

2019 Regular Session

HOUSE BILL NO. 484

BY REPRESENTATIVE CREWS AND SENATOR MIZELL AND REPRESENTATIVE GAROFALO

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

ABORTION: Establishes requirements for physicians and abortion facilities relative to medical records of women upon whom abortions are performed

1 AN ACT

2 To amend and reenact R.S. 40:1061.19 and 1061.29, relative to regulation of abortion; to

3 provide requirements relative to medical records of women upon whom abortions are

4 performed; to establish duties of physicians and medical directors, administrators,

5 and owners of abortion facilities relative to such medical records; to establish

6 retention periods for such records; to institute penalties for violations of laws relative

7 to abortion-related records; to provide conditions and requirements for obtaining and

8 maintaining an abortion facility license; to provide legislative findings; and to

9 provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. R.S. 40:1061.19 and 1061.29 are hereby amended and reenacted to read

12 as follows:

13 §1061.19. Records

14 A. ~~Each physician shall retain and make part of the medical record of each~~

15 ~~pregnant woman upon whom an abortion is performed or induced, copies of the~~

16 ~~following:~~ In addition to any other duty that may be imposed by state law or

17 regulations, each physician who performs or induces an abortion, the medical

18 director of the facility where an abortion is performed or induced, the administrator

19 of an abortion facility, each abortion facility, and each owner of an abortion facility

1 shall have an independent duty to ensure that a designated custodian of records for  
2 the facility obtains, retains, and makes part of the medical record of each pregnant  
3 woman upon whom an abortion is performed or induced at least one copy of each of  
4 the following documents:

5 (1) The certificate required by R.S. 40:1061.13.

6 (2) If the pregnant woman is an unemancipated minor, one of the following:

7 (a) A notarized consent form and copies of identification as provided for in  
8 R.S. 40:1061.14(A)(1).

9 (b) A court order required by R.S. 40:1061.14(B), if applicable.

10 (3) The consent form required by R.S. 40:1061.17.

11 (4) The reports required by R.S. 40:1061.21.

12 (5) The certificate required by R.S. 40:1061.23, if applicable.

13 (6) The signed certification form provided for in R.S. 40:1061.16(C)  
14 indicating that the woman or minor female acknowledged receipt of informational  
15 materials concerning psychological impacts, illegal coercion, abuse, and human  
16 trafficking.

17 (7) Any report made pursuant to Title VI of the Children's Code and any  
18 other report made to law enforcement in relation the patient.

19 B. ~~The physician shall retain the documents required in Subsection A of this~~  
20 ~~Section for not less than seven years.~~ The individuals listed in Subsection A of this  
21 Section and the abortion facility shall each have an independent duty to ensure that  
22 the custodian of records for the abortion facility where the abortion was performed  
23 or induced retains the documents required in Subsection A of this Section for not less  
24 than seven years for adult patients and not less than ten years from the age of  
25 majority for minor patients. The ten-year period for minors shall begin to run when  
26 the patient attains the age of eighteen; provided, however, that in any case where the  
27 patient has reported facts that would require reporting under Title VI of the  
28 Children's Code, the retention period shall be thirty years.

1           C. For purposes of this Section, "owner" shall include each person with an  
2           ownership interest totaling five percent or more in an abortion facility.

3           D.(1) Any person who intentionally or negligently fails to comply with the  
4           requirements of this Section or any duty recognized therein shall be subject to the  
5           penalties provided for in R.S. 40:1061.29.

6           (2) Any abortion facility that fails to comply with the requirements of this  
7           Section or any duty recognized therein shall be subject to the penalties provided for  
8           in R.S. 40:1061.29.

9           (3) Each medical record that does not include the documents identified in  
10          Subsection A of this Section, or which is not retained for the time specified in  
11          Subsection B of this Section, shall constitute a separate incidence or occurrence for  
12          purposes of R.S. 40:1061.29, and shall constitute a continuing violation until the  
13          relevant retention period specified in Subsection B of this Section has expired.

