

By: Kolkhorst

S.B. No. 831

A BILL TO BE ENTITLED

AN ACT

1
2 relating to voluntary and informed consent to an abortion and
3 prevention of coerced abortions; providing penalties; creating an
4 offense.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Chapter 6, Code of Criminal Procedure, is
7 amended by adding Article 6.11 to read as follows:

8 Art. 6.11. REPORTS OF COERCION OF ABORTION. (a) A peace
9 officer who receives a report of or other information indicating
10 the commission or attempted commission of an alleged offense under
11 Section 25.12, Penal Code, shall file a police report as necessary
12 to ensure that law enforcement may investigate the alleged offense.

13 (b) A peace officer receiving a report or other information
14 indicating that a person has coerced or forced or attempted to
15 coerce or force a pregnant minor to have or seek an abortion shall
16 notify the Department of Family and Protective Services.

17 SECTION 2. Section 33.002, Family Code, is amended by
18 adding Subsection (a-1) to read as follows:

19 (a-1) A physician giving notice under Subsection (a)(1)
20 shall inform the parent, managing conservator, or guardian that it
21 is considered to be child abuse under Texas law for the parent,
22 managing conservator, or guardian to coerce or force the minor to
23 have or seek an abortion.

24 SECTION 3. Section 261.001(1), Family Code, is amended to

1 read as follows:

2 (1) "Abuse" includes the following acts or omissions
3 by a person:

4 (A) mental or emotional injury to a child that
5 results in an observable and material impairment in the child's
6 growth, development, or psychological functioning;

7 (B) causing or permitting the child to be in a
8 situation in which the child sustains a mental or emotional injury
9 that results in an observable and material impairment in the
10 child's growth, development, or psychological functioning;

11 (C) physical injury that results in substantial
12 harm to the child, or the genuine threat of substantial harm from
13 physical injury to the child, including an injury that is at
14 variance with the history or explanation given and excluding an
15 accident or reasonable discipline by a parent, guardian, or
16 managing or possessory conservator that does not expose the child
17 to a substantial risk of harm;

18 (D) failure to make a reasonable effort to
19 prevent an action by another person that results in physical injury
20 that results in substantial harm to the child;

21 (E) sexual conduct harmful to a child's mental,
22 emotional, or physical welfare, including conduct that constitutes
23 the offense of continuous sexual abuse of young child or children
24 under Section [21.02](#), Penal Code, indecency with a child under
25 Section [21.11](#), Penal Code, sexual assault under Section [22.011](#),
26 Penal Code, or aggravated sexual assault under Section [22.021](#),
27 Penal Code;

1 (F) failure to make a reasonable effort to
2 prevent sexual conduct harmful to a child;

3 (G) compelling or encouraging the child to engage
4 in sexual conduct as defined by Section 43.01, Penal Code,
5 including conduct that constitutes an offense of trafficking of
6 persons under Section 20A.02(a)(7) or (8), Penal Code, prostitution
7 under Section 43.02(a)(2), Penal Code, or compelling prostitution
8 under Section 43.05(a)(2), Penal Code;

9 (H) causing, permitting, encouraging, engaging
10 in, or allowing the photographing, filming, or depicting of the
11 child if the person knew or should have known that the resulting
12 photograph, film, or depiction of the child is obscene as defined by
13 Section 43.21, Penal Code, or pornographic;

14 (I) the current use by a person of a controlled
15 substance as defined by Chapter 481, Health and Safety Code, in a
16 manner or to the extent that the use results in physical, mental, or
17 emotional injury to a child;

18 (J) causing, expressly permitting, or
19 encouraging a child to use a controlled substance as defined by
20 Chapter 481, Health and Safety Code;

21 (K) causing, permitting, encouraging, engaging
22 in, or allowing a sexual performance by a child as defined by
23 Section 43.25, Penal Code; [~~or~~]

24 (L) knowingly causing, permitting, encouraging,
25 engaging in, or allowing a child to be trafficked in a manner
26 punishable as an offense under Section 20A.02(a)(5), (6), (7), or
27 (8), Penal Code, or the failure to make a reasonable effort to

1 prevent a child from being trafficked in a manner punishable as an
2 offense under any of those sections; or

3 (M) coercing or forcing a child to have or seek an
4 abortion.

