transmission of Order for  
Payment in Proceeding to Waive Parental Notification and Consent  
(Form 2G)**

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Director, Fiscal Division  
Texas Department of Health  
1100 West 49th Street  
Austin TX 78756

Re: *In re Jane Doe*

Cause No. \_\_\_\_\_

Court: \_\_\_\_\_

County: \_\_\_\_\_

Dear Sir or Madam:

Please find enclosed a certified copy of an Order issued on \_\_\_\_\_, 20\_\_\_\_, in the referenced case. Please pay the amounts to the payees as stated in the Order.

In accordance with the Order, I certify the following fees and costs for payment as follows:

Amount: \$\_\_\_\_\_

Name of the Clerk: \_\_\_\_\_

Address : \_\_\_\_\_

Tax Identification No.: \_\_\_\_\_ Thank you.

Sincerely,

\_\_\_\_\_

[seal]

Name: \_\_\_\_\_

Position: \_\_\_\_\_

Encl.: Certified copy of Order

**Order Appointing Interpreter for Proceeding to Waive Parental Notification  
and Consent Under Chapter 33, Family Code (Form 2H)**

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CAUSE NO. \_\_\_\_\_

IN RE JANE DOE

IN THE \_\_\_\_\_

\_\_\_\_\_ COUNTY, TEXAS

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**ORDER**

ORDERED that for good cause, the following person is appointed an interpreter to assist the applicant in applying for relief under Chapter 33, Family Code:

Name: \_\_\_\_\_ State Bar No. \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_ Federal Tax ID: \_\_\_\_\_

Signed: this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Judge

**OATH FOR INTERPRETER**

I, \_\_\_\_\_, do swear or affirm that I am competent and well versed in the \_\_\_\_\_ language and will: (1) make a true interpretation of all the proceedings to the applicant; and (2) repeat verbatim all statements, questions, and answers of all persons who are a part of the proceeding to the applicant, counsel, the court, and others in the English language and in the \_\_\_\_\_ language, using my best skill and judgment.

I will not: (1) participate in any manner other than as an interpreter in the decision making or adjudicative process; (2) communicate with any other person regarding the proceedings except a literal translation of questions, answers, or remarks made during the proceeding; or (3) disclose or discuss any of the proceedings with any person following entry of judgment.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone Number

SWORN TO AND SUBSCRIBED before me on \_\_\_\_\_, 20\_\_.

[Seal]

**Notice to Clerk and Court Reporter to Prepare Records (Form 2I)**

CAUSE NO. \_\_\_\_\_

IN RE JANE DOE:

This matter was heard on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_. The Court has issued a final judgment. **Jane Doe may desire to appeal.** Jane Doe request the court reporter and appropriate clerk to immediately prepare a record of the trial proceedings and make it available to:

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
(Name and address of guardian ad litem) (Name and address of minor's attorney)

Immediately upon completion of the record, the clerk must contact both the undersigned attorney and the guardian ad litem at the following telephone numbers to advise that the record is available:

\_\_\_\_\_  
(Telephone number for guardian ad litem) (Telephone number for minor's attorney)

A copy of this notice has been given to both the appropriate clerk and court reporter and no additional request for the record of the trial proceedings is required. The filing of this document with the clerk constitutes proof that written request for preparation of the trial record was made.

Signed the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ at \_\_\_\_\_ [time] a.m./p.m. [circle one]

\_\_\_\_\_  
ATTORNEY

\_\_\_\_\_  
GUARDIAN AD LITEM

**Caution: no official or court personnel involved in the proceedings may ever disclose to anyone outside the proceedings—including the minor's parent, managing conservator, or legal guardian—that the minor is or has ever been pregnant, or that she wants or has ever wanted an abortion, except as permitted by law.**

# Notice to Clerk and Court Reporter to Prepare Records (Form 2J)

CAUSE NO. \_\_\_\_\_

IN RE JANE DOE:

This matter was heard on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_. The Court has issued a final judgment and **no appeal will be taken**. Jane Doe's attorney or guardian ad litem requests the court reporter and the appropriate clerk to prepare a record of the trial proceedings and make it available to:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
(Name and address of guardian ad litem)      (Name and address of minor's attorney)

Upon completion of the record, the clerk must contact both the undersigned attorney and the guardian ad litem at the following telephone numbers to advise that the record is available:

\_\_\_\_\_

\_\_\_\_\_

(Telephone number for guardian ad litem)      (Telephone number for minor's attorney)

A copy of this notice has been given to both the appropriate clerk and the court reporter and no additional request for the record of the trial proceedings is required. The filing of this document with the clerk constitutes proof that written request for preparation of the trial record was made.

Signed the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ at \_\_\_\_\_ [time] a.m./p.m. [circle one]

\_\_\_\_\_  
ATTORNEY

\_\_\_\_\_  
GUARDIAN AD LITEM

**Caution: no official or court personnel involved in the proceedings may ever disclose to anyone outside the proceedings—including the minor's parent, managing conservator, or legal guardian—that the minor is or has ever been pregnant, or that she wants or has ever wanted an abortion, except as permitted by law.**

## **Attention Clerk: Please Expedite**

### **Notice of Appeal in Proceeding to Waive Parental Notification and Consent (Form 3A)**

As prescribed by the Clerk of the Supreme Court of Texas pursuant to Tex. Fam. Code § 33.004(d).

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CAUSE NO. \_\_\_\_\_

IN RE JANE DOE

IN THE \_\_\_\_\_

\_\_\_\_\_ COUNTY, TEXAS

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**Important: Your lawyer should fill out the information below.**

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On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, notice is hereby given that Jane Doe appeals to the \_\_\_\_\_ Court of Appeals from the final order entered in the above-referenced cause denying her application for a court order authorizing her to consent to an abortion without the parental notification and consent required by Sections 33.002 and 33.0021, Family Code.

Attorney's Signature \_\_\_\_\_

Attorney's Name, Printed \_\_\_\_\_

State Bar No. \_\_\_\_\_

Attorney's Address \_\_\_\_\_

Attorney's Telephone \_\_\_\_\_

Attorney's Email Address \_\_\_\_\_

Attorney's Fax No. \_\_\_\_\_



**Request to Postpone Court of Appeals' Ruling in Proceeding to Waive Parental  
Notification and Consent; Designation of Alternative Time for Ruling  
(Form 3B)**

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CAUSE NO. \_\_\_\_\_

IN RE JANE DOE

IN THE COURT OF APPEALS FOR THE

\_\_\_\_\_ DISTRICT OF TEXAS

AT \_\_\_\_\_, TEXAS

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Please check and complete any questions below that apply:

- ☐ I request that the court postpone its ruling on my appeal. The appeal currently is due to be ruled on by 5 p.m. on \_\_\_\_\_.
- ☐ Please rule on my appeal by 5 p.m. on the fifth business day after (state a date after which you will be ready to proceed) \_\_\_\_\_. If the court holds oral argument, the clerk will notify you of its date and time.
- ☐ I will contact you at a later time to determine a time for ruling on my appeal.

Attorney's Signature \_\_\_\_\_

Attorney's Name, Printed \_\_\_\_\_

Attorney's State Bar No. \_\_\_\_\_

Attorney's Address \_\_\_\_\_

Attorney's Telephone \_\_\_\_\_

Attorney's Email Address \_\_\_\_\_

Attorney's Fax No. \_\_\_\_\_

**Judgment on Appeal in Proceeding to Waive Parental Notification and Consent  
(Form 3C)**

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CAUSE NO. \_\_\_\_\_

IN RE JANE DOE

IN THE COURT OF APPEALS FOR THE

\_\_\_\_\_ DISTRICT, TEXAS

AT \_\_\_\_\_, TEXAS

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It is ORDERED that the trial court's final order in this cause denying the minor's application for a court order authorizing her to consent to an abortion without the parental notice and consent required by Sections 32.002 and 33.0021, Family Code, is:

- ☐ Affirmed. The minor will be advised of her right to appeal under Rule 4 of the Rules for a Judicial Bypass of Parental Notice and Consent Under Chapter 33 of the Family Code and furnished a notice of appeal form, Form 4A.
- ☐ Reversed and the application is GRANTED.
- ☐ Opinion to follow.
- ☐ No opinion to follow.

\_\_\_\_\_  
Justice

Other members of the panel:

Justice \_\_\_\_\_

Justice \_\_\_\_\_

Date: \_\_\_\_\_

**Certification of Deemed Affirmance of Order On Appeal in Proceeding to  
Waive Parental Notification and Consent (Form 3D)**

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CAUSE NO. \_\_\_\_\_

IN RE JANE DOE

IN THE COURT OF APPEALS FOR THE

\_\_\_\_\_DISTRICT OF TEXAS

AT \_\_\_\_\_, TEXAS

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This will certify that on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, Jane Doe filed her notice of appeal from an order denying her application for a court order authorizing her to consent to an abortion without the parental notice and consent required by Sections 33.002 and 33.0021, Family Code. The court of appeals did not rule on her appeal by 5 p.m. on the fifth business day after the day the notice of appeals was filed. Accordingly, the order is deemed to be AFFIRMED.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Judge Presiding or Clerk

## **ATTENTION CLERK: PLEASE EXPEDITE**

### **Notice of Appeal to the Texas Supreme Court in Proceeding to Waive Parental Notification and Consent (Form 4A)**

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CAUSE NO. \_\_\_\_\_

IN THE SUPREME COURT OF TEXAS

IN RE JANE DOE

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On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, notice is hereby given that Jane Doe petitions the Supreme Court of Texas for review of the order entered in Cause No. \_\_\_\_\_, in the \_\_\_\_\_ Court of Appeals affirming the denial of her application for a court order authorizing her to consent to an abortion without the parental notice and consent required by Sections 33.002 and 33.0021, Family Code.

Attorney's Signature \_\_\_\_\_

Attorney's Name, Printed \_\_\_\_\_

Attorney's State Bar No. \_\_\_\_\_

Attorney's Address \_\_\_\_\_

Attorney's Telephone \_\_\_\_\_

Attorney's Email Address \_\_\_\_\_

Attorney's Fax No. \_\_\_\_\_



## THE SECRETARY OF HEALTH AND HUMAN SERVICES

WASHINGTON, D.C. 20201

July 11, 2022

VIA ELECTRONIC MAIL

Dear Health Care Providers:

In light of the Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*, I am writing regarding the Department of Health and Human Services (HHS) enforcement of the Emergency Medical Treatment and Active Labor Act (EMTALA). As frontline health care providers, the federal EMTALA statute protects your clinical judgment and the action that you take to provide stabilizing medical treatment to your pregnant patients, regardless of the restrictions in the state where you practice.