14          E.(1) In addition to the remedies provided in this Section and any other  
15          remedies available under the laws of this state, a person listed in Subsection A of this  
16          Section who, either intentionally or with negligence, fails to obtain, make part of a  
17          medical record, or retain any document in compliance with this Section may be  
18          temporarily or permanently disqualified from performing or inducing an abortion,  
19          applying for a medical facility license, or otherwise operating or managing a medical  
20          facility in this state.

21          (2) For purposes of this Subsection, "operating" or "managing" shall include  
22          acting as an owner, governing board member, physician, medical director,  
23          administrator, or in any comparable role or title in which the individual has executive  
24          responsibility for the medical facility or has professional medical responsibility for  
25          patient care.

26          F. Each abortion facility, as a condition of obtaining and maintaining a  
27          license under R.S. 40:2175.1 et seq., shall establish a written record retention and  
28          archiving policy, which shall be submitted within thirty days of the effective date of  
29          this Section to the department. The department shall review and approve the policy

1       within ninety days of its receipt. During the pendency of the ninety days, the facility  
 2       shall be deemed in compliance with this Section and if the department fails to act  
 3       within ninety days of receipt of the proposed policy, the policy shall be deemed  
 4       approved. The policy shall be signed by the individuals identified in Subsection A  
 5       of this Section who shall acknowledge their legal obligations and acknowledge  
 6       receiving a copy of the policy.

7               G. A person may comply with this Section by depositing a copy of each  
 8       document required by Subsection A of this Section with the department in an  
 9       organized and readily accessible format. The department shall have a cause of action  
 10       against the persons identified in Subsection A of this Section for the reasonably  
 11       anticipated cost of storing the documents for the required period of time, for which  
 12       those persons shall be liable in solido.

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14       §1061.29. Penalties

15               A. Whoever violates the provisions of this Chapter shall be fined not more  
 16       than one thousand dollars per incidence or occurrence, or imprisoned for not more  
 17       than two years, or both.

18               B. Whoever violates the provisions of this Chapter shall be subject to a civil  
 19       fine of one thousand dollars per incidence or occurrence. In addition to any other  
 20       authority granted by the constitution and laws of this state, the attorney general shall  
 21       have the authority to pursue the civil fines provided for in this Section.

22               C. In addition to whatever remedies are otherwise available under the law  
 23       of this state, failure to comply with the provisions of this Chapter shall:

24               (1) Provide a basis for a civil malpractice action. Such an action may be  
 25       brought by the woman upon whom the abortion was performed. Any intentional  
 26       violation of this Chapter shall be admissible in a civil suit as prima facie evidence  
 27       of a failure to comply with the requirements of this Chapter. When requested, the  
 28       court shall allow a woman to proceed using solely her initials or a pseudonym and

1 may close any proceedings in the case and enter other protective orders to preserve  
2 the privacy of the woman upon whom the abortion was performed.

3 (2) Provide a basis for professional disciplinary action, including but not  
4 limited to any action authorized under R.S. 37:1261 et seq.

5 (3) Provide a basis for recovery for the woman for the death of her unborn  
6 child under Louisiana Civil Code Article 2315.2, whether or not the unborn child  
7 was viable at the time the abortion was performed, or was born alive.

8 (4) Provide a basis for the attorney general, the district attorney in whose  
9 jurisdiction the violation occurred, or the secretary of the department to obtain a writ  
10 of injunction, which shall not be subject to being released upon bond. The trial of  
11 the proceeding shall be summary and by the judge without a jury.

12 Section 2. The Legislature of Louisiana hereby finds and declares the following:

13 (A) Laws enacted prior to the effective date of this Act are inadequate to deter and  
14 punish the illegal destruction of patient medical records by abortion clinics.

15 (B) Abortion facilities have among their clients women who have been victims of  
16 sexual assault, domestic violence, and human trafficking.

17 (C) Like other medical professionals, abortion providers are required by law to  
18 report child abuse and neglect.

19 (D) Medical records of Louisiana abortion facility patients have been destroyed in  
20 violation of current record retention requirements. These acts of destruction have obstructed  
21 investigation of sexual assaults involving minors and allegations of illegally performed  
22 abortions, and have permanently hindered the rights of victims to pursue or obtain justice.