5 SECTION 4. The heading to Subchapter B, Chapter 171, Health
6 and Safety Code, is amended to read as follows:

7 SUBCHAPTER B. VOLUNTARY AND INFORMED CONSENT

8 SECTION 5. Section 171.015, Health and Safety Code, is
9 amended to read as follows:

10 Sec. 171.015. INFORMATION RELATING TO PUBLIC AND PRIVATE
11 AGENCIES. The informational materials must include:

12 (1) geographically indexed materials designed to
13 inform the pregnant woman of public and private agencies and
14 services that:

15 (A) are available to assist a woman through
16 pregnancy, childbirth, and the child's dependency, including:

17 (i) a comprehensive list of adoption
18 agencies;

19 (ii) a description of the services the
20 adoption agencies offer;

21 (iii) a description of the manner,
22 including telephone numbers, in which an adoption agency may be
23 contacted; ~~and~~

24 (iv) a comprehensive list of agencies and
25 organizations that offer sonogram services at no cost to the
26 pregnant woman;

27 (v) pregnancy resource centers and

1 maternity homes;

2 (vi) a comprehensive list of assistance
3 programs for victims of domestic violence;

4 (vii) a list of persons licensed to
5 practice in this state as social workers, licensed professional
6 counselors, licensed marriage and family therapists, and
7 psychologists who have volunteered to assist women being coerced or
8 forced to have or seek an abortion; and

9 (viii) nonprofit organizations that
10 provide free legal aid to women being coerced or forced to have or
11 seek an abortion;

12 (B) do not provide abortions or abortion-related
13 services or make referrals to abortion providers; and

14 (C) are not affiliated with organizations that
15 provide abortions or abortion-related services or make referrals to
16 abortion providers; and

17 (2) a toll-free, 24-hour telephone number that may be
18 called to obtain an orallist and description of agencies described
19 by Subdivision (1) that are located near the caller and of the
20 services the agencies offer.

21 SECTION 6. Subchapter B, Chapter 171, Health and Safety
22 Code, is amended by adding Sections 171.019, 171.020, 171.021,
23 171.022, and 171.023 to read as follows:

24 Sec. 171.019. PREVENTION OF COERCED ABORTIONS. (a) Before
25 any anesthesia or sedative is given to a woman prior to the
26 performance of an abortion, a physician shall:

27 (1) verbally inform the woman on whom the abortion is

1 to be performed that a person cannot coerce or force her to have or
2 seek an abortion and that the physician cannot perform the abortion
3 unless the woman provides her voluntary and informed consent; and

4 (2) provide the woman on whom the abortion is to be
5 performed with the coerced abortion form described by Section
6 171.021:

7 (A) in both English and Spanish; and

8 (B) in a language other than English or Spanish,
9 if applicable, under Section 171.021(c).

10 (b) A physician may not perform an abortion on a woman
11 unless, before the abortion, the woman certifies on the coerced
12 abortion form described by Section 171.021 that she received from
13 the physician the information and materials required by Subsection
14 (a).

15 (c) If the woman indicates on the coerced abortion form or
16 on a form consenting to the procedure or at any time before the
17 abortion communicates verbally to the physician or the physician's
18 agent that she is being coerced or forced to have or seek an
19 abortion or the physician is otherwise made aware that the woman has
20 indicated that she is being coerced or forced to have or seek an
21 abortion, the physician:

22 (1) shall report an offense under Section 25.12, Penal
23 Code, to local law enforcement and, if the woman is a minor, make a
24 report to the Department of Family and Protective Services;

25 (2) shall provide the information described by Section
26 171.015;

