

2022 Regular Session

HOUSE BILL NO. 989

BY REPRESENTATIVES CREWS, AMEDEE, BACALA, BUTLER, CARRIER, EDMONDS, EDMONSTON, EMERSON, FIRMENT, GAROFALO, HORTON, MCCORMICK, MCFARLAND, CHARLES OWEN, SEABAUGH, AND WRIGHT

CHILDREN: Provides relative to reporting certain information relating to minors who undergo abortions

1 AN ACT

2 To amend and reenact R.S. 40:1061.14(B)(2) through (13), (C), and (D) and to enact R.S.
3 40:1061.14(B)(14) and (15) and (E), relative to minors who undergo abortions; to
4 provide for the report of certain information in connection with such abortions; to
5 provide for the requisite court findings; to provide for severability; and to provide
6 for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 40:1061.14(B)(2) through (13), (C), and (D) are hereby amended and
9 reenacted and R.S. 40:1061.14(B)(14) and (15) and (E) are hereby enacted to read as
10 follows:

11 §1061.14. Minors

12 * * *

13 B. The following provisions shall apply to all applications for court orders
14 by minors seeking abortions and appeals from denials of applications:

15 * * *

16 (2) Each clerk of each court which has jurisdiction to hear such applications
17 shall ~~prepare~~ obtain application forms ~~in clear and concise language which shall~~
18 ~~provide step-by-step instructions for filling out and filing the application forms. All~~
19 ~~application forms shall be submitted to~~ from the attorney general ~~for his approval.~~

1 A docket number shall be assigned and the case publicly docketed as In re:
2 Application of Jane Doe Pursuant to this Section. All filings shall be sealed,
3 including this application. The identity of the minor shall be proven through photo
4 identification or a copy of the minor's birth certificate. The clerk shall adopt a
5 process that maintains the minor's confidentiality while ensuring that the judge
6 knows her identity and the facts necessary for making a decision. The clerk may
7 communicate with another clerk regarding the existence or non-existence of another
8 judicial bypass application, provided that both clerks shall maintain the
9 confidentiality of the application. Each clerk shall assist each minor who requests
10 assistance in filling out or filing the application forms.

11 (3)(a) Each application shall be heard in chambers, anonymously, in a
12 summary manner, within four days, excluding legal holidays, of the filing thereof.
13 Prior to granting the application, the judge shall determine whether a duplicate
14 petition has been filed in any other division of the court or in any other court with
15 jurisdiction pursuant to this Subsection.

16 (b)(i) Prior to such ex parte hearing, the court is authorized to appoint an
17 attorney to represent the interests of the unborn child, the interests of the parent,
18 legal guardian, or lawful tutor, or the interests of any combination of these persons.

19 (ii) Prior to such ex parte hearing, the court ~~may~~ shall require the minor to
20 participate in an evaluation with a medical professional other than the abortion
21 provider to determine potential health risks to the minor, and also an evaluation and
22 counseling session with a mental health professional from the Louisiana Department
23 of Health, office of behavioral health, or a staff member from the Department of
24 Children and Family Services, office of children and family services, or both. The
25 court may refer the petitioner, if necessary, to the appropriate Louisiana Department
26 of Health, office of behavioral health regional office to arrange the evaluation and
27 counseling session within the four-day period prior to the ex parte hearing, as
28 provided in this Paragraph. This referral may be made by the clerk upon the minor's

1 filing the application when the court has issued a standing order authorizing same
2 and the circumstances fit the criteria of the standing order therefor.

3 ~~(ii)~~ (iii) Such evaluation and counseling session shall be for the purpose of
4 developing trustworthy and reliable expert opinion concerning the minor's
5 sufficiency of knowledge, insight, judgment, and maturity with regard to her abortion
6 decision in order to aid the court in its decision and to make the state's resources
7 available to the court for this purpose. Persons conducting such sessions shall
8 employ the information and printed materials referred to in R.S. 40:1061.17 in
9 examining how well the minor interviewed is informed about pregnancy, fetal
10 development, abortion risks and consequences, the indicators of human trafficking,
11 and abortion alternatives, and shall also endeavor to verify that the minor is seeking
12 an abortion of her own free will and is not acting under intimidation, threats, abuse,
13 undue pressure, or extortion by any other persons and is not a victim of a coerced
14 abortion as defined in Children's Code Article 603.

15 ~~(iii)~~ (iv) For purposes of providing screening to protect the safety and well-
16 being of the minor, such evaluation and counseling session shall also endeavor to
17 ascertain whether the minor is pregnant as a result of sexual activity constituting a
18 crime under the laws of this state, or as a result of commercial sexual exploitation
19 of the minor, and shall inform the minor of resources available for her protection.