The EMTALA statute requires that all patients receive an appropriate medical screening examination, stabilizing treatment, and transfer, if necessary, irrespective of any state laws or mandates that apply to specific procedures. It is critical that providers know that a physician or other qualified medical personnel's professional and legal duty to provide stabilizing medical treatment to a patient who presents to the emergency department and is found to have an emergency medical condition preempts any directly conflicting state law or mandate that might otherwise prohibit such treatment.

As indicated above and in our guidance<sup>1</sup>, the determination of an emergency medical condition is the responsibility of the examining physician or other qualified medical personnel. Emergency medical conditions involving pregnant patients may include, but are not limited to, ectopic pregnancy, complications of pregnancy loss, or emergent hypertensive disorders, such as preeclampsia with severe features. Any state laws or mandates that employ a more restrictive definition of an emergency medical condition are preempted by the EMTALA statute.

The course of treatment necessary to stabilize such emergency medical conditions is also under the purview of the physician or other qualified medical personnel. Stabilizing treatment could include medical and/or surgical interventions (e.g., abortion, removal of one or both fallopian tubes, anti-hypertensive therapy, methotrexate therapy etc.), irrespective of any state laws or mandates that apply to specific procedures.

Thus, if a physician believes that a pregnant patient presenting at an emergency department, including certain labor and delivery departments, is experiencing an emergency medical condition as defined by EMTALA, and that abortion is the stabilizing treatment necessary to resolve that condition, the physician must provide that treatment. And when a state law prohibits

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<sup>1</sup> *Reinforcement of EMTALA Obligations specific to Patients who are Pregnant or are Experiencing Pregnancy Loss* (QSO-21-22-Hospitals- UPDATED JULY 2022), available at <https://www.cms.gov/medicareprovider-enrollment-and-certificationsurvey/certificationgeninfo/policy-and-memos-states-and/reinforcement-emtala-obligations-specific-patients-who-are-pregnant-or-are-experiencing-pregnancy-0>

abortion and does not include an exception for the life and health of the pregnant person — or draws the exception more narrowly than EMTALA’s emergency medical condition definition — that state law is preempted.

The enforcement of EMTALA is a complaint driven process. The investigation of a hospital’s policies/procedures and processes, or the actions of medical personnel, and any subsequent sanctions are initiated by a complaint. If the results of a complaint investigation indicate that a hospital violated one or more of the provisions of EMTALA, a hospital may be subject to termination of its Medicare provider agreement and/or the imposition of civil monetary penalties. Civil monetary penalties may also be imposed against individual physicians for EMTALA violations. Additionally, physicians may also be subject to exclusion from the Medicare and State health care programs. To file an EMTALA complaint, please contact the appropriate state survey agency<sup>2</sup>.

EMTALA’s preemption of state law could also be enforced by individual physicians in a variety of ways, potentially including as a defense to a state enforcement action, in a federal suit seeking to enjoin threatened enforcement, or, when a physician has been disciplined for refusing to transfer an individual who had not received the stabilizing care the physician determined was appropriate, under the statute’s retaliation provision

As providers caring for pregnant patients across the country, thank you for all that you do. The Department of Health and Human Services will take every action within our authority to protect the critical care that you provide to patients every day.

Sincerely,

/s/

Xavier Becerra

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<sup>2</sup> <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/ContactInformation>

**Proposed Amendment to  
Rules and Forms for a Judicial Bypass of Parental Notice and Consent  
Under  
Chapter 33 of the Family  
Code**

**Explanatory  
Statement**

Chapter 33 of the Texas Family Code provides for judicial authorization of an unemancipated minor to consent to an abortion in Texas without notice to, or the consent of, a parent, managing conservator, or guardian. Sections 33.003 and 33.004, which govern proceedings in the trial and appellate courts, authorize the Court to make rules to ensure that judicial bypass applications are decided confidentially and promptly. *See* TEX. FAM. CODE §§ 33.003(l), 33.004(c). The statute also directs the Court to make forms for use in judicial bypass proceedings. *Id.* §§ 33.003(m), 33.004(d).

The Court approved the first set of rules and forms in 1999, following the enactment of Chapter 33. *See* Misc. Docket No. 99-9247 (Dec. 22, 1999); Act of May 25, 1999,

76th Leg., R.S., ch. 395, 1999 Tex. Gen. Laws 2466 (S.B. 30) (codified at TEX. FAM. CODE § 33.001 *et seq.*). The rules and forms have been amended to reflect the 2015

amendments to Chapter 33. *See* Act of June 1, 2015, 84th Leg., R.S., ch. 436 (H.B.

3994). The rules and forms track the statutory requirements. They do not reflect any judgment by the Court that Chapter 33, or any part of it, is constitutional. Constitutional questions should be resolved in an adversarial proceeding with full briefing and argument. Nor do the rules imply that abortion is—or is not—permitted in any specific situation. *See, e.g., Roe v. Wade*, 410 U.S. 113 (1973); TEX. HEALTH & SAFETY CODE

§ 170.002 (restrictions on third trimester abortions of viable fetuses).

The notes and comments appended to the rules are intended to inform their construction and application by courts and practitioners.

**Rule 1. General  
Provisions**

- 1.1 Applicability of These Rules.** These rules govern proceedings for obtaining a court order authorizing a minor to consent to an abortion without notice to, or the consent of, a parent, managing conservator, or guardian under Chapter 33,

Family Code. All references in these rules to “minor” refer to the minor applicant. Other Texas court rules—including the Rules of Civil Procedure, Rules of Evidence, Rules of Appellate Procedure, Rules of Judicial Administration, and local rules approved by the Supreme Court—also apply, but when the application of another rule would be inconsistent with the general framework or policy of Chapter 33, Family Code, or these rules, these rules control.

These rules continue to apply and are not inconsistent with Texas Health and Safety Code Chapter 170A which defines the circumstances when an abortion may take place. The proceedings under these rules are not intended to create a judicial determination that any exception to the provisions of Chapter 170A have been satisfied and an order under these rules should not be construed as a judicial determination that in the exercise of reasonable medical judgment, the pregnant unemancipated minor on whom the abortion might be performed 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.

## 1.2 Expedition Required.

- (a) ***Proceedings.*** A court must give proceedings under these rules precedence over all other pending matters to the extent necessary to ensure that applications and appeals are adjudicated as soon as possible and within the time required by Chapter 33, Family Code, and these rules.
- (b) ***Prompt actual notice required.*** Without compromising the confidentiality required by statute and these rules, courts and clerks must serve orders, decisions, findings, and notices required under these rules in a manner designed to give prompt actual notice in order that the deadlines imposed by Chapter 33, Family Code, can be met.

## 1.3 Identity of Minor Protected.

- (a) ***Generally.*** Proceedings under these rules must be conducted in a way that protects the confidentiality of the identity of the minor.
- (b) ***No reference to minor’s identity in proceeding.*** With the exception of the verification page required under Rule 2.1(c)(2) and the communications required under Rule 2.2(e), no reference may be made in any order, decision, finding, or notice, or on the record, to the name of the minor, her address, or other information by which she might



be identified by persons not participating in the proceedings. Instead, the minor must be referred to as “Jane Doe” in a numbered cause.

- (c) **Notice.** With the exception of orders and rulings released under Rule 1.4(b), all notices and communications from the court to the minor must be directed to the minor’s attorney with a copy to the guardian ad litem. The minor’s attorney must immediately serve on the guardian ad litem a copy of any document filed with the court. These requirements take effect when an attorney appears for the minor or when the clerk has notified the minor of the appointment of an attorney or a guardian ad litem.

#### 1.4 Confidentiality of Proceedings Required; Exceptions.

- (a) **Generally.** All officials and court personnel involved in the proceedings must ensure that the minor’s contact with the clerk and the court is confidential and expeditious. Except as permitted by law, officials and court personnel must never disclose to anyone outside the proceeding—including the minor’s parent, managing conservator, or legal guardian—that the minor is or has ever been pregnant, or that she wants or has ever wanted an abortion.
- (b) **Documents and information pertaining to the proceeding.**
- (1) *General rule; disclosure prohibited.* As required by Chapter 33, Family Code, the application and all other court documents and information 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.
  - (2) *Exception; disclosure to minor permitted.* The application and any other document in the court file may be disclosed to the minor.
  - (3) *Exception; disclosure of order to certain persons.* An order, ruling, opinion, or clerk’s certificate may be released to:
    - the minor;
    - the minor’s guardian ad litem;
    - the minor’s attorney;

- ✓ the physician who is to perform the abortion;
  - ✓ a person designated in writing by the minor to receive the order, ruling, opinion, or certificate;
  - ✓ a governmental agency or governmental attorney, in connection with a criminal or administrative action seeking to assert or protect the minor's interests; or
  - ✓ another court, judge, or clerk in the same or related proceedings.
- (c) ***Filing of court reporter's notes required.*** To ensure confidentiality, the court reporter's notes, in whatever form, must be filed with other court documents in the proceeding.
- (d) ***Duty to report possible abuse.***
- (1) ***Duty of the court.*** A judge or justice who, as a result of a court proceeding governed by these rules, has reason to believe that a minor has been or may be physically or sexually abused must report the suspected abuse in accordance with Sections 33.0085 and 33.009, Family Code, and other law.

(2) *Duty of an attorney or guardian ad litem.* An attorney or a guardian ad litem who, as a result of a court proceeding governed by these rules, has reason to believe that a minor has been or may be physically or sexually abused must report the suspected abuse in accordance with Section 33.009, Family Code, and other law.

(e) *Department of Family and Protective Services or local law enforcement agency to disclose certain information in proceeding.* The Department of Family and Protective Services or a local law enforcement agency may disclose to the court, the minor's attorney, and the guardian ad litem any information obtained under Sections 33.008, 33.0085, and 33.009, Family Code, without being ordered to do so. The court may order the Department or a local law enforcement agency to disclose the information to the court, the minor's attorney, and the guardian ad litem, and the Department or agency must comply.

#### 1.5 **Methods of Transmitting Documents; Hearings Conducted By Remote Electronic Means; Electronic Record Allowed When Necessary.**

(a) *Electronic filing through statewide portal prohibited.* Documents must not be filed through the electronic filing manager established by the Office of Court Administration.

