



Pacific Law Journal Review of Selected Nevada Legislative

Volume 1981 | Issue 1

Article 60

1-1-1981

Health and Welfare; Abortion

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Recommended Citation

Univeristy of the Pacific, McGeorge School of Law, *Health and Welfare; Abortion*, 1981 U. PAC. L. REV. (2019).

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Health and Welfare; abortion

N.R.S. §422.— (new); §§129.030, 442.240, 442.250 (amended).

AB 596 (Committee on Judiciary); STATS 1981, Ch 548

AB 267 (Committee on Judiciary); STATS 1981, Ch 760

Chapter 548 imposes a duty on a physician to inform a woman seeking an abortion¹ of specified matters.² Chapter 548 also modifies notice and consent provisions when the woman is married or an unmarried unemancipated minor.³ Finally, Chapters 548 and 760 revise recordation requirements for abortions performed in Nevada.⁴

Chapter 548 requires the attending physician to inform the woman not more than thirty days and not less than twenty-four hours before her consent of various matters pertaining to the abortion, unless the physician deems the abortion necessary to avert an imminent peril to the life of the woman.⁵ These matters include (1) the physician's professional opinion that the woman is pregnant and that a copy of her pregnancy test is available to her,⁶ (2) the number of weeks that have elapsed from the time of conception,⁷ (3) the general nature and extent of the particular risks associated with the pregnancy,⁸ (4) any known immediate or long-term physical or psychological dangers inherent in an abortion,⁹ (5) the medical procedure to be used,¹⁰ (6) possible alternatives to abortion,¹¹ (7) the legal obligation on the physician to try to preserve the life of the child should it be aborted alive,¹² and (8) any other material facts that the physician deems necessary to allow the woman to give her informed consent.¹³ This information must be

1. See N.R.S. §442.240 (definition of abortion).

2. See *id.* §442.—.

3. See *id.* §§442.—, 442.—.

4. See *id.* §§442.—, 442.—.

5. See *id.* §442.—. *But see* Akron Center for Reproductive Health, Inc. v. City of Akron, — F.2d — (6th Cir. 1981) (held a twenty-four hour waiting period to be unconstitutional), Planned Parenthood Association of Kansas City, Missouri, Inc. v. Ashcroft, — F.2d — (8th Cir. 1981) (held a forty-eight hour waiting period to be unconstitutional). The requirement of Chapter 548 that the woman be informed of certain facts not less than twenty-four hours before the abortion could be construed as a waiting period.

6. *Id.* §442.— 1(a).

7. *Id.* §442.— 1(b).

8. *Id.* §442.— 1(d).

9. See *id.* §442.— 1(c).

10. *Id.* §442.— 1(e).

11. *Id.* §442.— 1(f).

12. See *id.* §442.— 1(g).

13. See N.R.S. §442.— 1(h). *But see* Akron Center for Reproductive Health, Inc. v. City of Akron, — F.2d — (6th Cir. 1981) (statutory provision requiring a physician to give certain information to the woman prior to the abortion was found unconstitutional), Planned Parenthood Association of Kansas City, Missouri, Inc. v. Ashcroft, — F.2d — (8th Cir. 1981) (statutory provision requiring a physician to inform a woman of the immediate and long-term physical dangers of

presented accurately and in a manner likely to be understood by the woman.¹⁴ If the woman does not understand English the consent form must be written in a language understood by her, or the attending physician must certify that the required information was presented in a manner understood by her.¹⁵ The fact that the woman received the information within the time required, however, is not prima facie evidence of informed consent.¹⁶ Prior to performing an abortion the physician must certify in writing the woman's marital status and age and that the woman gave her informed written consent freely and without coercion.¹⁷

When the woman seeking the abortion is married, Chapter 548 requires a physician, if possible, to give *notice* to the husband informing him of the intended abortion at least twenty-four hours before it is performed.¹⁸ No notice is required, however, if the woman is legally separated from her husband or has obtained a judicial declaration of paternity that a man other than her husband is the father of the child.¹⁹ The physician no longer is required to obtain the written *consent* of the spouse.²⁰ Similarly, Chapter 548 prohibits a physician from performing an abortion upon a woman known by the physician to be an unmarried, unemancipated minor unless, when possible, *notice* of the intended abortion is given to a parent or guardian of the woman at least twenty-four hours before it is performed.²¹ In an apparent attempt to conform with the Supreme Court's holding in *H.L. v. Mathe-*

abortion, the psychological trauma resulting from abortion and any increased incidence of premature births, tubal pregnancies and stillbirths following abortion, was found unconstitutional).

