

1 HOUSE BILL NO. 968

2 INTRODUCED BY A. REGIER

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR PARENTAL CONSULTATION REGARDING A

5 MINOR'S ABORTION; REVISING DEFINITIONS; REVISING CONSENT REQUIREMENTS; REVISING

6 IDENTIFICATION REQUIREMENTS; PROVIDING FOR PARENTAL NOTIFICATION OF A MINOR'S

7 ABORTION IN THE EVENT THAT PARENTAL CONSULTATION PROVISIONS ARE ENJOINED; PROVIDING

8 AN APPROPRIATION; AMENDING SECTIONS 41-1-405, 47-1-104, 50-20-501, 50-20-502, 50-20-503, 50-20-

9 504, 50-20-505, AND 50-20-506, MCA; AND PROVIDING AN EFFECTIVE DATES AND A CONTINGENT

10 TERMINATION DATE."

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12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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14 NEW SECTION. Section 1. Short title. [Sections 1 through 9] may be cited as the "Parental Notice

15 of Abortion Act of 2023".

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17 NEW SECTION. Section 2. Legislative purpose and findings. (1) The legislature finds that:

18 (a) immature minors often lack the ability to make fully informed choices that take into account

19 both immediate and long-range consequences;

20 (b) the medical, emotional, and psychological consequences of abortion are sometimes serious

21 and can be lasting, particularly when the patient is immature;

22 (c) the capacity to become pregnant and the capacity for mature judgment concerning the wisdom

23 of an abortion are not necessarily related;

24 (d) parents ordinarily possess information essential to a physician in the exercise of the physician's

25 best medical judgment concerning the minor;

26 (e) parents who are aware that their minor daughter has had an abortion may better ensure that

27 the daughter receives adequate medical care after the abortion; and

28 (f) parental consultation is usually desirable and in the best interests of the minor.

- 1 (2) The purpose of [sections 1 through 9] is to further the important and compelling state interests
2 of:
3 (a) protecting minors against their own immaturity;
4 (b) fostering family unity and preserving the family as a viable social unit;
5 (c) protecting the constitutional rights of parents to rear children who are members of their
6 household; and
7 (d) reducing teenage pregnancy and unnecessary abortion.

8
9 **NEW SECTION. Section 3. Definitions.** As used in [sections 1 through 9], unless the context
10 requires otherwise, the following definitions apply:

- 11 (1) "Actual notice" means the giving of notice directly in person or by telephone.
12 (2) "Coerce" means to restrain or dominate the choice of a minor female by force, threat of force,
13 or deprivation of food and shelter.
14 (3) "Emancipated minor" means a person under 18 years of age who is or has been married or
15 who has been granted an order of limited emancipation by a court as provided in 41-3-438.
16 (4) "Medical emergency" means a condition that, on the basis of the physician's good faith clinical
17 judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion
18 of the woman's pregnancy to avert the woman's death or a condition for which a delay in treatment will create
19 serious risk of substantial and irreversible impairment of a major bodily function.
20 (5) "Minor" means a female under 16 years of age who is not an emancipated minor.
21 (6) "Physical abuse" means any physical injury intentionally inflicted by a parent or legal guardian
22 on a child.
23 (7) "Physician" means a person licensed to practice medicine under Title 37, chapter 3.
24 (8) "Sexual abuse" has the meaning given in 41-3-102.

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26 **NEW SECTION. Section 4. Notice of parent required.** A physician may not perform an abortion
27 upon a minor unless the physician has given at least 48 hours' actual notice to one parent or to the legal
28 guardian of the pregnant minor of the physician's intention to perform the abortion. The actual notice may be

1 given by a referring physician. The physician who performs the abortion must receive the written statement of
2 the referring physician certifying that the referring physician has given actual notice. If actual notice is not
3 possible after a reasonable effort, the physician or the physician's agent shall give alternate notice as provided
4 in [section 5].