(b) *Paper, fax, or email filing permitted.* Documents may be filed in paper form, by fax, or by email. The clerk of a court must designate an email address or a fax number for the filing of documents in proceedings governed by these rules and must take all reasonable steps to maintain the confidentiality of the filings. An attorney must notify the clerk by telephone before filing a document by email or fax.

(c) *Fax and email transmission by court and clerk.* The court and clerk may transmit orders, rulings, notices, and other documents by fax or email. But before the transmission is initiated, the sender must take all reasonable steps to maintain the confidentiality of the transmission. The time and date of a transmission by the court is the time and date when it was initiated.

(d) *Participation in hearings by electronic means.* Consistent with the confidentiality requirements of these rules, with the court's permission, a witness may participate in a hearing under these rules by video conferencing, telephone, or other remote electronic means. But the minor must appear before the court in person.

- (e) ***Record of hearing made by electronic means if necessary.*** If the court determines that a court reporter is unavailable for a hearing, the court may have a record of the hearing made by audio recording or other electronic means. If a notice of appeal is filed, the court must have the recording transcribed if possible. The person transcribing the recording must certify to the accuracy of the transcription. The court must transmit both the recording and the transcription to the court of appeals.

## 1.6 Disqualification, Recusal, or Objection to a Judge.

- (a) ***Time for filing and ruling.*** A motion to recuse or disqualify a trial judge or an objection to a trial judge under Section 74.053, Government Code, must be filed before 10 a.m. of the first business day after an application is filed or promptly after the assignment of a judge to hear the case is made known to the minor's attorney, whichever is later. A motion to recuse or disqualify an appellate judge or an objection to an appellate judge under Section 75.551, Government Code, must be filed before 10 a.m. of the first business day after a notice of appeal is filed or promptly after the assignment of a judge is made known to the minor's attorney, whichever is later. A judge who chooses to withdraw voluntarily must do so immediately. A motion to disqualify or recuse or an objection to an assigned judge does not extend the deadline for ruling on the minor's application.
- (b) ***Voluntary disqualification or recusal; objection.*** A judge who removes himself or herself voluntarily—whether in response to a motion or on the judge's own initiative—or to whom objection is made under Sections 74.053 or 75.551, Government Code, must immediately notify the appropriate authority under rule or statute for assigning another judge. That authority must immediately assign a judge or justice to the proceeding.
- (c) ***Involuntary disqualification or recusal.*** A judge who refuses to remove himself or herself voluntarily from a proceeding in response to a motion must immediately refer the motion to the appropriate judge under rule or statute for determination. The judge to whom the motion is referred must rule on it as soon as possible and may do so with or without a hearing. If the motion is granted, the judge to whom the motion was referred must immediately assign another judge to the proceeding.
- (d) ***Restrictions on the number of motions and objections.*** A minor who objects under Section 74.053 or Section 75.551, Government Code, to a judge assigned to the proceeding may not thereafter file a motion to recuse the judge assigned to replace the judge to whom the objection was made. A minor who files a motion to recuse or disqualify a judge may not thereafter

object under Section 74.053 or Section 75.551, Government Code, to another judge assigned to the proceeding.

- (e) ***Issues on appeal.*** Any error in the denial of a motion to recuse or disqualify, any error in the disallowance of an objection, or any challenge to a judge that a minor is precluded from making by subsections (a) or (d), may be raised only on appeal from the court's denial of the application.

## 1.7 Rules and Forms to be Made Available.

- (a) ***Online.*** A complete set of these rules and forms must be posted on the Texas Judiciary website at [www.txcourts.gov](http://www.txcourts.gov). Forms 1A, 2A, and 2B must be translated into Spanish.
- (b) ***In clerks' offices.*** The clerk of a court in which an application or appeal may be filed must make the rules and forms—including the Spanish version of Form 1A, 2A, and 2B—and any applicable local rules available to a minor without charge.

## 1.8 Duties of Attorneys Ad Litem. An attorney ad litem must represent the minor in the trial court in the proceeding in which the attorney is assigned and in any appeal under these rules to the court of appeals or the Supreme Court. But an attorney ad litem is not required to represent the minor in any other court or any other proceeding.

## 1.9 Fees and Costs.

- (a) ***No fees or costs charged to minor.*** No filing fee or court cost may be assessed against a minor for any proceeding in a trial or appellate court.
- (b) ***State ordered to pay fees and costs.***
  - (1) ***Fees and costs that may be paid.*** The State may be ordered to pay the reasonable and necessary fees and expenses of the attorney ad litem, the reasonable and necessary fees and expenses of the guardian ad litem, the court reporter's fee as certified by the court reporter, and trial court filing fees and costs as certified by the clerk. Court costs include the expenses of an interpreter (Form 2H) and an evaluation by a licensed mental health counselor but do not include the fees or expenses of a witness. Court costs do not include fees that must be remitted to the state treasury.

- (2) *To whom order directed and sent.* The order must be directed to the Comptroller of Public Accounts and sent to the Director, Fiscal Division, of the Texas Department of Health.
- (3) *Form and contents of the order.* The order must state the amounts to be awarded the attorney ad litem and the guardian ad litem. The order must be separate from any other order in the proceeding and must not address any subject other than the assessment of fees, expenses, and costs. A trial court may use Forms 2F and 2G, but it is not required to do so.
- (4) *Time for signing and sending order.* The order must be signed by the judge and sent by the clerk to the Department of Health not later than the ninetieth day after the date of the final ruling in a proceeding.
- (c) ***Motion to reconsider; time for filing.*** Within thirty days of actual receipt of the order, the Comptroller or any other person adversely affected by the order may file a motion in the trial court to reconsider the assessment of fees, expenses, or costs. The trial court retains jurisdiction of the case to hear and determine any timely filed motion to reconsider.
- (d) ***Appeal.*** The Comptroller or any other person adversely affected by the order may appeal from the trial court's ruling on the motion to reconsider as from any other final judgment of the court.
- (e) ***Report to the Office of Court Administration.*** The Department of Health must transmit to the Office of Court Administration a copy of every order assessing fees, expenses, or costs in a proceeding under Chapter 33, Family Code. Orders assessing fees, expenses, or costs are not subject to any order of the Supreme Court of Texas requiring mandatory reports of judicial appointments and fees or to the reporting requirements of Chapter 36, Government Code.
- (f) ***Confidentiality.*** When transmitting an order awarding costs to the Department of Health, the clerk must take reasonable steps to preserve its confidentiality. The confidentiality of an order awarding costs—as prescribed by Chapter 33, Family Code—is not affected by its transmission to the Comptroller, Texas Department of Health, or the Office of Court Administration, nor is the order subject to public disclosure in response to a request under any statute, rule, or other law. But these rules do not preclude the Comptroller, the Texas Department of Health, or the Office of Court

Administration from disclosing summary information from orders assessing costs for statistical or other such purposes.

**1.10 Amicus Briefs.** Amicus briefs may be submitted and received by a court—but not filed—under either of the following procedures.

- (a) ***Confidential, case-specific briefs.*** A non-party who is authorized to attend or participate in a particular proceeding under Chapter 33, Family Code, may submit an amicus brief addressing matters, including confidential matters, specific to the proceeding. The brief and the manner in which it is submitted must comply with Rules 1.3 and 1.4 and be directed to the court in which the proceeding is pending. If the brief is filed in paper form, the person must submit the original brief and the same number of copies required for other paper submissions to the court. The person must serve a copy of the brief on the minor’s attorney and guardian ad litem. The court to which the brief is submitted must maintain the brief as part of the confidential case file in accordance with Rule 1.4.
- (b) ***Public or general briefs.*** Any person may submit a brief addressing any matter relating to proceedings under Chapter 33, Family Code. The brief must not contain any information in violation of Rules 1.3 and 1.4. If the brief is filed in paper form, the person must submit the original brief and the same number of copies required for other paper submissions to the court. If the brief is submitted to a court of appeals, one copy of the brief must also be submitted to the Supreme Court of Texas. Upon receipt of an amicus brief submitted under this subsection, the Clerk of the Supreme Court must, as soon as practicable, have the brief posted on the Texas Judiciary website.

### Notes and Comments

1. Rule 1.1 contemplates that other court rules of procedure and administration remain as a “default” governing matters not addressed in these rules. Thus, for example, these rules do not state a deadline for filing notices of appeal, so the ordinary 30-day deadline controls, *see* Tex. R. App. P. 26.1, but these rules control over inconsistent provisions in the appellate rules governing the docketing statement, the record, and briefing.
2. Rule 1.1 also contemplates that individual jurisdictions may enact local rules pursuant to Tex. R. Civ. P. 3a, Tex. R. App. P. 1.2, or Tex. R. Jud. Admin. 10, to the extent consistent with Chapter 33, Family Code, and with these rules, to tailor the implementation of the statute and these rules to local needs and preferences. Local rules may address, for example, the specific location or office where

applications are to be filed, how applications are to be assigned for hearing, and whether an appellate court will permit or require briefing or oral argument. *See also* Rule 2, Comment 1.

3. Any judge involved in a proceeding—whether as the judge assigned to hear and decide the application; the judge assigned to hear and decide any disqualification, recusal, or objection; a judge authorized to transfer the application or assign another judge to it; or an appellate judge—may have access to all information (including the verification page) in the proceeding or any related proceeding, such as a prior filing by the minor. Similarly, a minor’s attorney and guardian ad litem must, of course, have access to the case file to the extent necessary to perform their respective duties.
4. Sections 33.008, 33.0085, and 33.009, Family Code, require physicians, judges, attorneys, and guardians ad litem to report suspected physical or sexual abuse to the Texas Department of Family and Protective Services and to a local law enforcement agency. Section 33.010 makes confidential—“[n]otwithstanding any other law”—all information obtained by the Department or a law enforcement agency under Sections 33.008, 33.0085, and 33.009 except to the extent necessary to prove certain criminal conduct. Rule 1.4(e) construes Section 33.010 in harmony with Section 33.003(i-2), which makes past or potential future abuse relevant to a claim that notifying or attempting to obtain the consent of a parent, managing conservator, or guardian would not be in the minor’s best interest.
5. Rule 1.6 controls to the extent that it conflicts with other provisions regarding the disqualification or recusal of judges, such as Tex. R. Civ. P. 18a, Tex. R. App. P. 16, and Tex. Gov’t Code 25.00255.
6. The archival requirements relating to proceedings under Chapter 33, Family Code, and these rules is governed by Sections 441.158 and 441.185, Government Code, and the schedules promulgated by the Texas State Library and Archives Commission pursuant to those authorities.
7. Orders awarding fees, expenses, and costs contain information that is made confidential by Chapter 33, Family Code. The confidentiality of the information should not be affected by the transmission of the order to the Texas Department of Health and to the Comptroller, which is necessary to effectuate payment, or to the Office of Court Administration, which is necessary to oversee the costs associated with the proceedings. Rule 1.9(f) does not preclude either the Comptroller, the Texas Department of Health, or the Office of Court Administration from disclosing total amounts paid for all proceedings, the average amount awarded per proceeding, or other statistical summaries or analyses that do not impair the confidentiality of the proceedings.



