
WEST VIRGINIA CODE CHAPTER 16
ARTICLE 2F

WV Legislature

§16-2F-1. Legislative findings and intent.

(a) The Legislature finds that immature minors often lack the ability to make fully informed choices that take into account both immediate and long-range consequences of their actions; that the medical, emotional and psychological consequences of abortion are serious and of indeterminate duration, particularly when the patient is immature; that in its current abortion policy as expressed in *Bellotti v. Baird*, 443 U.S. 622 (1979), *H. L. v. Matheson*, 450 U.S. 398 (1981), and *Hodgson v. Minnesota*, 497 U.S. 417, (1990), the United States Supreme Court held that notification of a parent with a judicial waiver procedure is Constitutional; that parents ordinarily possess information essential to a physician's exercise of his or her best medical judgment concerning their child; and that parents who are aware that their minor daughter has had an abortion may better ensure that the minor receives adequate medical attention after her abortion.

(b) The Legislature further finds that parental consultation regarding abortion is usually desirable and in the best interests of the minor.

(c) The Legislature further finds there exists important and compelling state interests:

- (1) In protecting minors against their own immaturity,
- (2) In fostering the family structure and preserving it as a viable social unit, and
- (3) In protecting the rights of parents to rear their own children in their own household.

(d) It is, therefore, the intent of the Legislature to further these important and compelling state interests by enacting this parental notice provision.

§16-2F-2. Definitions.

For purposes of this article, unless the context in which used clearly requires otherwise:

As used in this article:

(1) "Abortion" means the use of any instrument, medicine, drug, or any other substance or device with intent to terminate the pregnancy of a female known to be pregnant and with intent to cause the expulsion of a fetus other than by live birth. This article does not prevent the prescription, sale, or transfer of intrauterine contraceptive devices, other contraceptive devices, or other generally medically accepted contraceptive devices, instruments, medicines or drugs for a female who is not known to be pregnant and for whom the contraceptive devices, instruments, medicines or drugs were prescribed by a physician solely for contraceptive purposes and not for the purpose of inducing or causing the termination of a known pregnancy.

(2) "Medical emergency" means the same as that term is defined in §16-2M-2 of this code.

(3) "Secretary" means the Secretary of the West Virginia Department of Health and Human Resources.

(4) "Unemancipated minor" means any person less than 18 years of age who is not, or has not been, married, who is under the care, custody, and control of the person's parent or parents, guardian, or court of competent jurisdiction pursuant to applicable federal law or as provided in §49-4-115 of this code.

§16-2F-3. Parental notification required for abortions performed on unemancipated minors.

(a) A physician may not perform an abortion upon an unemancipated minor until notice of the pending abortion as required by this section is complete.

(b) A physician or his or her agent may personally give notice directly, in person, by telephone or by letter to the parent, the guardian or conservator of the unemancipated minor at their usual place of residence and shall be delivered personally by the physician or his or her agent. Upon delivery of the notice, forty-eight hours shall pass until the abortion may be performed.

(c) A physician or his or her agent may provide notice by certified mail addressed to the parent, the guardian or conservator of the unemancipated minor at their usual place of residence, return receipt requested. The delivery shall be sent restricted delivery assuring that the letter is delivered only to the addressee. Time of delivery shall be deemed to occur at twelve o'clock noon on the next day on which regular mail delivery takes place unless. Upon delivery of the notice, forty-eight hours shall pass until the abortion may be performed.

(d) Notice may be waived if the person entitled to notice certifies in writing that he or she has been notified.

§16-2F-4. Process to obtain waiver of notification.

(a) An unemancipated minor who objects to the notice being given to her parent or legal guardian may petition for a waiver of the notice to the circuit court of the county in which the unemancipated minor resides or in which the abortion is to be performed, or to the judge of either of such courts.

(b) The petition need not be made in any specific form and shall be sufficient if it fairly sets forth the facts and circumstances of the matter, but shall contain the following information:

(i) The age of the unemancipated minor and her educational level;

(ii) The county and state in which she resides; and

(iii) A brief statement of unemancipated minor's reason or reasons for the desired waiver of notification of the parent or guardian of such unemancipated minor.

No such petition shall be dismissed nor shall any hearing thereon be refused because of any defect in the form of the petition.

(c) The Attorney General shall prepare suggested form petitions and accompanying instructions and shall make the same available to the clerks of the circuit courts. The clerks shall make the form petitions and instructions available in the clerks office.