23 Section 3. If any provision or item of this Act or the application thereof is held  
24 invalid, such invalidity shall not affect other provisions, items, or applications of this Act  
25 which can be given effect without the invalid provisions, items, or applications, and to this  
26 end the provisions of this Act are hereby declared severable in accordance with R.S. 24:175.

27 Section 4. This Act shall become effective upon signature by the governor or, if not  
28 signed by the governor, upon expiration of the time for bills to become law without signature  
29 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If

- 1 vetoed by the governor and subsequently approved by the legislature, this Act shall become  
 2 effective on the day following such approval.

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DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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HB 484 Reengrossed

2019 Regular Session

Crews

**Abstract:** Establishes requirements for physicians and medical directors, administrators, and owners of abortion facilities relative to medical records of women upon whom abortions are performed.

Proposed law provides the following legislative findings:

- (1) Laws enacted prior to the effective date of Proposed law are inadequate to deter and punish the illegal destruction of patient medical records by abortion clinics.
- (2) Abortion facilities have among their clients women who have been victims of sexual assault, domestic violence, and human trafficking.
- (3) Like other medical professionals, abortion providers are required by law to report child abuse and neglect.
- (4) Medical records of La. abortion facility patients have been destroyed in violation of current record retention requirements. These acts of destruction have obstructed investigation of sexual assaults involving minors and allegations of illegally performed abortions, and have permanently hindered the rights of victims to pursue or obtain justice.

Proposed law provides that in addition to any other duty that may be imposed by state law or regulations, each physician who performs or induces an abortion, the medical director of the facility where an abortion is performed or induced, the administrator of an abortion facility, each abortion facility, and each owner of an abortion facility shall have an independent duty to ensure that a designated custodian of records for the facility obtains, retains, and makes part of the medical record of each pregnant woman upon whom an abortion is performed or induced at least one copy of the abortion-related records enumerated in present law, R.S. 40:1061.19(A).

Proposed law adds the following to the list of the abortion-related records enumerated in present law, R.S. 40:1061.19(A), which abortion facilities and providers are required to retain: Any report of child abuse required by present law, Ch.C. Art. 601 et seq., and any other report made to law enforcement in relation the patient.

Present law requires physicians to retain the abortion-related records enumerated in present law, R.S. 40:1061.19(A), for not less than seven years. Proposed law revises present law to provide that physicians and abortion facilities shall each have an independent duty to ensure that the custodian of records for the abortion facility where the abortion was performed or induced retains those records for not less than seven years for adult patients and not less than ten years from the age of majority for minor patients. Stipulates that the ten-year period for minors shall begin to run when the patient attains the age of 18; provided, however, that when the patient has reported facts that would require reporting of child abuse under present law, the retention period shall be 30 years.

Proposed law provides all of the following with respect to penalties:

- (1) Any person who intentionally or negligently fails to comply with the requirements of present law or proposed law relative to records retention shall be subject to the penalties provided for in present law and proposed law, R.S. 40:1061.29.
- (2) Any abortion facility that fails to comply with the requirements of present law or proposed law relative to records retention shall be subject to the penalties provided for in present law and proposed law, R.S. 40:1061.29.
- (3) Each medical record that does not include the documents identified in present law and proposed law, R.S. 40:1061.19(A), or which is not retained for the time specified in proposed law, shall constitute a separate incidence or occurrence for purposes of present law and proposed law providing penalties, R.S. 40:1061.29, and shall constitute a continuing violation until the relevant retention period specified in proposed law has expired.

Proposed law provides that in addition to the remedies provided therein and any others available under present law, a person required by proposed law to retain the abortion-related documents enumerated in present law who, either intentionally or with negligence, fails to obtain, make part of a medical record, or retain any document in compliance with proposed law may be temporarily or permanently disqualified from performing or inducing an abortion, applying for a medical facility license, or otherwise operating or managing a medical facility in La.

Proposed law requires each abortion facility, as a condition of obtaining and maintaining a state license, to establish a written record retention and archiving policy.

Proposed law provides that a person may comply with proposed law by depositing copies of required documents with the La. Department of Health in an organized and readily accessible format, and that the department shall have a cause of action against a depositor for the reasonably anticipated cost of storing the documents for the required period of time.