8. Rule 1.10 adds a procedure for filing amicus curiae briefs uniquely designed for the expedited and confidential nature of judicial bypass cases.

## RULE 2. PROCEEDINGS IN THE TRIAL COURT

### 2.1 **Where to File an Application; Court Assignment and Transfer; Application Form; Effect of a Nonsuit or Prior Determination.**

- (a) ***Counties in which an application may be filed.*** An application for an order under Section 33.003, Family Code, must be filed in the minor's county of residence, unless one of the following exceptions applies.
  - (1) *Minor's parent is a presiding judge.* If the minor's parent, managing conservator, or guardian is a presiding judge of a court described in (b)(1) in the county of the minor's residence, the application must be filed in:
    - (A) a contiguous county; or
    - (B) the county where the minor intends to obtain the abortion.
  - (2) *Residence in a county with a population of less than 10,000.* If the minor's county of residence has a population of less than 10,000, the application must be filed in:
    - (A) the minor's county of residence;
    - (B) a contiguous county; or
    - (C) the county where the minor intends to obtain the abortion.
  - (3) *Nonresident minor.* If the minor is not a Texas resident, the application must be filed in the county where the minor intends to obtain the abortion.
- (b) ***Courts in which an application may be filed; assignment and transfer.***
  - (1) *Courts with jurisdiction.* An application may be filed in a district court (including a family district court), a county court at law, or a court having probate jurisdiction.

- (2) *Application filed with district or county clerk.* An application must be filed with either the district clerk or the county clerk, who will assign the application to a court as provided by local rule or these rules. The clerk to whom the application is tendered cannot refuse to accept it because of any local rule or other rule or law that governs the filing and assignment of applications or cases. The clerk must accept the application and transfer it immediately to the proper clerk, advising the person tendering the application where it is being transferred.
- (3) *Court assignment and transfer by local rule.* The courts in a county that have jurisdiction to hear applications may determine by local rule how applications will be assigned between or among them. A local rule must be approved by the Supreme Court under Rule 3a, Texas Rules of Civil Procedure.
- (4) *Initial court assignment if no local rule.* Absent a local rule, the clerk who files an application—whether the district clerk or the county clerk—must assign it as follows:
  - (A) to a district court, if the active judge of the court, or a judge assigned to it, is available;
  - (B) if the application cannot be assigned under (A), then to a statutory county or probate court, if the active judge of the court, or a judge assigned to it, is available;
  - (C) if the application cannot be assigned under (A) or (B), then to the constitutional county court, if it has probate jurisdiction, and if the active judge of the court, or a judge assigned to it, is available;
  - (D) if the application cannot be assigned under (A), (B), or (C), then to the district court.
- (5) *Judges who may hear and determine applications.* An application may be heard and determined by the active judge of the court to which the application is assigned, by any judge authorized to sit for the active judge, or by any judge who may be assigned to the court in which the application is pending. An application may not be heard or determined, or any proceedings under these rules conducted, by a master or magistrate.

- (c) ***Application form.*** An application consists of two pages—a cover page and a separate verification page—if the minor is not represented by an attorney at the time of filing. If the minor is represented by an attorney at the time of filing, the application must include a third page, the attorney’s sworn statement or declaration made under penalty of perjury.
- (1) *Cover page.* The cover page may be submitted on Form 2A, but use of the form is not required. The cover page must be styled “In re Jane Doe” and must not disclose the name of the minor or any information from which the minor’s identity could be derived. The cover page must state:
- (A) that the minor is pregnant;
  - (B) that the minor is unmarried, is under 18 years of age, and has not had her disabilities removed under Chapter 31, Family Code;
  - (C) that the minor wishes to have an abortion without notifying or obtaining consent from either of her parents or a managing conservator or guardian, and the statutory ground or grounds on which she relies;
  - (D) that venue is proper in the county in which the application has been filed;
  - (E) whether the minor has retained an attorney, and if so, the attorney’s name, email address, mailing address, and telephone number;
  - (F) whether the minor requests the court to appoint a particular person as her guardian ad litem; and
  - (G) that, concerning her current pregnancy, the minor has not previously filed an application that was denied; or
  - (H) if the minor has filed a previous application with respect to the current pregnancy that was denied, that this application is being filed in the same court that denied the previous application and that there has been a material change in circumstances since the time the previous application was denied.

- (2) *Verification page.* The verification page may be submitted on Form 2B, but use of the form is not required. The verification page must be separate from the cover page, must be signed by the minor under oath or under penalty of perjury, and must state:
  - (A) the minor's full name, date of birth, physical address, mailing address, and telephone number;
  - (B) the name, address, telephone number, and relationship to the minor of any person the minor requests the court to appoint as her guardian ad litem;
  - (C) if the minor has not retained an attorney, a telephone number—whether that of the minor or someone else (such as a physician, friend, or relative)—at which the minor may be contacted immediately and confidentially until an attorney is appointed to represent her; and
  - (D) that all information contained in the application, including both the cover page and the verification page, is true.
- (3) *Attorney's statement.* The minor's attorney must file with the application a sworn statement or unsworn declaration made under penalty of perjury that attests to the truth of the minor's claims regarding venue and prior applications.
- (d) ***Time of filing.*** An application is filed when it is actually received by the district or county clerk.
- (e) ***Nonsuit requires permission.*** A minor may not withdraw or nonsuit an application without permission of the court.
- (f) ***Res judicata effect of prior determination.***
  - (1) *General rule.* A minor who has filed an application and obtained a determination by the court under Rule 2.5 may not initiate a new application proceeding with respect to the same pregnancy, and the prior determination is res judicata on the issue whether the minor may consent to an abortion without notification to, or consent of, a parent, managing conservator, or guardian.
  - (2) *Exception for material change in circumstances.* A minor whose application is denied may submit a new application to the court that

denied the application if the minor shows that there has been a material change in circumstances since the prior application was denied.

## 2.2 Clerk's Duties.

- (a) ***Assistance in filing.*** The clerk must give prompt assistance—in a manner designed to protect the minor's confidentiality—to persons seeking to file an application. If requested, the clerk must administer the oath for the verification page or provide a person authorized to do so. The clerk must also redact from the cover page any information identifying the minor. The clerk must ensure that both the cover page and the separate verification page are completed in full.
- (b) ***Filing procedure.*** The clerk must assign the application a cause number that does not identify the assigned judge and affix it to both the cover page and the verification page. The clerk must then provide a certified copy of the verification page to the person filing the application. The clerk must file the verification page under seal in a secure place where access is limited to essential court personnel.
- (c) ***Distribution.*** When an application is filed, the clerk must distribute the cover page and verification page, or a copy of them, to the appropriate court immediately. If appointment of a specific person as guardian ad litem has been requested, the clerk must also communicate the information to the appropriate court immediately.
- (d) ***If judge of assigned court not available.*** The clerk must determine immediately whether the judge of the court to which the application is assigned is available to hear the application within the prescribed time period. If that judge is not available, the clerk must immediately notify the local administrative judge or judges and the presiding judge of the administrative judicial region and must send them any information requested, including the cover page and verification page.
- (e) ***Notice of hearing and appointments.*** When the clerk is advised by the court of a time for the hearing or of the appointment of a guardian ad litem or an attorney ad litem, the clerk must immediately give notice—as directed in the verification page and to each appointee—of the hearing time or appointment. A court coordinator or other court personnel may give notice instead of the clerk.

- (f) **Orders.** The clerk must provide the minor's attorney and the guardian ad litem with copies of all court orders, including findings of fact and conclusions of law.
- (g) ***Certificate of court's failure to rule within time prescribed by statute.*** If the court fails to rule on an application within the time required by Section 33.003(h), Family Code, then, upon the minor's request, the clerk must immediately issue a certificate to that effect, stating that the application is deemed to be denied. The clerk may use Form 2E but is not required to do so.

**2.3 Court's Duties.** Upon receipt of an application from the clerk, the court must promptly:

- (a) appoint a qualified person to serve as guardian ad litem for the minor applicant;
- (b) unless the minor has a retained attorney, appoint an attorney ad litem for the minor, who must not be the same person appointed as guardian ad litem;
- (c) set a hearing on the application; and
- (d) advise the clerk of the appointments and the hearing time.

**2.4 Hearing.**

- (a) ***Time.***
  - (1) ***General rule.*** The court must conduct a hearing in time to rule on the application by the deadline stated in Rule 2.5(f).
  - (2) ***Minor may request postponement.*** The minor may postpone the hearing by written request to the clerk. The request may be submitted on Form 2C, but use of the form is not required. The request must either specify a date on which the minor will be ready for the hearing or state that the minor will later provide a date on which she will be ready for the hearing. Once the minor determines when she will be ready for the hearing, she must notify the clerk of that time in writing. The postponed hearing must be conducted in time for the court to rule on the application by the deadline stated in Rule 2.5(f).

- (b) **Place.** The hearing should be held in a location, such as a judge's chambers, that will ensure confidentiality. The hearing may be held away from the courthouse.
- (c) **Persons attending.** The hearing must be closed to the public. Only the judge, the court reporter, other essential court personnel, the minor, her attorney, her guardian ad litem, and witnesses on the minor's behalf may be present.
- (d) **Record.** The court, the minor, the minor's attorney, or the guardian ad litem may request that the record—the clerk's record and reporter's record—be prepared. A request by the minor, the minor's attorney, or the guardian ad litem must be in writing and may be, but is not required to be, on Form 2I (if an appeal will be taken) or 2J (if an appeal will not be taken). The court reporter must provide an original and two copies of the reporter's record to the clerk. When the record has been prepared, the clerk must contact the minor, if she has requested the record; the minor's attorney; and the guardian ad litem at the telephone numbers shown on Form 2I or 2J and make it available to them. The record must be prepared and made available immediately if it has been requested for appeal or to demonstrate the past or potential abuse of the minor. When a notice of appeal is filed, the clerk must forward the record to the court of appeals in accordance with Rule 3.2(b).
- (e) **Hearing to be informal.** The court should attempt to rule on the application without regard to technical defects in the application or the evidence. Affidavits of persons other than the minor are admissible. Statements in the application cannot be offered as evidence to support the application. If necessary, the court may assist the minor in remedying technical defects in the application and in presenting relevant and material facts.