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6 **NEW SECTION. Section 5. Alternative notification.** In lieu of the actual notice required by [section
7 4], notice may be made by certified mail addressed to the parent at the usual place of residence of the parent
8 with return receipt requested and delivery restricted to the addressee, which means a postal employee may
9 deliver the mail only to the authorized addressee. Time of delivery is considered to occur at noon on the next
10 day on which regular mail delivery takes place after mailing.

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12 **NEW SECTION. Section 6. Exceptions.** Notice is not required under [section 4] or [section 5] if:

- 13 (1) the attending physician certifies in the patient's medical record that a medical emergency exists
14 and there is insufficient time to provide notice;
15 (2) notice is waived, in writing, by the person entitled to notice; or
16 (3) notice is waived under [section 8].

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18 **NEW SECTION. Section 7. Coercion prohibited.** A parent, a guardian, or any other person may not
19 coerce a minor to have an abortion. If a minor is denied financial support by the minor's parents, guardian, or
20 custodian because of the minor's refusal to have an abortion, the minor must be considered an emancipated
21 minor for the purposes of eligibility for public assistance benefits. The public assistance benefits may not be
22 used to obtain an abortion.

23
24 **NEW SECTION. Section 8. Procedure for judicial waiver of notice.** (1) The requirements and
25 procedures under this section are available to minors whether or not they are residents of this state.

- 26 (2) The minor may petition the youth court for a waiver of the notice requirement and may
27 participate in the proceedings on the person's own behalf. The petition must include a statement that the
28 petitioner is pregnant and is not emancipated. The court may appoint a guardian ad litem for the petitioner. A

1 guardian ad litem is required to maintain the confidentiality of the proceedings. The youth court shall advise the
2 petitioner of the right to assigned counsel and shall order the office of state public defender, provided for in 2-
3 15-1029, to assign counsel upon request.

4 (3) Proceedings under this section are confidential and must ensure the anonymity of the
5 petitioner. All proceedings under this section must be sealed. The petitioner may file the petition using a
6 pseudonym or using the petitioner's initials. All documents related to the petition are confidential and are not
7 available to the public. The proceedings on the petition must be given preference over other pending matters to
8 the extent necessary to ensure that the court reaches a prompt decision. The court shall issue written findings
9 of fact and conclusions of law and rule within 48 hours of the time that the petition is filed unless the time is
10 extended at the request of the petitioner. If the court fails to rule within 48 hours and the time is not extended,
11 the petition is granted and the notice requirement is waived.

12 (4) If the court finds that the petitioner is competent to decide whether to have an abortion, the
13 court shall issue an order authorizing the minor to consent to the performance or inducement of an abortion
14 without the notification of a parent or guardian.

15 (5) The court shall issue an order authorizing the petitioner to consent to an abortion without the
16 notification of a parent or guardian if the court finds that:

17 (a) there is evidence of physical abuse, sexual abuse, or emotional abuse of the petitioner by one
18 or both parents, a guardian, or a custodian; or

19 (b) the notification of a parent or guardian is not in the best interests of the petitioner.

20 (6) If the court does not make a finding specified in subsection (4) or (5), the court shall dismiss the
21 petition.

22 (7) A court that conducts proceedings under this section shall issue written and specific findings of
23 fact and conclusions of law supporting its decision and shall order that a confidential record of the evidence,
24 findings, and conclusions be maintained.

25 (8) The supreme court may adopt rules providing an expedited confidential appeal by a petitioner if
26 the youth court denies a petition. An order authorizing an abortion without notice is not subject to appeal.

27 (9) Filing fees may not be required of a pregnant minor who petitions a court for a waiver of
28 parental notification or appeals a denial of a petition.

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2 **NEW SECTION. Section 9. Criminal and civil penalties.** (1) A person convicted of performing an
3 abortion in violation of [section 4] or [section 5] shall be fined an amount not to exceed \$500 or be imprisoned in
4 the county jail for a term not to exceed 6 months, or both.

5 (2) Failure to provide the notice required under [section 4] or [section 5] is prima facie evidence in
6 an appropriate civil action for a violation of a professional obligation. The evidence does not apply to issues
7 other than failure to notify the parents or guardian. A civil action may be based on a claim that the failure to
8 notify was the result of a violation of the appropriate legal standard of care. Failure to provide notice is
9 presumed to be actual malice pursuant to the provisions of 27-1-221. [Sections 1 through 9] do not limit the
10 common-law rights of parents.