Proposed law provides that whoever violates present law and proposed law relative to regulation of abortion (R.S. 40:1061 et seq.) shall be subject to a civil fine of \$1,000 per incidence or occurrence. Provides that in addition to any other authority granted by present constitution and present law, the attorney general shall have the authority to pursue the civil fines provided for in present law and proposed law.

Proposed law stipulates that in addition to whatever remedies are otherwise available under present law, failure to comply with present law and proposed law shall provide a basis for the attorney general, the district attorney in whose jurisdiction the violation occurred, or the secretary of the La. Department of Health to obtain a writ of injunction, which shall not be subject to being released upon bond. Provides that the trial of the proceeding shall be summary and by the judge without a jury.

(Amends R.S. 40:1061.19 and 1061.29)

#### Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Health and Welfare to the original bill:

1. Provide that each abortion facility shall have an independent duty to ensure that a designated custodian of records for the facility obtains, retains, and makes part of the medical record of each pregnant woman upon whom an abortion is performed or induced at least one copy of each of the abortion-related records enumerated in present law and proposed law, R.S. 40:1061.19(A).

2. Add the following to the list of the abortion-related records enumerated in present law, R.S. 40:1061.19(A), which abortion facilities and providers are required to retain: Any report of child abuse required by present law, Ch.C. Art. 601 et seq., and any other report made to law enforcement in relation the patient.
3. Revise proposed law to provide that abortion facilities and providers shall retain certain records for not less than seven years for adult patients and not less than ten years from the age of majority for minor patients.
4. Revise proposed law to provide all of the following:
  - a. Any person who intentionally or negligently fails to comply with the requirements of present law or proposed law shall be subject to the penalties provided for in present law and proposed law, R.S. 40:1061.29.
  - b. Any abortion facility that fails to comply with the requirements of present law or proposed law shall be subject to the penalties provided for in present law and proposed law, R.S. 40:1061.29.
  - c. Each medical record that does not include the documents identified in present law and proposed law, R.S. 40:1061.19(A), or which is not retained for the time specified in proposed law, shall constitute a separate incidence or occurrence for purposes of present law and proposed law providing penalties, R.S. 40:1061.29, and shall constitute a continuing violation until the relevant retention period specified in proposed law has expired.
5. Provide that any person subject to proposed law who fails to make part of the medical record of a woman upon whom an abortion is performed any document required by proposed law may be temporarily or permanently disqualified from all of the following:
  - a. Performing or inducing an abortion.
  - b. Applying for a medical facility license.
  - c. Otherwise operating or managing a medical facility.
6. Delete proposed law providing all of the following:
  - a. That failure to obtain or retain any document in compliance with proposed law shall provide a basis for professional disciplinary action against any licensed healthcare provider.
  - b. The obligation to retain records shall survive the voluntary or involuntary termination of an abortion facility's license for a period provided in proposed law.
  - c. In addition to the district attorney, the attorney general shall have authority to investigate and prosecute criminal violations of proposed law.
7. Provide that a person may comply with proposed law by depositing copies of required documents with the La. Department of Health in an organized and readily accessible format, and that the department shall have a cause of action against a depositor for the reasonably anticipated cost of storing the documents for the required period of time.



8. Provide that whoever violates present law and proposed law relative to regulation of abortion (R.S. 40:1061 et seq.) shall be subject to a civil fine of \$1,000 per incidence or occurrence, and that the attorney general shall have jurisdiction to pursue this civil fine in any competent court.
9. Stipulate that in addition to whatever remedies are otherwise available under present law, failure to comply with present law and proposed law shall provide a basis for the attorney general, the district attorney in whose jurisdiction the violation occurred, or the secretary of the La. Department of Health to obtain a writ of injunction, which shall not be subject to being released upon bond; and that the trial of the proceeding shall be summary and by the judge without a jury.
10. Make technical changes.

The House Floor Amendments to the engrossed bill:

1. Revise language pertaining to civil penalties for violations of present law and proposed law to provide that in addition to any other authority granted by present constitution and present law, the attorney general shall have the authority to pursue the civil fines provided for in present law and proposed law.
2. Revise language of a legislative finding to state that laws enacted prior to the effective date of proposed law are inadequate to deter and punish the illegal destruction of patient medical records by abortion clinics.