## 2.5 Ruling.

- (a) **Form of ruling.** The court's ruling on the application must include a signed order and written findings of fact and conclusions of law. The findings and conclusions may be included in the order. The court may use Form 2D, but it is not required to do so.
- (b) **Grounds for granting application.** The court must grant the application if the minor establishes, by clear and convincing evidence:

- (1) that the minor is mature and sufficiently well informed to make the decision to have an abortion performed without notice to, or consent of, a parent, managing conservator, or guardian; or
  - (2) that the notification or attempt to obtain consent would not be in the minor's best interest.
- (c) ***The mature-and-informed inquiry.*** In determining whether the minor meets the requirements of (b)(1), the court must consider the experience, perspective, and judgment of the minor. The court may:
  - (1) consider all relevant factors, including:
    - (A) the minor's age;
    - (B) the minor's life experiences, such as working, traveling independently, or managing her own financial affairs; and
    - (C) steps taken by the minor to explore her options and the consequences of those options;
  - (2) inquire as to the minor's reasons for seeking an abortion;
  - (3) consider the degree to which the minor is informed about the state-published informational materials described by Chapter 171, Health and Safety Code; and
  - (4) require the minor to be evaluated by a licensed mental health counselor, who must return the evaluation to the court for review within three business days.
- (d) ***The best-interest inquiry.*** In determining whether the minor meets the requirements of (b)(2), the court may inquire as to:
  - (1) the minor's reasons for not wanting to notify and obtain consent from a parent, managing conservator, or guardian;
  - (2) whether notification or the attempt to obtain consent may lead to physical or sexual abuse;
  - (3) whether the pregnancy was the result of sexual abuse by a parent, managing conservator, or guardian; and



- (4) any history of physical or sexual abuse from a parent, managing conservator, or guardian.
- (e) ***Grounds for denying the application.*** The court must deny the application if:
  - (1) the minor does not establish either ground in (b) by clear and convincing evidence; or
  - (2) the minor does not attend the hearing; and
    - (A) the minor had actual knowledge of the setting; or
    - (B) diligent attempts were made to notify the minor of the setting.
- (f) ***Time for ruling.*** The court must rule on an application as soon as possible after it is filed, subject to any postponement requested by the minor, and immediately after the hearing is concluded. Section 33.003(h), Family Code, states that a court must rule on an application by 5 p.m. on the fifth business day after the day the application is filed, or if the minor requests a postponement, by 5 p.m. on the fifth business day after the date the minor states she is ready for the hearing.
- (g) ***Failure to timely rule.*** If the court fails to timely rule on an application, the application is deemed to be denied.
- (h) ***Notification of the right to appeal.*** If the court denies the application, it must inform the minor of her right to appeal under Rule 3 and furnish her with the notice of appeal form, Form 3A.

### Notes and Comments

1. Section 33.003(b), Family Code, permits an application to be filed in “a county court at law, court having probate jurisdiction, or district court, including a family district court, in the minor’s county of residence” or, if an exception applies, in a contiguous county or the county where the abortion would be performed. The initial assignment of an application to a specific court in a county is made by the clerk with whom the application is filed (not by the minor). Given the diversity of needs and circumstances among Texas courts, these rules allow the courts in each county to tailor the procedures for filing, handling, and assigning applications prescribed by these rules to best meet those needs and circumstances. Chapter 74, Subchapter C, Government Code, affords the presiding judge of an administrative judicial region broad discretion to assign active judges within the region, as well

as visiting judges, to hear matters pending in courts within the region. *See* Tex. Govt. Code §§ 74.054, 74.056; *see also id.* § 74.056(b) (presiding judges may request judges from other judicial regions for assignment); § 74.057 (Chief Justice may assign judges from one judicial region to another). Section 25.0022, Government Code, provides for assignment of probate judges. Furthermore, Chapter 74, Subchapter D, Government Code, authorizes district and statutory county court judges within a county to hear matters pending in any district or statutory county court in the county. *Id.* § 74.094(a). Finally, Section 74.121, Government Code, permits courts within a county to transfer cases among courts having jurisdiction over the case. If no local rule governs assignments, then Rule 2.1(b)(4) controls.

2. Because an application is considered filed when it is actually received by the clerk, the timing provisions relating to filing by mail of Tex. R. Civ. P. 21a are inapplicable.
3. Section 33.003(f), Family Code, provides that a guardian ad litem may be (1) a person who may consent to treatment for the minor under Sections 32.001(a)(1)-(3), Family Code; (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 Family and Protective Services; (4) a member of the clergy; or (5) another appropriate person selected by the court. The trial court may also consider appointing a qualified person requested by the minor. Although not directly applicable to these proceedings, the standards embodied in Chapter 107, Family Code, reflect legislative intent that competent and qualified persons be appointed to serve as ad litem and may provide general guidance concerning the nature of those qualifications. Appointment of an employee of the Department of Family and Protective Services to serve as guardian ad litem may give rise to a conflict of interest not immediately apparent at the time since the Department may be involved with the minor's family due to an abuse or neglect investigation, or may be party to a suit affecting the parent-child relationship, or may already be serving as the child's managing conservator.
4. The duties of guardians ad litem are not susceptible of precise definition. Generally, a guardian ad litem should interview the minor and conduct any investigation the guardian believes to be appropriate, without violating Rules 1.3 and 1.4, to assist the court in arriving at an opinion whether the minor is mature and sufficiently well informed to make the decision to have an abortion performed without notification to, or consent of, either of her parents or a managing conservator or guardian or whether notification or the attempt to obtain consent would not be in the best interest of the minor. Rule 2.5(c) and (d) list some nonexclusive factors outlined in Section 33.003(i-1)-(i-2), Family Code, that a court may consider in deciding whether the statutory criteria for a bypass have

been met. Factors that have been considered in other jurisdictions with similar parental notification and consent statutes include:

- whether the minor has been examined by a doctor of medicine, doctor of osteopathy, or registered nurse—who is licensed to practice in Texas—and has given that health care provider an accurate and complete statement of her medical history;
- whether the minor’s physician has indicated that, in the exercise of reasonable medical judgment, the minor has a life-threatening physical condition aggravated by, caused by, or arising from a pregnancy that places the minor at risk of death or poses a serious risk of substantial impairment of a major bodily function unless the abortion is performed or induced;
- whether the minor has been provided with information or counseling bearing on her decision to have an abortion;
- whether the minor desires further counseling;
- whether, based on the information or counseling provided to the minor, she is able to give informed consent;
- whether the minor is attending school, or is or has been employed;
- whether the minor has previously filed an application that was denied;
- whether the minor lives with her parents;
- 
- whether the minor desires an abortion or has been threatened, intimidated, or coerced into having an abortion;
- 
- whether the pregnancy resulted from sexual assault, sexual abuse, or incest;
- 
- whether there is a history or pattern of family violence; and
- 
- whether the minor fears for her safety.

These considerations may not be relevant in every case, are not exclusive, and may not be sufficient to discharge the guardian ad litem’s responsibilities in every case. Use of these factors as a basis for civil liability or as a statement of the standard of care is contrary to their intended purpose. Nothing in this comment alters existing standards of conduct under the Texas Disciplinary Rules of

Professional Conduct, the Texas Rules of Disciplinary Procedure, or the Code of Judicial Conduct.

In addition to these general guidelines, Chapter 107, Family Code, sets forth duties of guardians and attorneys ad litem appointed in suits affecting the parent-child relationship. These duties are not directly applicable to proceedings under Chapter

33, Family Code, and may be incompatible with the confidential and expeditious nature of such proceedings, but they reflect general legislative intent concerning the responsibilities of ad litem.

5. Under Rule 2.5(b), once a court concludes that an application should be granted on a single ground, it need not address other grounds. But in addressing any ground, the court should attempt to ascertain, among other factors, whether the pregnancy resulted from sexual assault, sexual abuse, or incest. The legislative history of Chapter 33, Family Code, indicates that one of the principal purposes of the statute was to screen for sexual crimes and abuse of minors so as to protect them against further victimization.

### **RULE 3. APPEAL FROM DENIAL OF APPLICATION**

- 3.1 How to Appeal.** To appeal the denial of an application, the minor must file a notice of appeal with the clerk of the court that denied the application, file a copy of the notice of appeal with the clerk of the court of appeals to which an appeal is to be taken, and advise the clerk of the court of appeals by telephone that an appeal is being taken under Chapter 33, Family Code. The minor may use Form 3A but is not required to do so. The notice of appeal must:

- (a) be styled “In re Jane Doe”;
- (b) state the number of the cause in the trial court;
- (c) be addressed to a court of appeals with jurisdiction in the county in which the application was filed;
- (d) state an intention to appeal; and
- (e) be signed by the minor’s attorney.

- 3.2 Clerk’s Duties.**

- (a) ***Assistance in filing.*** The trial court clerk must give prompt assistance—in a manner designed to protect the minor’s confidentiality—to persons seeking to file an appeal. The clerk must ensure that the notice of appeal is addressed to the proper court of appeals and that the minor’s name and identifying information are not disclosed.
- (b) ***Forwarding record to court of appeals.*** Upon receipt of a notice of appeal, the trial court clerk must immediately forward to the clerk of the court of appeals the notice of appeal, the clerk’s record excluding the verification

page, and the reporter's record. The trial court clerk must deliver the record to the clerk of the court of appeals by hand or send it by fax or email. The clerk must not send the record by mail.

- (c) ***Certificate of court's failure to rule within time prescribed by statute.*** If the court of appeals fails to rule on an application within the time required by Section 33.004(b), Family Code, then, upon the minor's request, the clerk of the court of appeals must immediately issue a certificate to that effect, stating that the trial court's order is affirmed. The clerk may use Form 3D but is not required to do so.