11 (3) A person who coerces a minor to have an abortion is guilty of a misdemeanor and upon
12 conviction shall be fined an amount not to exceed \$1,000 or be imprisoned in the county jail for a term not to
13 exceed 1 year, or both. On a second or subsequent conviction, the person shall be fined an amount not less
14 than \$500 and not more than \$50,000 and be imprisoned in the state prison for a term not less than 10 days
15 and not more than 5 years, or both.

16 (4) A person not authorized to receive notice under [section 5] who signs a notice of waiver as
17 provided in [section 6(2)] is guilty of a misdemeanor.

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19 **Section 10.** Section 41-1-405, MCA, is amended to read:

20 **"41-1-405. Emergencies and special situations.** (1) A health professional may render or attempt to
21 render emergency service or first aid, medical, surgical, dental, or psychiatric treatment, without compensation,
22 to any injured person or any person regardless of age who is in need of immediate health care when, in good
23 faith, the professional believes that the giving of aid is the only alternative to probable death or serious physical
24 or mental damage.

25 (2) A health professional may render nonemergency services to minors for conditions that will
26 endanger the health or life of the minor if services would be delayed by obtaining consent from spouse, parent,
27 parents, or legal guardian.

28 (3) Consent may not be required of a minor who does not possess the mental capacity or who has

1 a physical disability that renders the minor incapable of giving consent and who has no known relatives or legal
2 guardians, if a physician determines that the health service should be given.

3 (4) Self-consent of minors does not apply to sterilization or abortion, except as provided in ~~Title 50,~~
4 ~~chapter 20, part 5 [sections 1 through 9].~~"

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6 **Section 11.** Section 47-1-104, MCA, is amended to read:

7 **"47-1-104. Statewide system -- structure and scope of services -- assignment of counsel at**

8 **public expense.** (1) There is a statewide public defender system, which is required to deliver public defender
9 services in all courts in this state. The system is supervised by the director.

10 (2) The director shall approve a strategic plan for service delivery and divide the state into not
11 more than 11 public defender regions. The director may establish a regional office to provide public defender
12 services in each region, as provided in 47-1-215, establish a contracted services program to provide services in
13 the region, or utilize other service delivery methods as appropriate and consistent with the purposes described
14 in 47-1-102.

15 (3) When a court orders the assignment of a public defender, the appropriate office shall
16 immediately assign a public defender qualified to provide the required services. The director shall establish
17 protocols to ensure that the offices make appropriate assignments in a timely manner.

18 (4) A court may order assignment of a public defender under this chapter in the following cases:

19 (a) in cases in which a person is entitled to assistance of counsel at public expense because of
20 financial inability to retain private counsel, subject to a determination of indigence pursuant to 47-1-111, as
21 follows:

22 (i) for a person charged with a felony or charged with a misdemeanor for which there is a
23 possibility of incarceration, as provided in 46-8-101;

24 (ii) for a party in a proceeding to determine parentage under the Uniform Parentage Act, as
25 provided in 40-6-119;

26 (iii) for a parent, guardian, or other person with physical or legal custody of a child or youth in any
27 removal, placement, or termination proceeding pursuant 41-3-422 and as required under the federal Indian
28 Child Welfare Act, as provided in 41-3-425;

1 (5) (a) Except as provided in subsection (5)(b), a public defender may not be assigned to act as a
2 court-appointed special advocate or guardian ad litem in a proceeding under the Montana Youth Court Act, Title
3 41, chapter 5, or in an abuse and neglect proceeding under Title 41, chapter 3.

4 (b) A private attorney who is contracted with under the provisions of 47-1-121 to provide public
5 defender services under this chapter may be appointed as a court-appointed special advocate or guardian ad
6 litem in a proceeding described in subsection (5)(a) if the appointment is separate from the attorney's service
7 for the statewide public defender system and does not result in a conflict of interest."