20 ~~(iv)~~ (v) The results of such evaluation and counseling shall be reported to the
21 court by the most expeditious means, commensurate with security and
22 confidentiality, to assure receipt by the court prior to or at the ex parte hearing.

23 ~~(4)(a) If the minor has not been interviewed in such evaluation and~~
24 ~~counseling session prior to the ex parte hearing, such that the court does not have the~~
25 ~~benefit of the required report, then the court may appoint a certified child advocate~~
26 ~~attorney to be present with the minor at the ex parte hearing for the purpose of~~
27 ~~assisting the minor in communicating to the court whether her abortion decision is~~
28 ~~made with sufficient maturity and free and informed consent, commensurate with the~~
29 ~~duty of confidentiality. A certified child advocate attorney shall be given sufficient~~

1 ~~time on the same day as the ex parte hearing to review with the minor the~~
2 ~~information and printed materials referred to in R.S. 40:1061.17, in evaluating how~~
3 ~~well the minor is informed about pregnancy, fetal development, abortion risks and~~
4 ~~consequences, the indicators of human trafficking, and abortion alternatives. The~~
5 ~~certified child advocate attorney shall also endeavor to assist in the court's~~
6 ~~determination of whether the minor is seeking the abortion of her own free will and~~
7 ~~is not acting under intimidation, threats, undue pressure, or extortion by other~~
8 ~~persons, is not a victim of coerced abortion as defined in Children's Code Article~~
9 ~~603, and is not in need of assistance or protective orders if the minor is a victim of~~
10 ~~commercial sexual exploitation as defined in Children's Code Article 603, or any~~
11 ~~crime against the child as defined in Children's Code Article 603. The pregnant~~
12 ~~minor shall prove by clear and convincing evidence that she is sufficiently mature~~
13 ~~and capable of giving informed consent based on her experience level, perspective,~~
14 ~~judgment, and age.~~

15 (b) In assessing the pregnant minor's experience level, the court may
16 consider, among other relevant factors, the pregnant minor's age and experiences
17 working outside of the home, living away from her home, traveling on her own,
18 handling personal finances, and making other significant decisions.

19 (c) In assessing the pregnant minor's perspective, the court may consider,
20 among other relevant factors, what steps the pregnant minor took to explore her
21 options and the extent to which she considered and weighed the potential
22 consequences of each option.

23 (d) In assessing the pregnant minor's judgment, the court may consider,
24 among other relevant factors, the pregnant minor's conduct since learning of her
25 pregnancy and her intellectual ability to understand her options and to make a
26 meaningful, informed decision.

27 (e) In assessing the pregnant minor's age, the court shall appoint a certified
28 child advocate attorney if the minor is younger than the age of fifteen. If the minor

1 is under the age of thirteen, there shall be a rebuttable presumption that the child is
2 not capable of being sufficiently well-informed and mature.

3 (f) In assessing whether the pregnant minor is well-informed, the court may
4 consider any of the following:

5 (i) Whether the pregnant minor has obtained information from a healthcare
6 provider about the health risks associated with an abortion at the particular stage of
7 the minor's pregnancy and that she understands those risks.

8 (ii) Whether the pregnant minor is knowledgeable about her own medical
9 history and her family's medical history.

10 (iii) Whether the pregnant minor understands the alternatives to abortion and
11 their implications, including adoption and keeping the child.

12 (iv) Whether the minor is aware of the emotional and psychological aspects
13 of undergoing an abortion.

14 (v) Whether the minor requested consent from her parent, legal guardian, or
15 tutor and was denied consent. If the parent declined to consent to the abortion, the
16 court shall notify the parent, legal guardian, or tutor that they have the option to
17 submit information to the court, whether in camera, by video conference, or by a
18 written filing. The court may further consider whether the pregnant minor is being
19 guided, influenced, or persuaded by a representative of the abortion facility or by a
20 special interest group or advocate.

21 (5) If the court, using reasoned judgment and evidentiary evaluation, finds,
22 by clear and convincing evidence, that the minor is sufficiently mature and well
23 enough informed to make the decision concerning the abortion on her own, and
24 further finds that the minor is not a victim of coerced abortion, and is seeking the
25 abortion of her own free will, the court shall issue an order authorizing the minor to
26 act on the matter without parental consultation or consent. To avoid the increase in
27 potential health complications as the pregnancy continues, the judicial bypass order
28 shall expire after ten days. The judicial bypass order shall indicate the exact date
29 that it expires.