### 3.3 Proceedings in the Court of Appeals.

- (a) ***Briefing and argument.*** A minor may request to be allowed to submit a brief and to present oral argument, but the court may decide to rule without a brief or oral argument.
- (b) ***Ruling.*** The court of appeals—sitting in a three-judge panel—must issue a judgment affirming or reversing the trial court's order denying the application. The court may use Form 3C but is not required to do so.
- (c) ***Time for ruling.*** The court of appeals must rule on an appeal as soon as possible, subject to any postponement requested by the minor. Section 33.004(b), Family Code, states that a court must rule on an appeal by 5 p.m. on the fifth business day after the notice of appeal is filed with the court that denied the application, or if the minor requests a postponement, by 5 p.m. on the fifth business day after the date the minor states she is ready to proceed.
- (d) ***Postponement by minor.*** The minor may postpone the time of ruling by written request filed either with the trial court clerk at the time she files the notice of appeal or thereafter with the court of appeals clerk. The request may be submitted on Form 3B, but use of the form is not required. The request must either specify a date on which the minor will be ready to proceed to ruling, or state that the minor will later provide a date on which she will be ready to proceed to ruling. Once the minor determines when she will be ready to proceed to ruling, she must notify the court of appeals clerk of that date in writing.
- (e) ***Opinion.***
  - (1) ***Opinion optional; must preserve confidentiality.*** A court of appeals may issue an opinion explaining its ruling, but it is not required to do

so. An opinion that is designated for publication or public release must be written in a way to preserve the confidentiality of the identity of the minor.

(2) *Time.* Any opinion must issue not later than:

(A) ten business days after the day on which a notice of appeal is filed in the Supreme Court, if an appeal is taken to the Supreme Court; or

(B) sixty days after the day on which the court of appeals issued its judgment, if no appeal is taken to the Supreme Court.

(3) *Transmission to Supreme Court and trial court.* When the court of appeals issues an opinion, the clerk must transmit it immediately to the Supreme Court and to the trial court. If the opinion is not designated for publication or public release, the transmission must be confidential.

(f) ***Failure to timely rule.*** If the court of appeals fails to timely rule on the appeal, the trial court's judgment is deemed to be affirmed.

### Notes and Comments

1. Chapter 33, Family Code, provides for no appeal from an order granting an application.
2. A request to postpone the ruling of the court of appeals may be used in conjunction with a request for oral argument or to submit briefing.
3. Neither Chapter 33, Family Code, nor these rules prescribe the appellate standard of review.
4. The 2015 amendments to Chapter 33, Family Code, permit the court of appeals to publish an opinion "if the opinion is written in a way to preserve the confidentiality of the identity of the pregnant minor." TEX. FAM. CODE § 33.004(c-1). Any opinion that is released to the public must not only omit the minor's name and other directly identifying information but it must also describe the facts in a way that those who know the minor would not be able to recognize her.

**RULE 4. APPEAL TO THE SUPREME COURT**

**4.1 How to Appeal to the Supreme Court.** To appeal from the court of appeals to the Supreme Court, the minor must file a notice of appeal with the clerk of the Supreme Court, file a copy of the notice of appeal with the clerk of the court of appeals, and advise the clerk of each court by telephone that an appeal is being taken under Chapter 33, Family Code. The minor may use Form 4A but is not required to do so. The notice of appeal must:

- (a) be styled “In re Jane Doe”;
- (b) state the number of the cause in the court of appeals;
- (c) state an intention to appeal; and
- (d) be signed by the minor’s attorney.

**4.2 Clerk’s Duties.**

- (a) ***Assistance in filing.*** The clerk of the Supreme Court must give prompt assistance—in a manner designed to protect the minor’s confidentiality—to any person seeking to file an appeal. The clerk must ensure that the notice of appeal is addressed to the Supreme Court and that the minor’s name and identifying information are not disclosed.
- (b) ***Forwarding record to Supreme Court.*** Upon receipt of a notice of appeal to the Supreme Court, the clerks of the court of appeals and Supreme Court must immediately forward to the Supreme Court the record that was before the court of appeals.

**4.3 Proceedings in the Supreme Court.** A minor may request to be allowed to submit a brief and to present oral argument, but the Court may decide to rule without a brief or oral argument. The Court must rule as soon as possible.



**Proposed Amendment to  
Instructions for Applying to the Court for a Waiver  
of Parental Notification and Consent (Form 1A)**

**Your situation and the law**

If you are younger than 18 and have not been legally “emancipated,” you are “unemancipated,” which means that you are legally under the custody or control of your parents (or one of your parents), a managing conservator, or a guardian. (A “managing conservator” is an adult or agency appointed by a court to have custody or control of you.)

An abortion in Texas is only available if a physician, in the exercise of reasonable medical judgment, states that you have a life-threatening physical condition aggravated by, caused by, or arising from our pregnancy that places you at risk of death or poses a serious risk of substantial impairment of one of your major bodily functions unless the abortion is performed. or induced.

If you are pregnant, unemancipated, and younger than 18, you cannot get an abortion in Texas unless:

- your doctor informs one of your parents or your managing conservator or guardian at least 48 hours before the abortion and obtains the consent of your parent, managing conservator, or guardian; *or*
- a judge issues an order that “waives” or removes the requirement that you must let a parent or your managing conservator or guardian know about your planned abortion and obtain his or her consent to it.

**How to get a waiver of parental notification and consent**

***Fill out the application***

To get a court order waiving the requirements that you tell a parent or your managing conservator or guardian about your planned abortion and obtain his or her consent, you must complete Forms 2A and 2B, ***Confidential Application for Waiver of Parental Notification***. Form 2A is the “Cover Page” for the Application; it requests basic information about why you are seeking the order. Form 2B is the “Verification Page,” which requests information about you.

On the Verification Page, you will be asked to tell the court how you may be contacted quickly and confidentially. It is very important that you provide this information because the court may later need to contact you about your application. If you cannot be contacted, your application will be denied. You may list a phone number, email address, or any other way that you can be contacted. You can but need not give your own number—instead, you can ask the court to contact you through someone who is helping

you or acting on your behalf. You may also list a second person who may be contacted on your behalf.

You or someone acting on your behalf must deliver the forms to the clerk in the district court, county court at law, county court, or probate court to be filed. The court clerk can help you complete and file the application, and can help you get a hearing on your request. However, the clerk cannot give you legal advice or counsel you about abortion.

All of the information you put on the application is confidential. You do not have to pay a fee to file this application.

### ***Your hearing***

The court will tell you when to come to the courthouse for your “hearing.” In your hearing, you will meet with a judge to discuss your request. The court will hold your hearing within five days (not counting weekends and holidays) after you file your application.

After you file your application, the court will appoint a person to meet with you before the hearing and help the judge decide your application. The person is called a “guardian ad litem.” In your application you may ask the court to appoint someone you want to be your guardian ad litem (who can be a relative, clergy, counselor, psychiatrist or psychologist, or other adult), but the court is not required to appoint this person.

You must also have a lawyer with you at your hearing. You may hire your own lawyer, or you may ask the court to appoint one to represent you for free.

### ***Keeping it confidential***

Your hearing will be confidential and private. The only persons allowed to be there are you, your guardian ad litem, your lawyer, court staff, and any person whom you request to be there.

You already know that your application stays confidential. So will everything from your hearing: all testimony, documents and other evidence presented to the court, and any order given by the judge. The court will keep everything sealed. No one else can inspect the evidence.

### ***The court’s decision***

The court must “rule”—issue a decision on your application—before 5 p.m. on the fifth day after the day you filed your application, not counting weekends and holidays.

If the court fails to rule within that time, then your request is automatically denied. You can get a certificate from the court clerk that says that your request is “deemed denied.” If you choose to appeal, the certificate will be sent to the appellate court to explain what happened in your case.

If the court *does* rule within the required time, the court issues an order that does one of the following three things:

- (1) approves your request because the court finds that you are mature enough and know enough to choose on your own to have an abortion;

- (2) approves your request because it is in your best interests *not* to notify or to attempt to obtain the consent of your parent or your managing conservator or guardian before getting the abortion; or
- (3) denies your request because the court does not find (1) or (2).

If you say, or if there is evidence, that you have been or may be sexually abused, the court must treat your claim as a very serious matter and may be required to refer it to the police or other authorities for investigation.

### ***Appealing the court's decision***

If the court denies your request, you may ask another court to hear your case. This request is called an “appeal,” and the new court will be the court of appeals.

To appeal the first court’s decision, have your lawyer fill out Form 3A, ***Notice of Appeal in Parental Notification Proceeding***. The lawyer must file it with the clerk of the court that denied your request for a waiver of parental notification.

You will *not* have to go to the court of appeals in person. Instead, the court of appeals will review the written record and will issue a written ruling on your appeal no later than 5 p.m. on the fifth day after the day you file the *Notice of Appeal*, not counting weekends and holidays.

The court of appeals will provide its ruling to you, your lawyer, your guardian ad litem, or any other person designated by you to receive the ruling.

The same guardian ad litem and lawyer who helped you with your first hearing can help with your appeal.

### ***Getting the forms you need***

Forms 2A and 2B, the Cover Page and Verification Page to the *Confidential Application for Waiver of Parental Notification*, and Form 3A, *Notice of Appeal in Parental Notification Proceeding*, should all be attached to these instructions.

If these forms are not attached to these instructions, you can get them from the clerk of the district, county court at law, county, or probate court or from the clerk of the court of appeals. These forms are also available on the Texas Judiciary website at [www.txcourts.gov](http://www.txcourts.gov).

**Attention Clerk: Please Expedite**

**Confidential Application for Waiver of  
Parental Notification and Consent: Cover Page (Form 2A)**

As prescribed by the Clerk of the Supreme Court of Texas pursuant to Tex. Fam. Code § 33.003(m).

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**(Do not complete this section. Court staff will complete this section.)**

CAUSE NO. \_\_\_\_\_

IN RE JANE DOE

IN THE \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_ COUNTY, TEXAS

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**Important: Your Application has two parts: (1) this cover sheet (Form 2A), which asks for basic information about your application; and (2) a separate verification page (Form 2B), which asks for information about you and for you to swear to the truth of everything you say in the cover sheet and verification page. You must complete both of these forms.**

---

1. I ask the court for an order that allows me to have an abortion without first telling and obtaining the consent of my parent, managing conservator, or guardian. I swear or affirm that **(place a check mark in all the blanks for which you answer “yes”)**:
  - ☐ I am pregnant.
  - ☐ I am unmarried and younger than 18 years of age.
  - ☐ I do not have an order from a Texas court that gives me the same legal rights and responsibilities as an adult.
2. I request this order for one of the following reasons **(place a check mark beside any that apply)**:

- ☐ I am mature enough to decide to have an abortion without telling and obtaining the consent of my parent, managing conservator, or guardian. I also know enough about abortion to make this decision.
- ☐ Telling my parent, managing conservator, or guardian that I want an abortion and attempting to obtain his or her consent is not in my best interest.
- ☐ Telling my parent, managing conservator, or guardian that I want an abortion may lead to physical or emotional abuse of me.
- ☐ Telling my parent, managing conservator, or guardian that I want an abortion may lead to sexual abuse of me.

