

SENATE BILL No. 399

DIGEST OF INTRODUCED BILL

Citations Affected: IC 16-34-2.

Synopsis: Parental consent for abortion. Requires the state department of health (state department) to create a consent form (form) for a physician to use before performing an abortion on an unemancipated pregnant minor (minor). Sets forth what the state department must include in the form. Requires a clear and convincing standard to be used if a juvenile court makes certain findings regarding a minor obtaining an abortion. Provides that a juvenile court may require a minor to participate in an evaluation and counseling session with a mental health professional before a juvenile court rules on a minor's petition. Provides criteria for a juvenile court to consider in determining if a minor is mature enough to make a decision regarding an abortion if the minor objects to having the written consent of her parent, legal guardian, or custodian, or if the parent, legal guardian, or custodian refuses to consent to an abortion. Makes technical corrections.

Effective: July 1, 2022.

Donato

January 12, 2022, read first time and referred to Committee on Judiciary.



Second Regular Session of the 122nd General Assembly (2022)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2021 Regular Session of the General Assembly.

SENATE BILL No. 399

A BILL FOR AN ACT to amend the Indiana Code concerning health.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 16-34-2-1, AS AMENDED BY P.L.218-2021,
2 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2022]: Sec. 1. (a) Abortion shall in all instances be a criminal
4 act, except when performed under the following circumstances:
5 (1) Except as prohibited in IC 16-34-4, during the first trimester
6 of pregnancy for reasons based upon the professional, medical
7 judgment of the pregnant woman's physician if:
8 (A) the abortion is performed by the physician;
9 (B) the woman submitting to the abortion has filed her consent
10 with her physician. However, if in the judgment of the
11 physician the abortion is necessary to preserve the life of the
12 woman, her consent is not required; and
13 (C) the woman submitting to the abortion has filed with her
14 physician the ~~written~~ consent of her parent or legal guardian
15 ~~if~~ **form** required under section 4 of this chapter.
16 However, an abortion inducing drug may not be dispensed,
17 prescribed, administered, or otherwise given to a pregnant woman



1 after eight (8) weeks of postfertilization age. A physician must
2 dispense the abortion inducing drug in person and have the
3 pregnant woman consume the drug in the presence of the
4 physician. A physician shall examine a pregnant woman in person
5 before prescribing or dispensing an abortion inducing drug. The
6 physician shall provide the pregnant woman with a copy of the
7 manufacturer's instruction sheets and require that the pregnant
8 woman sign the manufacturer's patient agreement form. A
9 physician shall also provide, orally and in writing, along with
10 other discharge information, the following statement: "Some
11 evidence suggests that the effects of Mifepristone may be
12 avoided, ceased, or reversed if the second pill, Misoprostol, has
13 not been taken. Immediately contact the following for more
14 information at (insert applicable abortion inducing drug reversal
15 Internet web site and corresponding hotline number)." The
16 physician shall retain a copy of the signed patient agreement
17 form, and the signed physician's agreement form required by the
18 manufacturer, in the patient's file. As used in this subdivision, "in
19 person" does not include the use of telehealth or telemedicine
20 services.

21 (2) Except as prohibited by IC 16-34-4, after the first trimester of
22 pregnancy and before the earlier of viability of the fetus or twenty
23 (20) weeks of postfertilization age, for reasons based upon the
24 professional, medical judgment of the pregnant woman's
25 physician if:

26 (A) all the circumstances and provisions required for legal
27 abortion during the first trimester are present and adhered to;
28 and

29 (B) the abortion is performed in a hospital or ambulatory
30 outpatient surgical center (as defined in IC 16-18-2-14).

31 (3) Except as provided in subsection (b) or as prohibited by
32 IC 16-34-4, at the earlier of viability of the fetus or twenty (20)
33 weeks of postfertilization age and any time after, for reasons
34 based upon the professional, medical judgment of the pregnant
35 woman's physician if:

36 (A) all the circumstances and provisions required for legal
37 abortion before the earlier of viability of the fetus or twenty
38 (20) weeks of postfertilization age are present and adhered to;

39 (B) the abortion is performed in compliance with section 3 of
40 this chapter; and

41 (C) before the abortion the attending physician shall certify in
42 writing to the hospital in which the abortion is to be



1 performed, that in the attending physician's professional,
 2 medical judgment, after proper examination and review of the
 3 woman's history, the abortion is necessary to prevent a
 4 substantial permanent impairment of the life or physical health
 5 of the pregnant woman. All facts and reasons supporting the
 6 certification shall be set forth by the physician in writing and
 7 attached to the certificate.

8 (b) A person may not knowingly or intentionally perform a partial
 9 birth abortion unless a physician reasonably believes that:

- 10 (1) performing the partial birth abortion is necessary to save the
 11 mother's life; and
 12 (2) no other medical procedure is sufficient to save the mother's
 13 life.