27 (3) shall provide the woman with access to a telephone

1 in a private room; and

2 (4) may not perform the abortion until:

3 (A) 72 hours have elapsed:

4 (i) since the woman last communicated to
5 the physician, through the form or otherwise, that the woman was
6 being coerced or forced to have or seek an abortion; or

7 (ii) to the best of the physician's
8 knowledge, since the woman last communicated to an agent of the
9 physician or law enforcement that the woman was being coerced or
10 forced to have or seek an abortion;

11 (B) the woman provides her voluntary and informed
12 consent that the woman states is not a result of coercion; and

13 (C) local law enforcement has completed the
14 investigation and report required under Section 171.020 and Article
15 6.11, Code of Criminal Procedure, and, as applicable, the
16 Department of Family and Protective Services has completed an
17 investigation under Subchapter D, Chapter 261, Family Code.

18 (d) A person who is a volunteer for or an employee of a
19 physician or an office or facility at which abortions are performed
20 shall immediately notify the physician who is to perform an
21 abortion on a woman if the woman communicates to the person that the
22 woman is being coerced or forced to have or seek an abortion.

23 (e) The woman on whom the abortion is to be performed may
24 withdraw consent to the abortion at any time before the performance
25 of the abortion.

26 Sec. 171.020. PHYSICIAN'S DUTY TO REPORT COERCION;
27 INVESTIGATION AND ASSISTANCE. (a) If a woman claims to have been

1 coerced or forced to have or seek an abortion, the physician or
2 physician's agent shall immediately report the suspected coercion
3 and the name of the individual suspected of coercing the woman to
4 the appropriate local law enforcement agency and, if the woman is a
5 minor, to the Department of Family and Protective Services.

6 (b) The local law enforcement agency has a duty to respond
7 and shall write a report within 12 hours of being notified of the
8 alleged coercion under this section. A report must be made in
9 response to every notification by a physician or physician's agent
10 under this section, regardless of whether the law enforcement
11 agency knows that a report about the coercion was previously made.

12 (c) Notwithstanding Sections 261.301 and 261.3015, Family
13 Code, the Department of Family and Protective Services shall
14 respond within 12 hours of being notified of the alleged coercion of
15 a minor under this section.

16 (d) The appropriate local law enforcement agency and the
17 Department of Family and Protective Services shall investigate
18 suspected coercion reported under this section and, if warranted,
19 shall refer the case to the appropriate prosecuting authority.

20 (e) If the investigation shows that a parent, managing
21 conservator, or guardian is coercing or forcing or attempting to
22 coerce or force a minor to have or seek an abortion, the Department
23 of Family and Protective Services shall take any appropriate action
24 under Title 5, Family Code.

25 (f) The fact that a woman has signed a form under Section
26 171.021 does not affect:

27 (1) the duty of a physician or physician's agent under

1 this section; or

2 (2) the culpability of a person coercing or forcing a
3 woman to have or seek an abortion.

4 Sec. 171.021. CONTENTS OF FORM. (a) The department shall
5 develop a coerced abortion form to be completed by each woman on
6 whom an abortion is performed in this state. The form must include:

7 (1) the following title centered on the page in
8 boldfaced capital letters in 26-point font or larger: "NOTICE";

9 (2) the following statement printed in 16-point font
10 or larger: "It is against the law for a person, regardless of that
11 person's relationship to you (for example, your husband, parent,
12 boyfriend, or teacher), to coerce or force you to have or seek an
13 abortion. You have the right to a telephone in a private room to
14 contact any local or state law enforcement agency to receive
15 protection from any actual or threatened physical abuse or
16 violence. Coercing or forcing a woman to have or seek an abortion
17 is child abuse if the woman is a minor and may be punishable by up to
18 a year in jail and up to a \$4,000 fine. By law, a physician cannot
19 perform an abortion, including inducing, prescribing for, or
20 otherwise providing the means for an abortion, unless you give your
21 voluntary and informed consent without coercion or force. It is
22 against the law for a physician to perform an abortion against your
23 will.";

