

RÉSUMÉ DIGEST

ACT 165 (SB 111)

2017 Regular Session

Mizell

Prior law required that, in order for a physician to perform an abortion on a minor who has not been emancipated, either by court order or marriage, the physician or abortion clinic must first receive one of the following:

- (1) A notarized statement from the mother, father, legal guardian, or tutor of the unemancipated minor child declaring that the parent or guardian has been informed that the minor intends to seek an abortion and that the parent or guardian consents to the abortion.
- (2) A court order signed by a judge.

New law retains prior law but requires that the notarized statement signed by the mother, father, legal guardian, or tutor of the unemancipated minor shall state whether the parent is the lawful mother, the lawful father, the legal guardian, or the lawful tutor of the minor.

New law retains prior law but requires the affiant to provide sufficient evidence of identity that is expressly specified in an affidavit to establish an articulable basis for a reasonably prudent person to believe that the affiant is the lawful mother, lawful father, legal guardian, or lawful tutor giving consent for the minor to obtain an abortion. New law also requires a copy of a valid and unexpired driver's license or a government issued identification card of the individual giving consent on behalf of the minor.

Prior law provided that, prior to a court order, an ex parte hearing shall be conducted and the court may require the minor to participate in an evaluation and counseling session with a mental health professional from the Louisiana Department of Health, office of behavioral health, or a staff member from the Department of Children and Family Services, office of children and family services, or both. Prior law provided that the court may refer the petitioner, if necessary, to the appropriate Louisiana Department of Health, office of behavioral health regional office to arrange the evaluation and counseling session within the four-day period prior to the ex parte hearing. Prior law provided that the referral may be made by the clerk upon the minor's filing the application when the court has issued a standing order authorizing same and the circumstances fit the criteria of the standing order.

Prior law provided for an evaluation and counseling session for the purpose of developing trustworthy and reliable expert opinion concerning the minor's sufficiency of knowledge, insight, judgment, and maturity with regard to her abortion decision in order to aid the court in its decision and to make the state's resources available to the court for this purpose. Prior law provided that the persons conducting such sessions may employ the information and printed materials referred to in the "Woman's Right To Know" booklet and will examine how well the minor interviewed is informed about pregnancy, fetal development, abortion risks and consequences, and abortion alternatives, and should also endeavor to verify that the minor is seeking an abortion of her own free will and is not acting under intimidation, threats, abuse, undue pressure, or extortion by any other persons.

New law retains prior law but changes the permissive provisions to mandatory and requires that the evaluation and counseling session endeavor to ascertain whether the minor is the subject of a coerced abortion or the pregnancy is the result of sexual activity constituting a crime under the laws of this state or the result of commercial sexual exploitation of the minor child. New law requires the person conducting the counseling session to examine how well the minor is informed on the indicators of human trafficking and to inform the minor of resources available for her protection.

New law provides that if the minor has not been interviewed prior to the court hearing, the court may appoint a certified child advocate attorney to be with the minor at the hearing and assist the minor in communicating to the court whether her abortion decision was made with sufficient maturity and free and informed consent. New law provides that the certified child advocate attorney shall endeavor to assist the court in determining whether the minor is seeking the abortion of her own free will and is not acting under intimidation, threat, pressure, or extortion by other persons.

New law provides that whether or not the court authorizes the abortion, if the court finds by a preponderance of the evidence that the minor is a victim of commercial sexual exploitation or any crime against the child, the court may issue any appropriate protective orders or afford the minor the continued services of a court-appointed special advocate, or both.

New law provides that any person giving parental consent on behalf of a minor on whom an abortion was completed shall be subject to penalties for the unlawful production, manufacturing, distribution or possession of fraudulent documents for identification purposes. New law provides that any employee of a licensed outpatient abortion facility who knowingly aids and abets a person who is not the mother, father, legal guardian or tutor of a minor on whom an abortion was performed in the execution or acceptance of the parental consent requirements shall be subject to the penalties.

Prior law provided that each physician shall retain and make part of the medical record of each pregnant woman upon whom an abortion is performed or induced certain documents, including a notarized consent form for the abortion or a copy of the court order.

New law retains prior law but provides that the physician also maintain a copy of the valid and unexpired driver's license or government issued identification card of the individual giving parental consent on behalf of the minor for the abortion.

Prior law required the physician performing an abortion to complete an individual abortion report. New law requires a notation of whether the abortion was performed pursuant to either notarized parental consent or a judicial bypass order if the pregnant woman is a minor.

New law provides that in accordance with prior law relative to severability (R.S. 24:175), if any provision or item of new law or the application thereof to any person or circumstance is found to be unconstitutional, the same is hereby declared to be severable and the balance of new law shall remain effective notwithstanding such unconstitutionality. Provides a declaration indicating that the legislature would have passed new law, and each provision, section, subsection, sentence, clause, phrase, or word thereof, irrespective of the fact that any provision or item be declared unconstitutional.

Effective August 1, 2017.

(Amends R.S. 40:1061.14(A)(intro para) and (A)(1) and (B)(3)(b)(ii) and (iii) and (4), 1061.19(A)(2), and 1061.21(A)(5); adds R.S. 40:1061.14(B)(3)(b)(iv) and 1061.14.1)