1 ~~(e)~~ (6) Whether or not the court authorizes the abortion, if the court finds by
2 a preponderance of the evidence that the minor is a victim of commercial sexual
3 exploitation as defined in Children's Code Article 603, or rape or any other crime
4 against the child as defined in Children's Code Article 603, the court may issue any
5 appropriate protective orders or afford the minor the continued services of a
6 court-appointed special advocate, or both.

7 ~~(5)~~ (7) If the court finds that the minor is not sufficiently mature and well
8 enough informed to make a decision intelligently among the alternatives, the court
9 shall decide whether or not it would be in the best interest of the minor to notify her
10 parents or guardian of the proceedings. If the court finds that it is in the minor's best
11 interest to notify her parents or guardian, the court shall so notify and reconvene the
12 proceedings within forty-eight hours with the parents or guardian present to advise
13 and counsel the minor and aid the court in making its determination whether or not
14 the abortion would be in the best interest of the minor.

15 ~~(6)~~ (8) If the court finds that the minor is not sufficiently mature and well
16 enough informed to make the decision concerning the abortion and further finds that
17 it would not be in the minor's best interest to notify her parents or guardian, the court
18 shall ~~issue an order authorizing the abortion if the court finds, by clear and~~
19 ~~convincing evidence, that the abortion would be in the best interest of the minor.~~
20 However, as appoint a certified child advocate attorney to determine whether the
21 pregnant minor is in danger. If the pregnant minor is in danger, the court may issue
22 any appropriate protective orders or afford the minor the continued services of a
23 court-appointed special advocate, or both. As stated in Bellotti v. Baird, 443 U.S.
24 622, 647 (1979), "the court may deny the abortion request of an immature minor in
25 the absence of parental consultation if it concludes that her best interests would be
26 served thereby."

27 ~~(7)~~ (9) In all cases, the court shall issue its final judgment and order
28 immediately upon completion of the reconvened hearing, if there is one, or
29 immediately upon completion of the original ex parte hearing, if there is no

1 reconvened hearing, and in any case where unusual justification exists for taking the
2 matter under advisement, the court shall report taking the matter under advisement
3 to the Supreme Court of Louisiana and to the court of appeal for the circuit to which
4 appeals lie from the court and shall issue its final judgment and order within forty-
5 eight hours after taking the matter under advisement at the completion of such
6 hearing. Appeals from decisions of the court hearing the application shall be by trial
7 de novo in the court of appeal.

8 ~~(8)~~ (10) Each clerk of each court of appeal shall prepare appeal forms in
9 clear and concise language which shall provide step-by-step instructions for filling
10 out and filing the appeal forms. All appeal forms shall be submitted to the attorney
11 general for his approval. Each clerk shall assist each minor who requests assistance
12 in filling out or filing the appeal forms.

13 ~~(9)~~ (11) Each appeal shall be heard in chambers, anonymously, in a summary
14 manner, and within forty-eight hours of the filing thereof.

15 ~~(10)~~ (12) The decision of the court of appeal shall be based on the criteria
16 provided in Paragraphs ~~(4), (5), and (6)~~ (4) through (8) of this Subsection, and such
17 court shall issue its final judgment and order within forty-eight hours of its hearing.

18 ~~(11)~~ (13) Each minor who declares to the clerk of the court hearing the
19 application or appeal that she does not have sufficient funds to pay for the costs of
20 the application or the appeal shall be allowed to proceed in forma pauperis.

21 ~~(12)~~ (14) Each minor who files an application or an appeal shall be entitled
22 to an initial hearing and a determination by the court independently of any notice to
23 or consultation with her parents, tutor, or guardian.

24 ~~(13)~~ (15) Except as otherwise provided in this Section, or as otherwise
25 provided by rule of court, hearings of applications and appeals shall be conducted in
26 accordance with the provisions of the Louisiana Children's Code.

27 C.(1) A form created by the Louisiana Department of Health shall be used
28 by physicians to obtain the consent required prior to performing an abortion on a
29 minor who is not emancipated.

1 (2) A form is not valid and consent is not sufficient unless all of the
2 following conditions and requirements are met:

3 (a) A parent or legal guardian initials each page of the form, indicating that
4 the parent or legal guardian has read and understands the information included on
5 that page.

6 (b) A parent or legal guardian signs the last page of the form in the presence
7 of a person who is a notary public.

8 (c) The minor initials each list of risks and hazards as detailed in
9 Subparagraph (3)(d) of this Subsection.

10 (d) The minor signs a consent statement, as described in Subparagraph (3)(f)
11 of this Subsection.