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9

Section 12. Section 47-1-104, MCA, is amended to read:

10

"47-1-104. Statewide system -- structure and scope of services -- assignment of counsel at

11

public expense. (1) There is a statewide public defender system, which is required to deliver public defender
12 services in all courts in this state. The system is supervised by the director.

13

(2) The director shall approve a strategic plan for service delivery and divide the state into not

14

more than 11 public defender regions. The director may establish a regional office to provide public defender
15 services in each region, as provided in 47-1-215, establish a contracted services program to provide services in

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the region, or utilize other service delivery methods as appropriate and consistent with the purposes described
17 in 47-1-102.

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(3) When a court orders the assignment of a public defender, the appropriate office shall

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immediately assign a public defender qualified to provide the required services. The director shall establish
20 protocols to ensure that the offices make appropriate assignments in a timely manner.

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(4) A court may order assignment of a public defender under this chapter in the following cases:

22

(a) in cases in which a person is entitled to assistance of counsel at public expense because of

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financial inability to retain private counsel, subject to a determination of indigence pursuant to 47-1-111, as
24 follows:

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(i) for a person charged with a felony or charged with a misdemeanor for which there is a

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possibility of incarceration, as provided in 46-8-101;

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(ii) for a party in a proceeding to determine parentage under the Uniform Parentage Act, as

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provided in 40-6-119;

- 1 (iii) for a parent, guardian, or other person with physical or legal custody of a child or youth in any
2 removal, placement, or termination proceeding pursuant 41-3-422 and as required under the federal Indian
3 Child Welfare Act, as provided in 41-3-425;
- 4 (iv) for an applicant for sentence review pursuant to Title 46, chapter 18, part 9;
- 5 (v) for a petitioner in a proceeding for postconviction relief, as provided in 46-21-201;
- 6 (vi) for a petitioner in a habeas corpus proceeding pursuant to Title 46, chapter 22;
- 7 (vii) for a parent or guardian in a proceeding for the involuntary commitment of a developmentally
8 disabled person to a residential facility, as provided in 53-20-112;
- 9 (viii) for a respondent in a proceeding for involuntary commitment for a mental disorder, as provided
10 in 53-21-116;
- 11 (ix) for a respondent in a proceeding for the involuntary commitment of a person for alcoholism, as
12 provided in 53-24-302; and
- 13 (x) for a witness in a criminal grand jury proceeding, as provided in 46-4-304.
- 14 (b) in cases in which a person is entitled by law to the assistance of counsel at public expense
15 regardless of the person's financial ability to retain private counsel, as follows:
- 16 (i) as provided for in 41-3-425;
- 17 (ii) for a youth in a proceeding under the Montana Youth Court Act alleging a youth is delinquent
18 or in need of intervention, as provided in 41-5-1413, and in a prosecution under the Extended Jurisdiction
19 Prosecution Act, as provided in 41-5-1607;
- 20 (iii) for a juvenile entitled to assigned counsel in a proceeding under the Interstate Compact on
21 Juveniles, as provided in 41-6-101;
- 22 (iv) for a minor who petitions for a waiver of parental ~~consent notification~~ requirements under the
23 Parental ~~Consent for Abortion Act of 2013~~ Notice of Abortion Act of 2023, as provided in ~~50-20-509~~ [section 8];
- 24 (v) for a respondent in a proceeding for the involuntary commitment of a developmentally disabled
25 person to a residential facility, as provided in 53-20-112;
- 26 (vi) for a minor voluntarily committed to a mental health facility, as provided in 53-21-112;
- 27 (vii) for a person who is the subject of a petition for the appointment of a guardian or conservator in
28 a proceeding under the provisions of the Uniform Probate Code in Title 72, chapter 5;