24 (3) the following statements printed in 14-point font
25 or larger followed by spaces for the woman and, if the woman is a
26 minor, the woman's parent or guardian, if present, to initial:

27 (A) "I understand that I have the right to access

1 a telephone in a private room to contact a local or state law
2 enforcement agency to receive protection from any actual or
3 threatened physical abuse or violence.";

4 (B) "I have been informed in person that no one
5 can coerce or force me to have or seek an abortion and that an
6 abortion cannot be provided to me unless I provide my freely given,
7 voluntary, and informed consent.";

8 (C) "I have read the above notice and understand
9 that I have legal protection against being coerced or forced to have
10 or seek an abortion.";

11 (D) "I freely give my voluntary consent to this
12 abortion without being coerced or forced."; and

13 (E) "I am aware that it is child abuse for a
14 parent, managing conservator, or guardian to coerce or force his or
15 her daughter or a child under his or her care to have or seek an
16 abortion.";

17 (4) spaces for the signature of the woman on whom an
18 abortion is to be performed and, if the woman is a minor, the
19 woman's parent or guardian, if present, and the date the form was
20 completed;

21 (5) spaces for the license number, area of specialty,
22 and signature of the physician who performed the abortion; and

23 (6) the telephone number for the National Domestic
24 Violence Hotline.

25 (b) The department shall provide the form required by
26 Subsection (a) in both English and Spanish.

27 (c) If the department determines that a substantial number

1 of residents in this state speak a primary language other than
2 English or Spanish, the department shall provide the form required
3 by Subsection (a) in that language. The department shall instruct a
4 facility that provides abortions to provide the coerced abortion
5 form in a language other than English or Spanish if the department
6 determines that a substantial number of residents in the area speak
7 a primary language other than English or Spanish.

8 Sec. 171.022. PROVISION AND RETENTION OF COERCED ABORTION
9 FORM. (a) The department shall provide a copy of this section and
10 Sections 171.019-171.021 and the coerced abortion form required by
11 Section 171.021 to:

12 (1) a physician who becomes newly licensed to practice
13 in this state, not later than the 30th day after the date the
14 physician receives the license; and

15 (2) all physicians licensed to practice in this state,
16 not later than December 1 of each year.

17 (b) A copy of the coerced abortion form certified by the
18 woman shall be placed in the woman's medical file and kept until at
19 least the seventh anniversary of the date on which the form was
20 signed or, if the woman is a minor, at least until the date the woman
21 reaches 20 years of age, whichever is later.

22 (c) The woman on whom an abortion is performed shall be
23 given a copy of the completed coerced abortion form in person before
24 the woman leaves the facility where the abortion is performed.

25 Sec. 171.023. SIGN POSTING. (a) An office or facility at
26 which abortions are performed shall post the following sign:
27 "NOTICE: It is against the law for a person, regardless of that

1 person's relationship to you (for example, your husband, parent,
2 boyfriend, or teacher), to coerce or force you to have or seek an
3 abortion. You have the right to a telephone in a private room to
4 contact any local or state law enforcement agency to receive
5 protection from any actual or threatened physical abuse or
6 violence. Coercing or forcing a woman to have or seek an abortion
7 is child abuse if the woman is a minor and may be punishable by up to
8 a year in jail and up to a \$4,000 fine. By law, a physician cannot
9 perform an abortion, including inducing, prescribing for, or
10 otherwise providing the means for an abortion, unless you give your
11 voluntary and informed consent without coercion or force. It is
12 against the law for a physician to perform an abortion against your
13 will.".

14 (b) The sign described by Subsection (a) must:

15 (1) be printed with lettering that is legible and in at
16 least two-inch boldfaced type;

17 (2) be printed and posted in both English and Spanish,
18 as well as any language other than English or Spanish if it is
19 likely that a substantial number of the residents in the area speak
20 a language other than English or Spanish as their familiar
21 language; and

22 (3) include the telephone number for the National
23 Domestic Violence Hotline.