12 (e) The physician signs the declaration described in Subparagraph (3)(g) of
13 this Subsection.

14 (3) The form shall include but not be limited to all of the following:

15 (a) A description of the minor's rights, including her right to informed
16 consent.

17 (b) A description of the parent's or legal guardian's rights under Louisiana
18 law.

19 (c) A detailed description of the surgical or medical procedures that are
20 planned to be performed on the minor.

21 (d) A detailed list of the risks and hazards related to the surgical and medical
22 procedures planned for the minor, including but not limited to all of the following:

23 (i) Risks and hazards that may occur in connection with any surgical,
24 medical, or diagnostic procedure, including but not limited to potential for infection,
25 blood clots in veins and lungs, hemorrhaging, allergic reactions, or death.

26 (ii) Risks and hazards that may occur with a surgical abortion, including but
27 not limited to hemorrhaging, uterine perforation or other damage to the uterus,
28 sterility, injury to the bowel or bladder, hysterectomy as a result of complication or

1 injury during the procedure, and failure to remove all products of conception, which
2 may result in an additional procedure.

3 (iii) Risks and hazards that may occur with a medical or non-surgical
4 abortion, including but not limited to hemorrhaging, failure to remove all products
5 of conception that may result in an additional procedure, sterility, and possible
6 continuation of pregnancy.

7 (iv) Risks and hazards of the particular procedure planned for the minor
8 including but not limited to cramping of the uterus or pelvic pain, infection of the
9 female organs, cervical laceration, incompetent cervix, and emergency treatment for
10 complications.

11 (e) A description of additional information that shall be provided by the
12 physician to the minor in accordance with Louisiana law, including but not limited
13 to the probable gestational age of the unborn baby, the availability of medical
14 assistance benefits and other resources, the father's responsibilities, the adoption
15 option, and all other information contained in the Women's Right to Know booklet.

16 (f) A consent statement shall be signed by the minor. The consent statement
17 shall include but is not limited to all of the following points, which shall be
18 individually initialed by the minor:

19 (i) That the minor understands that the doctor is going to perform an abortion
20 on her which will end her pregnancy and will result in the death of her unborn child.

21 (ii) That the minor is not being forced to have an abortion, and that she has
22 the choice not to have the abortion and may withdraw consent prior to the abortion.

23 (iii) That the minor gives permission for the procedure.

24 (iv) That the minor understands that there are risks and hazards that could
25 affect her if she has the planned surgical or medical procedure.

26 (v) That the minor has been given the opportunity to ask questions about her
27 condition, alternative forms of treatment, risk of non-treatment, the procedures to be
28 used, and the risks and hazards involved.

29 (vi) That the minor has been given information required in R.S. 40:1061.17.

1 (vii) That the minor has sufficient information to give informed consent.

2 (g) A physician declaration, which shall be signed by the physician, stating
3 that the physician or his assistant has, as required, explained the procedure and the
4 contents of this form to the minor and her parent or legal guardian and has answered
5 all questions. Further, to the best of the physician's knowledge, the patient and her
6 parent or legal guardian have been adequately informed and have consented to the
7 procedure.

8 (h) A parental consent statement that is signed by the parent or legal
9 guardian and states all of the following:

10 (i) That the parent or legal guardian understands that the doctor signing the
11 physician declaration is going to perform an abortion on the minor, which will end
12 her pregnancy and result in the death of her unborn child.

13 (ii) That the parent or legal guardian has had the opportunity to read this
14 form or have it read and has initialed each page.

15 (iii) That the parent or legal guardian had the opportunity to ask questions
16 to the physician or the physician's assistant about the information in this form and
17 the surgical and medical procedures to be performed on the minor.

18 (iv) That the parent or legal guardian believes that there is sufficient
19 information to give informed consent.

20 (v) That, by the parent or legal guardian's signature, the parent or legal
21 guardian affirms that the parent or legal guardian is the minor's father, mother, or
22 legal guardian.

23 (i) A page for the parent or legal guardian's signature that shall be notarized
24 by a notary public.

25 (j) Any additional information that is required to be provided to a woman in
26 accordance with the laws of Louisiana in order for a physician to obtain her informed
27 consent prior to performing an abortion.

28 D.(1) Nothing in this Section shall be construed as creating or recognizing
29 a right to abortion.

1 (2) It is not the intention of this Section to make lawful an abortion that is
2 unlawful on July 10, 1997, or which later becomes unlawful.

3 ~~D.~~ E. Nothing in this Section shall be deemed or construed to affect or alter
4 existing law on the confidentiality of proceedings and records related thereto, except
5 to the extent specifically contained in this Section.