3. Please check all that apply:

- ☐ I live in the county where this application is being filed.
- ☐ My parent, managing conservator, or guardian is a presiding judge of a district court, a county court at law, or a court having probate jurisdiction in the county where I live, and **(check any that apply)**:
  - ☐ The county where I live is contiguous to (shares a border with) this one.
  - ☐ I intend to obtain the abortion in this county.
- ☐ The population of the county where I live has a population of less than 10,000, and **(check any that apply)**:
  - ☐ The county where I live is contiguous to (shares a border with) this one.
  - ☐ I intend to obtain the abortion in this county.
- ☐ I am not a Texas resident, but I intend to obtain the abortion in this county.

4. Please check one of the following statements:

- ☐ I do **not** have a lawyer. (The court will appoint one for you).
- ☐ I have a lawyer, who is:

Lawyer's name: \_\_\_\_\_

Lawyer's email address: \_\_\_\_\_

Lawyer's address: \_\_\_\_\_

Lawyer's phone: \_\_\_\_\_

5. The court must appoint a “guardian ad litem” for you. A guardian ad litem meets with you before the hearing and helps the judge decide your application. Please state whether you want the court to appoint someone you know as your guardian ad litem. This person could be a relative, a member of the clergy, a counselor, a psychiatrist or psychologist, or another adult. You do not have to ask the court to appoint someone you know. Keep in mind that the court may appoint the person you request, but it does not have to.
- I am requesting that the court appoint someone I know as my guardian ad litem. (You will identify this person on your verification page.)
  - I am not requesting the court to appoint someone I know as my guardian ad litem. (The court will appoint someone it chooses.)
6. Please state whether you have filed a Confidential Application for Waiver of Parental Notification and Consent other than this one with respect to your current pregnancy.
- I have filed another Confidential Application for Waiver of Parental Notification and Consent with respect to my current pregnancy.
  - I have **not** filed another Confidential Application for Waiver of Parental Notification and Consent with respect to my current pregnancy.
7. If you have filed another Confidential Application for Waiver of Parental Notification and Consent with respect to your current pregnancy, please answer the following questions. If you have not filed another Application with respect to your current pregnancy, do not answer these questions.

What court ruled on your previous application? \_\_\_\_\_

Has there been a material change in circumstances since the time your previous application was denied? (Write “yes” or “no.”) \_\_\_\_\_

CAUSE NO. \_\_\_\_\_

**(Do not fill in the blank above. Court staff will fill in the blank.)**

**Confidential Application for Waiver of Parental  
Notification and Consent: Verification Page (Form 2B)**

As prescribed by the Clerk of the Supreme Court of Texas pursuant to Tex. Fam. Code  
§ 33.003(m)

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**Important: Your Application has two parts: (1) the cover sheet (Form 2A), which asks for basic information about your application; and (2) this verification page (Form 2B), which asks for information about you and for you to swear to the truth of everything you say in the cover sheet and verification page. You must complete both of these forms.**

---

1. Please provide the following information.

Your full name: \_\_\_\_\_

Your date of birth: \_\_\_\_\_

Your address (if the place you receive mail is different than the place you actually live, list both addresses): \_\_\_\_\_

Your telephone number: \_\_\_\_\_

2. If you are requesting the court to appoint someone you know as your guardian ad litem (*see* Question 5 on the Cover Sheet, Form 2A), please identify them:

Name: \_\_\_\_\_

Relationship: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

3. If you do not have a lawyer, please complete the two blanks below. Tell us how the court, the lawyer appointed by the court, and the guardian ad litem appointed by the court can quickly contact you. If you cannot be contacted, your application will be denied. You can choose to be contacted by telephone or any other method by which you can be contacted immediately and confidentially. If you share a telephone number with another person, or there is another reason why you do not



want to be contacted at the telephone number you provided above, you can have us contact someone else who helps you.

Person to be contacted (you or another person): \_\_\_\_\_

Phone number or other contact information: \_\_\_\_\_

Another person to be contacted (optional): \_\_\_\_\_

Phone number or other contact information: \_\_\_\_\_

**Important:** Please complete either Option 1 or Option 2 below. You do not have to complete both. If you complete Option 1, you must sign your name before a notary public, court clerk, or another person authorized to give oaths. If you complete Option 2, you do not have to sign your name before a notary public or any other person, but you must swear that the information in your Application is true “under penalty of perjury.” “Perjury” means lying to a judge, and it is a crime. If you swear that a statement is true “under penalty of perjury,” and you make the statement knowing that it is false, you could be prosecuted in criminal court.

**Option 1**

I swear or affirm that the information in my Application (both the Cover Sheet and this Verification Page) is true and correct.

\_\_\_\_\_  
Signature of minor

\_\_\_\_\_  
Name of minor printed or typed

\_\_\_\_\_  
Minor’s date of birth

Sworn to or affirmed in my presence this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Signature of notary public, clerk, or other person authorized to give oaths

**(Option 2 is on the next page)**

**Option 2**

My name is \_\_\_\_\_ (*First*) \_\_\_\_\_ (*Middle*) \_\_\_\_\_ (*Last*), my date of birth is \_\_\_\_\_, and my address is \_\_\_\_\_ (*Street*), \_\_\_\_\_ (*City*), \_\_\_\_\_ (*State*), \_\_\_\_\_ (*Zip Code*), and \_\_\_\_\_ (*Country*). I declare under penalty of perjury that the information in my Application (both the Cover Sheet and the Verification Page) is true and correct. Executed in \_\_\_\_\_ (*County*), State of \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_ (*Month*), \_\_\_\_\_ (*Year*).

\_\_\_\_\_  
Signature of minor

**Request to Postpone Trial Court Hearing in Proceeding to Waive Parental  
Notification and Consent; Designation of Alternate Time for Hearing  
(Form 2C)**

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CAUSE NO. \_\_\_\_\_

IN RE JANE DOE

IN THE \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ COUNTY, TEXAS

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Please check and complete any questions below that apply:

- ☐ I request that the court postpone its hearing on my application. The hearing currently is due to be held on or by \_\_\_\_\_ at \_\_\_\_\_ a.m./p.m.
- ☐ Please rule on my application by 5 p.m. on the fifth business day after (please state a date after which you will be ready to have a hearing) \_\_\_\_\_. The clerk will notify you concerning the specific time of the hearing.
- ☐ I will contact you at a later time to determine a time for the hearing.

Attorney's Signature: \_\_\_\_\_

Attorney's Name, Printed: \_\_\_\_\_

Attorney's State Bar No.: \_\_\_\_\_

Attorney's Address: \_\_\_\_\_

Attorney's Telephone: \_\_\_\_\_

Attorney's Email Address: \_\_\_\_\_

Attorney's Fax No.: \_\_\_\_\_

**Judgment and Findings of Fact and Conclusions of Law on Application in  
Proceeding to Waive Parental Notification and Consent (Form 2D)**

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CAUSE NO. \_\_\_\_\_

IN RE JANE DOE

IN THE \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ COUNTY, TEXAS

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This matter was heard on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ . Based on the  
testimony and evidence presented, this court finds:

1. The applicant is pregnant.
2. The applicant is unmarried and under 18 years of age.
3. The applicant has not had her disabilities as a minor removed under Chapter 31 of the Texas Family Code.
4. The applicant wishes to have an abortion without her doctor notifying and obtaining the consent of either of her parents, her managing conservator, or her guardian.
5. Clear and convincing evidence supports the following: [State “yes” beside an issue for which the court finds in favor of the applicant by clear and convincing evidence. If any one issue is decided in favor of the applicant, the court need not consider the other issues.]

— The applicant is mature and sufficiently well informed to make the decision to have an abortion performed without notification to, or the consent of, either of her parents, her managing conservator, or her guardian.

Finding of Facts and Conclusions of Law:

\_\_\_\_\_  
\_\_\_\_\_

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- Notifying and attempting to obtain the consent of either of the applicant's parents, her managing conservator, or her guardian would not be in her best interest.

Findings of Facts and Conclusions of Law:

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THEREFORE, IT IS ORDERED:

- The application is GRANTED and the applicant is authorized to consent to the performance of an abortion without notifying and obtaining the consent of either of her parents or a managing conservator or guardian.
- The application is DENIED. The applicant is advised of her right to appeal under Rule 3 of the Rules for a Judicial Bypass of Parental Notice and Consent Under Chapter 33 of the Family Code and will be furnished a Notice of Appeal form, Form 3A.

All costs shall be paid by the State of Texas pursuant to Family Code Chapter 33.

---

Judge Presiding

**Certificate of Deemed Denial of Application in Proceeding to Waive Parental  
Notification and Consent (Form 2E)**

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CAUSE NO. \_\_\_\_\_

IN RE JANE DOE

IN THE \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_ COUNTY, TEXAS

---

This will certify that on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, Jane Doe filed an application for a court order authorizing her to consent to an abortion without the parental notice and consent required by Sections 33.002 and 33.0021, Family Code. The court did not rule on the application by 5 p.m. on the fifth business day after the day the application was filed. Accordingly, under Rule 2.5(g) of the Rules for a Judicial Bypass of Parental Notice and Consent Under Chapter 33, Family Code, the application is deemed to be DENIED.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Judge Presiding or Clerk

**Order that Costs in Proceeding to Waive Parental Notification and Consent Be  
Paid by the State Pursuant to Texas Family Code § 33.007 (Form 2F)**

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**Notice: To guarantee reimbursement, this Order must be served on the Director, Fiscal Division, Texas Department of Health, within the deadlines imposed by Rule 1.9(b) of the Rules for a Judicial Bypass of Notice and Consent Under Chapter 33 of the Family Code.**

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CAUSE NO. \_\_\_\_\_

IN RE JANE DOE

IN THE \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ COUNTY, TEXAS

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**ORDER**

In this proceeding filed under Texas Family Code § 33.003, the court heard evidence on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, concerning court costs. Based on the evidence presented, pursuant to Texas Family Code § 33.007, the State of Texas is ordered to pay:

1. Reasonable and necessary attorney ad litem fees and expenses of \$\_\_\_\_\_ to:

Name:

State Bar No.