1 (viii) for a ward when the ward's guardian has filed a petition to require medical treatment for a
2 mental disorder of the ward, as provided in 72-5-322; and
3 (c) for an eligible appellant in an appeal of a proceeding listed in this subsection (4).
4 (5) (a) Except as provided in subsection (5)(b), a public defender may not be assigned to act as a
5 court-appointed special advocate or guardian ad litem in a proceeding under the Montana Youth Court Act, Title
6 41, chapter 5, or in an abuse and neglect proceeding under Title 41, chapter 3.
7 (b) A private attorney who is contracted with under the provisions of 47-1-121 to provide public
8 defender services under this chapter may be appointed as a court-appointed special advocate or guardian ad
9 litem in a proceeding described in subsection (5)(a) if the appointment is separate from the attorney's service
10 for the statewide public defender system and does not result in a conflict of interest."
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12 **Section 13.** Section 50-20-501, MCA, is amended to read:

13 **"50-20-501. Short title.** This part may be cited as the "Parental Consent Consultation for Minor's
14 Abortion Act of 2013 2023"."
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16 **Section 14.** Section 50-20-502, MCA, is amended to read:

17 **"50-20-502. Legislative purpose and findings.** (1) The legislature finds that:

- 18 (a) immature minors often lack the ability to make fully informed choices that take into account
19 both immediate and long-range consequences;
20 (b) the medical, emotional, and psychological consequences of abortion are sometimes serious
21 and can be lasting, particularly when the patient is immature;
22 (c) the capacity to become pregnant and the capacity for mature judgment concerning the wisdom
23 of an abortion are not necessarily related;
24 (d) parents ordinarily possess information essential to a physician in the exercise of the physician's
25 best medical judgment concerning the minor;
26 (e) parents who are aware that their minor daughter has had an abortion may better ensure that
27 the daughter receives adequate medical care after the abortion; and
28 (f) parental consultation is usually desirable and in the best interests of the minor.

1 the parent or legal guardian is the lawful parent or legal guardian of the minor proof of relationship to the minor
2 so that the consent form required by 50-20-505 substantially complies with the identification requirements of 1-
3 5-603.

4 (2) A physician or physician assistant shall retain the completed consent form and the documents
5 provided pursuant to subsection (1) in the minor's medical file for 5 years after the minor reaches 18 years of
6 age, but in no event less than 7 years.

7 (3) A physician or physician assistant receiving documentation under this section shall execute for
8 inclusion in the minor's medical record an affidavit stating: "I, (insert name of physician or physician assistant),
9 certify that according to my best information and belief, a reasonable person under similar circumstances would
10 rely on the information presented by both the minor and the minor's parent or legal guardian as sufficient
11 evidence of identity and relationship."
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13 **NEW SECTION. Section 19. Appropriation.** (1) There is appropriated \$1,000 from the general fund
14 to the department of public health and human services for the biennium beginning July 1, 2023.

15 (2) The appropriation must be used to pay for the costs associated with providing the consent form
16 described in [section 6].

17 (3) The legislature intends that the appropriation provided for in this section is a one-time-only
18 appropriation.
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20 **NEW SECTION. Section 20. Codification instruction.** [Sections 1 through 9] are intended to be
21 codified as an integral part of Title 50, chapter 20, part 2, and the provisions of Title 50, chapter 20, part 2,
22 apply to [sections 1 through 9].
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24 **NEW SECTION. Section 21. Effective dates -- contingency.** (1) Except as provided in subsection
25 (2), [This this act] is effective July 1, 2023.

26 (2) [Sections 1 through 10 and 12] are effective on the date that the attorney general certifies in
27 writing to the code commissioner that enforcement of the Parental Consultation for Minor's Abortion Act of
28 2023, Title 50, chapter 20, part 5, has been preliminarily or permanently enjoined.

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NEW SECTION. **Section 22. Contingent termination.** [Sections 1 through 10 and 12] terminate on the date that the attorney general certifies to the code commissioner that, following litigation in which the Parental Consultation for Minor's Abortion Act of 2023, Title 50, chapter 20, part 5, was preliminarily or permanently enjoined, the Parental Consultation for Minor's Abortion Act of 2023 has been upheld by a court of final disposition and is in full force and effect. The attorney general shall submit certification within 2 days of the occurrence of the contingency.

- END -

AMENDMENT