6 Section 2. Any provision of this Act held to be invalid or unenforceable by its terms,
7 or as applied to any person or circumstance, shall be construed so as to give it the maximum
8 effect permitted by law, unless such holding is one of utter invalidity or unenforceability,
9 in which event such provision shall be deemed severable in accordance with R.S. 24:175,
10 and shall not affect the remainder hereof or the application of such provision to other persons
11 not similarly situated or to other, dissimilar circumstances.

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)]

HB 989 Reengrossed

2022 Regular Session

Crews

Abstract: Requires courts to obtain certain information when a minor undergoes an abortion and establishes certain requirements for court proceedings.

Present law prohibits physicians from performing or inducing an abortion upon any pregnant woman under the age of 18 years who is not emancipated judicially or married unless the physician or a qualified person acting as an agent of the physician has received certain documentation.

Present law requires a notarized statement signed by the parent, legal guardian, or tutor of the unemancipated minor declaring that the parent, legal guardian, or tutor has been informed that the minor intends to seek an abortion and consents to the abortion.

Present law requires the parent, legal guardian, or tutor of the unemancipated minor to provide sufficient evidence of identity via a valid and unexpired driver's license or a government-issued identification card.

Present law provides the applicability provisions for court orders by minors who seek to undergo abortion procedures and the requirements to appeal denials of applications for such procedures.

Present law requires each application to be heard in chambers, anonymously, in a summary manner, within four days of the filing of the application.

Present law requires certain evaluations and counseling sessions to be conducted prior to the ex parte hearing required by present law.

Present law states that the court may appoint a certified child advocate attorney to the minor for the ex parte hearing for the purpose of assisting the minor in communicating to the court whether her abortion decision is made with sufficient maturity and free and informed consent.

Present law provides that the court may determine by clear and convincing evidence that the minor is sufficiently mature and well enough informed to make the decision concerning the abortion on her own and find whether the minor was a victim of coerced abortion. Absent such findings, present law provides that the court shall issue an order authorizing the minor to act on the matter without parental consultation or consent.

Present law provides that 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 minor, the court may issue the appropriate protective orders.

Present law provides that the court shall decide whether it would be in the best interest of the minor to notify her parents or guardian of the proceedings and determine whether the abortion would be in the best interest of the minor.

Present law details the necessary procedures to appeal the determination of the court.

Proposed law identifies the necessary findings of the court in its determination of whether a minor gave the necessary informed consent prior to undergoing the abortion procedure.

Proposed law identifies information that shall be obtained within the consent form from the physician.

Proposed law provides that if the court finds by a preponderance of the evidence that the minor is a victim of commercial sexual exploitation, or rape or any other crime against the child as defined in present law, the court may issue the appropriate protective orders.

Proposed law requires a pregnant minor to prove by clear and convincing evidence that she is sufficiently mature and capable of giving informed consent based on her experience level, perspective, judgment, and age.

Proposed law provides that the court may consider, among other relevant factors, the pregnant minor's age and experiences working outside the home, living away from home, traveling on her own, handling personal finances, the pregnant minor's conduct since learning of her pregnancy, what steps the pregnant minor took to explore her options, her intellectual ability to understand her options, the extent to which she considered the potential consequences of her options, and other relevant factors in its determination.

Proposed law provides that in assessing the pregnant minor's age, the court shall appoint a certified child advocate attorney if the minor is younger than the age of 15.

Proposed law provides that if the minor is under the age of 13, there shall be a rebuttable presumption that the child is not capable of being sufficiently well-informed and mature.

Proposed law details how the court may make its determination of whether the minor requested consent from her parent, legal guardian, or tutor and was denied consent.

Proposed law details how the court may make its determination of whether the pregnant minor is being guided, influenced, or persuaded by a representative of the abortion facility or by a special interest group or advocate.

Proposed law requires that a form created by the La. Dept. of Health be used by physicians to obtain the consent required prior to performing an abortion on a minor who is not emancipated.

Proposed law establishes duties and confidentiality provisions for the clerk of court as it relates to judicial bypass applications.

Proposed law establishes provisions for judicial bypass orders.

(Amends R.S. 40:1061.14(B)(2)-(13), (C) and (D); Adds R.S. 40:1061.14(B)(14) and (15) and (E))

Summary of Amendments Adopted by House

The House Floor Amendments to the engrossed bill:

1. Allow clerks of the court to communicate with one another regarding the existence or non-existence of a judicial bypass application.
2. Require clerks of the court to maintain confidentiality.