Address:

Telephone:

Federal Tax ID:

2. Reasonable and necessary guardian ad litem fees and expenses of \$\_\_\_\_\_ to:

Name:

Address:

Telephone:

Federal Tax ID:

3. Court reporter's fees certified by the court reporter to:

Name:

Address:

Telephone:

Federal Tax ID:

4. All court costs certified by the clerk.

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Judge Presiding



**Clerk's Certification of Court Costs and Fees and Transmission of Order for  
Payment in Proceeding to Waive Parental Notification and Consent (Form  
2G)**

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Director, Fiscal Division  
Texas Department of Health  
1100 West 49th Street  
Austin TX 78756

Re: *In re Jane Doe*

Cause No. \_\_\_\_\_

Court: \_\_\_\_\_

County: \_\_\_\_\_

Dear Sir or Madam:

Please find enclosed a certified copy of an Order issued on \_\_\_\_\_, 20\_\_\_\_,  
in the referenced case. Please pay the amounts to the payees as stated in the Order.

In accordance with the Order, I certify the following fees and costs for payment  
as follows:

Amount: \$\_\_\_\_\_

Name of the Clerk: \_\_\_\_\_

Address : \_\_\_\_\_

Tax Identification No.: \_\_\_\_\_ Thank you.

Sincerely,

\_\_\_\_\_

[seal]

Name: \_\_\_\_\_

Position: \_\_\_\_\_

Encl.: Certified copy of Order

**Order Appointing Interpreter for Proceeding to Waive Parental Notification  
and Consent Under Chapter 33, Family Code (Form 2H)**

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CAUSE NO. \_\_\_\_\_

IN RE JANE DOE

IN THE \_\_\_\_\_

\_\_\_\_\_ COUNTY, TEXAS

---

**ORDER**

ORDERED that for good cause, the following person is appointed an interpreter to assist the applicant in applying for relief under Chapter 33, Family Code:

Name: \_\_\_\_\_ State Bar No. \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_ Federal Tax ID: \_\_\_\_\_

Signed: this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Judge

**OATH FOR INTERPRETER**

I, \_\_\_\_\_, do swear or affirm that I am competent and well versed in the \_\_\_\_\_ language and will: (1) make a true interpretation of all the proceedings to the applicant; and (2) repeat verbatim all statements, questions, and answers of all persons who are a part of the proceeding to the applicant, counsel, the court, and others in the English language and in the \_\_\_\_\_ language, using my best skill and judgment.

I will not: (1) participate in any manner other than as an interpreter in the decision making or adjudicative process; (2) communicate with any other person regarding the proceedings except a literal translation of questions, answers, or remarks made during the proceeding; or (3) disclose or discuss any of the proceedings with any person following entry of judgment.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone Number

SWORN TO AND SUBSCRIBED before me on \_\_\_\_\_, 20\_\_.

[Seal]

## Notice to Clerk and Court Reporter to Prepare Records (Form 2I)

CAUSE NO. \_\_\_\_\_

IN RE JANE DOE:

This matter was heard on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_. The Court has issued a final judgment. **Jane Doe may desire to appeal.** Jane Doe request the court reporter and appropriate clerk to immediately prepare a record of the trial proceedings and make it available to:

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
(Name and address of guardian ad litem)      (Name and address of minor's attorney)

Immediately upon completion of the record, the clerk must contact both the undersigned attorney and the guardian ad litem at the following telephone numbers to advise that the record is available:

\_\_\_\_\_  
(Telephone number for guardian ad litem)      (Telephone number for minor's attorney)

A copy of this notice has been given to both the appropriate clerk and court reporter and no additional request for the record of the trial proceedings is required. The filing of this document with the clerk constitutes proof that written request for preparation of the trial record was made.

Signed the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ at \_\_\_\_\_ [time] a.m./p.m. [circle one]

\_\_\_\_\_  
ATTORNEY

\_\_\_\_\_  
GUARDIAN AD LITEM

**Caution: no official or court personnel involved in the proceedings may ever disclose to anyone outside the proceedings—including the minor's parent, managing conservator, or legal guardian—that the minor is or has ever been pregnant, or that she wants or has ever wanted an abortion, except as permitted by law.**

# Notice to Clerk and Court Reporter to Prepare Records (Form 2J)

CAUSE NO. \_\_\_\_\_

IN RE JANE DOE:

This matter was heard on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_. The Court has issued a final judgment and **no appeal will be taken**. Jane Doe's attorney or guardian ad litem requests the court reporter and the appropriate clerk to prepare a record of the trial proceedings and make it available to:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
(Name and address of guardian ad litem)

\_\_\_\_\_  
(Name and address of minor's attorney)

Upon completion of the record, the clerk must contact both the undersigned attorney and the guardian ad litem at the following telephone numbers to advise that the record is available:

\_\_\_\_\_

(Telephone number for guardian ad litem) (Telephone number for minor's attorney)

\_\_\_\_\_

A copy of this notice has been given to both the appropriate clerk and the court reporter and no additional request for the record of the trial proceedings is required. The filing of this document with the clerk constitutes proof that written request for preparation of the trial record was made.

Signed the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ at \_\_\_\_\_ [time] a.m./p.m. [circle one]

ATTORNEY \_\_\_\_\_

GUARDIAN AD LITEM \_\_\_\_\_

**Caution: no official or court personnel involved in the proceedings may ever disclose to anyone outside the proceedings—including the minor's parent, managing conservator, or legal guardian—that the minor is or has ever been pregnant, or that she wants or has ever wanted an abortion, except as permitted by law.**

## Attention Clerk: Please Expedite

### Notice of Appeal in Proceeding to Waive Parental Notification and Consent (Form 3A)

As prescribed by the Clerk of the Supreme Court of Texas pursuant to Tex. Fam. Code § 33.004(d).

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CAUSE NO. \_\_\_\_\_

IN RE JANE DOE

IN THE \_\_\_\_\_

\_\_\_\_\_ COUNTY, TEXAS

---

**Important: Your lawyer should fill out the information below.**

---

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, notice is hereby given that Jane Doe appeals to the \_\_\_\_\_ Court of Appeals from the final order entered in the above-referenced cause denying her application for a court order authorizing her to consent to an abortion without the parental notification and consent required by Sections 33.002 and 33.0021, Family Code.

Attorney's Signature \_\_\_\_\_

Attorney's Name, Printed \_\_\_\_\_

State Bar No. \_\_\_\_\_

Attorney's Address \_\_\_\_\_

Attorney's Telephone \_\_\_\_\_

Attorney's Email Address \_\_\_\_\_

Attorney's Fax No. \_\_\_\_\_

**Request to Postpone Court of Appeals' Ruling in Proceeding to Waive Parental Notification and Consent; Designation of Alternative Time for Ruling (Form 3B)**

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CAUSE NO. \_\_\_\_\_

IN RE JANE DOE

IN THE COURT OF APPEALS FOR THE

\_\_\_\_\_ DISTRICT OF TEXAS

AT \_\_\_\_\_, TEXAS

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Please check and complete any questions below that apply:

- ☐ I request that the court postpone its ruling on my appeal. The appeal currently is due to be ruled on by 5 p.m. on \_\_\_\_\_.
- ☐ Please rule on my appeal by 5 p.m. on the fifth business day after (state a date after which you will be ready to proceed) \_\_\_\_\_. If the court holds oral argument, the clerk will notify you of its date and time.
- ☐ I will contact you at a later time to determine a time for ruling on my appeal.

Attorney's Signature \_\_\_\_\_

Attorney's Name, Printed \_\_\_\_\_

Attorney's State Bar No. \_\_\_\_\_

Attorney's Address \_\_\_\_\_

Attorney's Telephone \_\_\_\_\_

Attorney's Email Address \_\_\_\_\_

Attorney's Fax No. \_\_\_\_\_

**Judgment on Appeal in Proceeding to Waive Parental Notification and Consent  
(Form 3C)**

---

CAUSE NO. \_\_\_\_\_

IN RE JANE DOE

IN THE COURT OF APPEALS FOR THE

\_\_\_\_\_ DISTRICT, TEXAS

AT \_\_\_\_\_, TEXAS

---

It is ORDERED that the trial court's final order in this cause denying the minor's application for a court order authorizing her to consent to an abortion without the parental notice and consent required by Sections 32.002 and 33.0021, Family Code, is:

- ☐ Affirmed. The minor will be advised of her right to appeal under Rule 4 of the Rules for a Judicial Bypass of Parental Notice and Consent Under Chapter 33 of the Family Code and furnished a notice of appeal form, Form 4A.
- ☐ Reversed and the application is GRANTED.
- ☐ Opinion to follow.
- ☐ No opinion to follow.

\_\_\_\_\_  
Justice

Other members of the panel:

Justice \_\_\_\_\_

Justice \_\_\_\_\_

Date: \_\_\_\_\_



**Certification of Deemed Affirmance of Order On Appeal in Proceeding to  
Waive Parental Notification and Consent (Form 3D)**

---

CAUSE NO. \_\_\_\_\_

IN RE JANE DOE

IN THE COURT OF APPEALS FOR THE

\_\_\_\_\_ DISTRICT OF TEXAS

AT \_\_\_\_\_, TEXAS

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This will certify that on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, Jane Doe filed her notice of appeal from an order denying her application for a court order authorizing her to consent to an abortion without the parental notice and consent required by Sections 33.002 and 33.0021, Family Code. The court of appeals did not rule on her appeal by 5 p.m. on the fifth business day after the day the notice of appeals was filed. Accordingly, the order is deemed to be AFFIRMED.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Judge Presiding or Clerk

## **ATTENTION CLERK: PLEASE EXPEDITE**

### **Notice of Appeal to the Texas Supreme Court in Proceeding to Waive Parental Notification and Consent (Form 4A)**

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CAUSE NO. \_\_\_\_\_

IN THE SUPREME COURT OF TEXAS

IN RE JANE DOE

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On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, notice is hereby given that Jane Doe petitions the Supreme Court of Texas for review of the order entered in Cause No. \_\_\_\_\_, in the \_\_\_\_\_ Court of Appeals affirming the denial of her application for a court order authorizing her to consent to an abortion without the parental notice and consent required by Sections 33.002 and 33.0021, Family Code.

Attorney's Signature \_\_\_\_\_

Attorney's Name, Printed \_\_\_\_\_

Attorney's State Bar No. \_\_\_\_\_

Attorney's Address \_\_\_\_\_

Attorney's Telephone \_\_\_\_\_

Attorney's Email Address \_\_\_\_\_

Attorney's Fax No. \_\_\_\_\_