State of Nevada - Initiative Petition – Statewide Statutory Measure

S-04-2020

The people of the State of Nevada do enact as follows:

NRS 442.255 is hereby amended to read as follows:

Notice to custodial parent or guardian; request for authorization for abortion.

1. Unless in the judgment of the attending physician an abortion is immediately necessary to preserve the patient's life or health or an abortion is authorized pursuant to subsections 2-8, a physician shall not knowingly perform or induce an abortion upon an unmarried and unemancipated person who is under the age of 18 years until at least 48 hours after written notice of the pending operation has been delivered in the manner provided in subsections (a) or (b) below. The physician shall certify age in writing based upon proof of age offered by the patient seeking an abortion.

(a) The notice shall be addressed to a custodial parent (hereinafter "parent") or guardian at the usual place of abode of the parent or guardian and delivered personally to the parent or guardian by the physician or an agent. The time of delivery of the written notice shall be deemed to be the time of the personal service on the parent or guardian.

(b) In lieu of the delivery required by subsection 1(a), notice shall be made by certified mail addressed to a parent or guardian at the usual place of abode of the parent or guardian with return receipt requested and restricted delivery to the addressee which means postal employee can only deliver the mail to the authorized addressee. Time of delivery shall be deemed to occur at 12 p.m. on the next day on which regular mail delivery takes place, subsequent to mailing.

2. An unmarried or unemancipated person who is under the age of 18 years (hereinafter "minor") may petition the district court to conduct expedited proceedings to determine whether to issue an order authorizing a physician to perform an abortion upon the minor without the notification of a parent or guardian (hereinafter "notification") required by subsection 1 of this act.

(a) The court shall, upon request by the minor if it appears that the minor is unable to employ counsel, appoint an attorney to represent the minor in the preparation of a petition, a hearing on the merits of the petition, and on an appeal, if necessary;

(b) The minor must not be charged, assessed or held liable for any filing fees or other court fees relating to the petition or the proceedings regarding the petition at any stage of the proceedings, including, without limitation, any appeal.

3. The petition may be filed using the initials of the minor or using a fictitious name. The petition must set forth the age of the minor, the estimated number of weeks elapsed from the probable time of conception, and whether maturity, emancipation, notification detrimental to the minor's best interests, or a combination thereof are relied upon in avoidance of the notification required by subsection 1. The petition shall include any supporting facts or circumstances that may be relevant and helpful to the district court in determining whether to authorize the proposed abortion without the notification required by subsection 1.

4. Proceedings in the district court under this subsection shall be confidential and have precedence over other pending matters. Members of the public shall not inspect, obtain copies of or otherwise have access

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to records of court proceedings under this subsection unless authorized by law. For purposes of the confidentiality required by this subsection, "records of court proceedings" and a "confidential record of the evidence" includes, without limitation, all files, documents and records relating to the proceedings.

5. A hearing on the merits of the petition, on the record, must be held as soon as possible and within 3 judicial days after the filing of the petition. At the hearing the court shall hear evidence relating to

(a) The minor's emotional development, maturity, intellect, and understanding;

(b) The minor's degree of financial independence and degree of emancipation from parental authority;

(c) The minor's best interests relative to parental involvement in the decision whether to undergo an abortion; and

(d) Any other evidence that the court may find useful in determining whether the minor is entitled to avoid notification required by subsection 1.

(e) A judge who conducts proceedings under this subsection shall make in writing specific factual findings and legal conclusions supporting the decision and shall order a confidential record of the evidence to be maintained, including the judge's own findings and conclusions.

6. The court shall authorize a physician to perform the abortion if the judge determines that the minor is mature and capable of giving informed consent to the proposed abortion. If said judge determines that the minor is not mature, or if the minor does not claim to be mature, the judge shall determine whether the performance of an abortion upon the minor without notification required by subsection 1 would be in the minor's best interests.