(d) The proceedings held pursuant to this article shall be confidential and the court shall conduct the proceedings in camera. The court shall inform the unemancipated minor of her right to be represented by counsel. If the unemancipated minor is without the requisite funds to retain the services of an attorney, the court will appoint an attorney to represent the unemancipated minor's interest in the matter. If the unemancipated minor desires the services of an attorney, an attorney shall be appointed to represent the unemancipated minor, if the unemancipated minor advises the court under oath or affidavit that the unemancipated minor is financially unable to retain counsel. An attorney appointed to represent the unemancipated minor shall be appointed and paid for his services pursuant to the provisions of article twenty-one, chapter twenty-nine of this code. The pay shall not exceed the sum of \$100.

(e) The court shall conduct a hearing upon the petition without delay, but may not exceed the next succeeding judicial day. The court shall render its decision immediately upon its submission and, its written order not later than twenty-four hours and entered in the record by the clerk of the court. All testimony, documents, evidence, petition, orders entered thereon and all records relating to the matter shall be sealed by the clerk and shall not be opened to any person except upon order of the court upon a showing of good cause. A separate order book for the purposes of this article shall be maintained by the clerk and shall be sealed and not open to inspection by any person save upon order of the court for good cause shown.

(f) Notice as required by section three of this article shall be ordered waived by the court if the court finds either:

(1) That the unemancipated minor is mature and well informed sufficiently to make the decision to proceed with the abortion independently and without the notification or involvement of her parent or legal guardian; or

(2) That notification to the person or persons to whom notification would otherwise be required would not be in the best interest of the unemancipated minor.

(g) A confidential appeal shall be available to any unemancipated minor to whom a court denies an order authorizing an abortion without notification. An order authorizing an abortion without notification may not be appealed. Access to the trial court and the Supreme Court of Appeals shall be given to an unemancipated minor.

(h) Filing fees are not required of any unemancipated minor who avails herself of any of the procedures provided by this section.

§16-2F-5. Emergency exception from notification requirements.

(a) The notification requirements of section three of this article do not apply where the attending physician certifies that there is a need for an abortion to be performed due to a medical emergency. A description of the medical emergency shall be maintained with the unemancipated minor's medical records.

(b) If the physician who is to perform the abortion concludes under subsection (a) of this section that a medical emergency exists and that there is insufficient time to provide the notice required by section three of this article, 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 three.

(c) A physician who performs an abortion under the circumstances described in subsection (a) of this section shall, not later than 48 hours after the abortion is performed, send a written notice that a medical emergency occurred and that the parent, managing conservator, or guardian may 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.

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

§16-2F-6. Reporting requirements for physicians.

(a) A physician performing an abortion upon an unemancipated minor shall provide the secretary a written report of the procedure within thirty days after having performed the abortion. The following information, in addition to any other information which may be required by the secretary, regarding an unemancipated minor receiving the abortion shall be included in the reporting form:

- (1) Age;
- (2) Educational level;
- (3) Previous pregnancies;
- (4) Previous live births;
- (5) Previous abortions;
- (6) Complications, if any, of the abortion being reported;
- (7) Reason for waiver of notification, if such notice was waived; and
- (8) The city and county in which the abortion was performed.

(b) The report shall not contain the name, address or other information by which the unemancipated minor receiving the abortion may be identified.

§16-2F-7. Article not to be construed to require abortion.

Nothing in this article, nor in any order issued pursuant thereto, shall require that a physician perform an abortion or that any person be required to assist in the performance of an abortion if such physician or person, for any reason, medical or otherwise, does not wish to perform or assist in such abortion.

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§16-2F-8. Penalties.

(a) Any physician or other licensed medical practitioner who intentionally or recklessly performs or induces an abortion in violation of this article is considered to have acted outside the scope of practice permitted by law or otherwise in breach of the standard of care owed to patients, and is subject to discipline from the applicable licensure board for that conduct, including, but not limited to, loss of professional license to practice.

(b) A person, not subject to subsection (a) of this section, who intentionally or recklessly performs or induces an abortion in violation of this article is considered to have engaged in the unauthorized practice of medicine in violation of section thirteen, article three, chapter thirty of this code, and upon conviction, subject to the penalties contained in that section.

(c) In addition to the penalties set forth in subsections (a) and (b) of this section, a patient may seek any remedy otherwise available to such patient by applicable law.

(d) No penalty may be assessed against any patient upon whom an abortion is performed or induced or attempted to be performed or induced.

§16-2F-9. Severability.

Effective from the reenactment of this section during the third extraordinary session of the Legislature, 2022, this article is of no force or effect unless any provision of §16-2R-1 *et seq.* of this code is judicially determined to be unconstitutional.

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