24 (c) An office or facility at which abortions are performed
25 shall conspicuously post the sign described by Subsection (a) in
26 each patient waiting room, each patient consultation room regularly
27 used by patients seeking abortions, and the room in which abortions

1 are performed or induced.

2 (d) If requested by a patient, the office or facility shall
3 provide the patient:

4 (1) a paper copy of the sign described by Subsection
5 (a) in the language preferred by the patient; and

6 (2) access to a telephone in a private room.

7 SECTION 7. Chapter 25, Penal Code, is amended by adding
8 Section 25.12 to read as follows:

9 Sec. 25.12. COERCION OF ABORTION. (a) A person commits an
10 offense if the person uses coercion to cause a pregnant woman to
11 have or seek an abortion, unless:

12 (1) the pregnant woman is younger than 18 years of age;
13 and

14 (2) the actor is the parent, guardian, or conservator
15 of the pregnant woman.

16 (b) An offense under this section is a Class A misdemeanor.

17 (c) A person who in good faith reports to law enforcement
18 authorities a suspected offense under Subsection (a) is immune from
19 civil liability in an action brought against the person for
20 reporting the suspected offense.

21 SECTION 8. (a) As soon as practicable after the effective
22 date of this Act, the Department of State Health Services shall:

23 (1) develop and make available:

24 (A) the form required by Subchapter B, Chapter
25 171, Health and Safety Code, as amended by this Act, along with
26 instructions for completing the form; and

27 (B) the sign required by Section 171.023, Health

1 and Safety Code, as added by this Act; and

2 (2) revise the informational materials under Section
3 171.015, Health and Safety Code, as amended by this Act.

4 (b) The executive commissioner of the Health and Human
5 Services Commission may identify rules required by the passage of
6 this Act that must be adopted on an emergency basis and may use the
7 procedures established under Section 2001.034, Government Code,
8 for adopting those rules. The executive commissioner of the Health
9 and Human Services Commission is not required to make the finding
10 described by Section 2001.034(a), Government Code, to adopt
11 emergency rules under this subsection.

12 (c) A physician or other person subject to the requirements
13 of Sections 171.019, 171.020, 171.021, 171.022, and 171.023, Health
14 and Safety Code, as added by this Act, is not required to provide,
15 use, or retain the coerced abortion form under Section 171.019,
16 171.021, or 171.022, Health and Safety Code, as added by this Act,
17 or post the sign required under Section 171.023, Health and Safety
18 Code, as added by this Act, before the Department of State Health
19 Services develops and makes available the form and the sign.

20 (d) A physician is not criminally liable under Section
21 171.018, Health and Safety Code, for failing to provide updated
22 informational materials under Section 171.015, Health and Safety
23 Code, as amended by this Act, failing to provide, use, or retain the
24 coerced abortion form under Section 171.019, 171.021, or 171.022,
25 Health and Safety Code, as added by this Act, or failing to post the
26 sign required under Section 171.023, Health and Safety Code, as
27 added by this Act, before the Department of State Health Services

1 develops and makes available the revised informational materials,
2 the form, or the sign.

3 SECTION 9. The changes in law made by this Act apply only to
4 an offense under Section 33.002, Family Code, as amended by this
5 Act, Section 171.018, Health and Safety Code, or Section 25.12,
6 Penal Code, as added by this Act, committed on or after September 1,
7 2015. An offense committed before September 1, 2015, is governed by
8 the law in effect on the date the offense was committed, and the
9 former law is continued in effect for that purpose. For purposes of
10 this section, an offense was committed before September 1, 2015, if
11 any element of the offense occurred before that date.

12 SECTION 10. This Act takes effect immediately if it
13 receives a vote of two-thirds of all the members elected to each
14 house, as provided by Section 39, Article III, Texas Constitution.
15 If this Act does not receive the vote necessary for immediate
16 effect, this Act takes effect September 1, 2015.