7. The district court will enter an order on the petition within 1 judicial day of the hearing. In the order, the court shall, for good cause,

(a) Grant the petition, and give judicial authorization to permit a physician to perform an abortion without the notification required by subsection 1; or

(b) Deny the petition, setting forth the grounds on which the petition is denied.

8. Upon request of the minor, an expedited appeal from an order issued under subsection 7 may be taken to the appellate court of competent jurisdiction pursuant to the rules fixed by the Supreme Court pursuant to Section 4 of Article 6 of the Nevada Constitution, which shall suspend the Nevada Rules of Appellate Procedure pursuant to NRAP 2 to provide for an expedited appeal. The notice of appeal must be filed with the district court clerk within 1 judicial day after the date on which the minor is served with the district court's written order pursuant to subsection 7. The record on appeal shall be perfected within 5 judicial days after the filing of the notice of appeal and transmitted to the appellate court of competent jurisdiction pursuant to the rules fixed by the Supreme Court. The appellate court of competent jurisdiction shall, by court order or rule, provide for a confidential and expedited appellate review of cases appealed under this subsection.

9. Absent authorization under subsections 7 or 8, if a person knowingly performs an abortion upon a minor in violation of subsection 1, the person is guilty of a misdemeanor.

10. Any provision contained in any subsection 1-9 shall be deemed a separate and freestanding right and shall remain in full force and effect should any other provision in any subsection 1-9 be stricken for any reason.

11. Effective Date: This act shall become effective on July 1, 2021 if approved by the legislature, or on January I, 2023 if approved by the voters.

DESCRIPTION OF EFFECT

This initiative will prohibit a physician from knowingly performing an abortion upon a minor unless: (1) a custodial parent or guardian of the minor is notified prior to the abortion("parental notification requirement"); or (2) upon the petition of the minor, a Nevada court authorizes the abortion without parental notification ("judicial bypass"). Presently, a pregnant minor in the state of Nevada can get an abortion without parental notification or authorization by a court.

The Nevada legislature passed a parental notification requirement in 1985, but the law was never enforced because a federal court found that its judicial bypass portion was not written appropriately.

This initiative addresses this by rewriting the expedited judicial bypass schedule. It also amends law to enhance protection of the minor's privacy. The amended law provides that a Nevada court may authorize an abortion for a minor without parental notification if the court finds that the minor is sufficiently mature and capable of giving informed consent to the proposed abortion or that the performance of an abortion on the minor without notification of a custodial parent or guardian would be in the minor's best interests.

County of _____ (Only registered voters of this county may sign below)
Petition District: _____ (Only registered voters of this petition district may sign below)

			This Space For Office Use Only
1	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY	
	YOUR SIGNATURE DATE / /	CITY COUNTY	
2	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY	
	YOUR SIGNATURE DATE / /	CITY COUNTY	
3	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY	
	YOUR SIGNATURE DATE / /	CITY COUNTY	
4	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY	
	YOUR SIGNATURE DATE / /	CITY COUNTY	
5	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY	
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Petition District _____ **(Only registered voters of this petition district may sign below)**

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	YOUR SIGNATURE DATE / /	CITY COUNTY	

Place Affidavit on last page of document.

THE FOLLOWING AFFIDAVIT MUST BE COMPLETED AND SIGNED:

AFFIDAVIT OF CIRCULATOR

(TO BE SIGNED BY CIRCULATOR)

STATE OF NEVADA)
)
COUNTY OF _____)

I, _____, (print name), being first duly sworn under penalty of perjury, depose and say: (1) that I reside at _____ (print street, city and state); (2) that I am 18 years of age or older; (3) that I personally circulated this document; (4) that all signatures were affixed in my presence; (5) that the number of signatures affixed thereon is _____; and (6) that each person who signed had an opportunity before signing to read the full text of the act or resolution on which the initiative or referendum is demanded.

_____
Signature of Circulator

Subscribed and sworn to or affirmed before me this
_____ day of _____, _____, by_____.

_____
Notary Public or person authorized to administer oath