14. *Id.* §442.— 1.

15. *See id.* §442.— 2.

16. *Id.* §442.—

17. *See id.* §442.— *See also* Planned Parenthood of Central Missouri v. Danforth, 428 U.S. 52, 53 (1976) (similar statutory requirements for written consent by the woman seeking the abortion are not unconstitutional).

18. *See id.* §442.— 1. *See also* Roe v. Rampton, 394 F. Supp. 677, 682 (D. Utah 1975), *aff'd*, 535 F.2d 1219 (10th Cir. 1976) (similar statute requiring physicians to inform a woman's husband before performing an abortion held not unconstitutional).

19. N.R.S. §442.— 2.

20. *Compare id.* §442.— 3 with STATUTES OF NEVADA 1977, c. 473, §94, at 961 (amending N.R.S. §442.250). *See also* 48 U.S. at 53 (the spousal consent requirement of the Missouri abortion statute was held unconstitutional); Roe v. Wade, 410 U.S. 113, 153 (1973) (the right to privacy encompasses a woman's decision whether to terminate her pregnancy; only a compelling state interest may justify any regulation limiting fundamental rights).

21. N.R.S. §442.— *See also* H.L. v. Matheson, 49 U.S.L.W. 4255 (1981). A similar statute requiring parental notice when possible was held not violative of the constitutional rights of an immature, dependent minor seeking an abortion. The court in *Matheson* applied the parental notice requirement to an unemancipated minor living with and dependent upon her parents. No claim or showing as to maturity was made. Chapter 548, however, may be broader than the Utah statute applied in *Matheson*. *See* Planned Parenthood Association of Kansas City, Missouri, Inc. v. Ashcroft, — F.2d — (8th Cir. 1981) (parental notice requirement found unconstitutional because it would require parental notice even if the minor woman was mature or emancipated or the abortion was in her best interests).

son, Chapter 548 provides that written consent of the woman's parent or guardian prior to performing the abortion is no longer required.²²

Finally, Chapter 548 requires that a physician maintain a record of any abortion performed for at least five years after it is performed.²³ The record must contain the written consent of the woman,²⁴ a statement of the information that was provided to the woman,²⁵ and a description of efforts made to give any required notice.²⁶ In addition to these recordation requirements, Chapter 760 requires each hospital to submit a monthly report to the state registrar of vital statistics containing information on the number of patients hospitalized for a complication arising from an abortion, the nature of the complication, and the type of abortion performed.²⁷

22. Compare N.R.S. §442.— 3 with STATUTES OF NEVADA 1977, c. 473, §94, at 961. See also *H.L. v. Matheson*, 49 U.S.L.W. 4255 (1981) (a statute setting out a mere requirement of parental notice when possible, does not violate the constitutional rights of an immature, dependent, minor); *Planned Parenthood of Central Missouri v. Danforth*, 428 U.S. 52, 53 (1976) (similar statute held that a state may not constitutionally impose a blanket parental consent requirement as a condition for an unmarried minor's abortion during the first twelve weeks of the pregnancy); *Roe v. Wade*, 410 U.S. 113, 153 (1973).

23. See N.R.S. §442.—.

24. *Id.* §442.—.

25. *Id.* §442.—.

26. *Id.* §442.— 3. See also *id.* §442.— (any person who violates provisions regarding notice and recordation is guilty of a misdemeanor).

27. See *id.* §442.—.

Health and Welfare; guardianships—appointment for persons of limited capacity and revised procedure for appointment

N.R.S. §§159.031, 159.045, 159.051, 159.063 (repealed); §§159.—, 159.— (new); §§159.013, 159.015, 159.017, 159.021, 159.029, 159.035, 159.043, 159.047, 159.049, 159.053, 159.055, 159.061, 159.075, 159.177, 159.179, 159.201 (amended).

SB 674 (Committee on Judiciary); STATS 1981, Ch 758

Chapter 758 provides for the appointment of a special guardian for a person of limited capacity¹ and establishes new procedures for appointing all guardians, including the special guardian.² Chapter 758 also clarifies the procedure for the termination of a guardianship.³

1. N.R.S. §159.— 2.

2. See *id.* §§159.—, 159.—, 159.—, 159.047 2(a).

3. See *id.* §159.—.