14 (c) A person may not knowingly or intentionally perform a
 15 dismemberment abortion unless reasonable medical judgment dictates
 16 that performing the dismemberment abortion is necessary:

- 17 (1) to prevent any serious health risk to the mother; or
 18 (2) to save the mother's life.

19 (d) Telehealth and telemedicine may not be used to provide any
 20 abortion, including the writing or filling of a prescription for any
 21 purpose that is intended to result in an abortion.

22 SECTION 2. IC 16-34-2-4, AS AMENDED BY P.L.218-2021,
 23 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 24 JULY 1, 2022]: Sec. 4. (a) No physician shall perform an abortion on
 25 an unemancipated pregnant minor less than eighteen (18) years of age
 26 without first having obtained from one (1) of the parents, a legal
 27 guardian, or a custodian accompanying the unemancipated pregnant
 28 minor:

- 29 (1) the notarized ~~written consent of the parent, legal guardian, or~~
 30 ~~custodian of the unemancipated pregnant minor; form described~~
 31 **in subsection (b);**
 32 (2) government issued proof of identification of the parent, ~~or the~~
 33 legal guardian, or custodian of the unemancipated pregnant
 34 minor; and
 35 (3) some evidence, which may include identification or other
 36 written documentation that provides an articulable basis for a
 37 reasonably prudent person to believe that the person is the parent,
 38 ~~or~~ legal guardian, or custodian of the unemancipated pregnant
 39 minor.

40 The physician shall keep records of the documents required under this
 41 subsection in the unemancipated pregnant minor's medical file for at
 42 least seven (7) years.



1 **(b) The state department shall create a consent form as required**
 2 **by subsection (a)(1). The form must include:**

3 **(1) a description of the unemancipated pregnant minor's**
 4 **rights including the unemancipated pregnant minor's rights**
 5 **regarding informed consent;**

6 **(2) a description of the parent's, legal guardian's, and**
 7 **custodian's rights regarding informed consent;**

8 **(3) a detailed description of the surgical and medical**
 9 **procedures planned for the unemancipated pregnant minor;**

10 **(4) a detailed list of the risks and hazards related to the**
 11 **surgical and medical procedures planned for the**
 12 **unemancipated pregnant minor including:**

13 **(A) risks and hazards that may occur in connection with**
 14 **any surgical, medical, and diagnostic procedure including:**

15 **(i) infection potential;**

16 **(ii) blood clots in veins and lungs;**

17 **(iii) hemorrhage;**

18 **(iv) allergic reactions; and**

19 **(v) death;**

20 **(B) risks and hazards that may occur in a surgical abortion**
 21 **including:**

22 **(i) hemorrhage;**

23 **(ii) uterine perforation;**

24 **(iii) damage to the uterus;**

25 **(iv) sterility;**

26 **(v) injury to the bowel and bladder;**

27 **(vi) hysterectomy as a result of a complication or injury**
 28 **during the procedure; and**

29 **(vii) failure to remove all products of conception that**
 30 **may result in an additional procedure;**

31 **(C) risks and hazards that may occur with a medical,**
 32 **nonsurgical abortion including:**

33 **(i) hemorrhage;**

34 **(ii) failure to remove all products of conception that may**
 35 **result in an additional procedure;**

36 **(iii) sterility; and**

37 **(iv) the continuation of pregnancy;**

38 **(D) risks and hazards of the particular procedure planned**
 39 **for the unemancipated pregnant minor including:**

40 **(i) cramping of the uterus;**

41 **(ii) pelvic pain;**

42 **(iii) infection of the uterus and ovaries;**



- 1 (iv) cervical laceration; and
 2 (v) incompetent cervix;
 3 (5) a description of additional information that must be
 4 provided by the physician including:
 5 (A) the probable gestational age of the unborn child; and
 6 (B) the availability of medical assistance benefits for the
 7 unemancipated pregnant minor;
 8 (6) a consent statement, to be signed by the unemancipated
 9 pregnant minor stating that the unemancipated pregnant
 10 minor:
 11 (A) understands that the doctor is going to perform an
 12 abortion on her which will end her pregnancy and result in
 13 the death of her unborn child;
 14 (B) is not being forced to have an abortion;
 15 (C) has the choice to not have the abortion;
 16 (D) may withdraw consent before the abortion;
 17 (E) gives permission for the procedure;
 18 (F) understands that there are risks and hazards that could
 19 result from the planned surgical or medical procedure;
 20 (G) has been given the opportunity to ask questions about:
 21 (i) the unemancipated pregnant minor's condition;
 22 (ii) alternative forms of treatment;
 23 (iii) risk of nontreatment;
 24 (iv) the procedures to be used; and
 25 (v) the risks and hazards of the procedure;
 26 (7) a declaration for the physician, that must be signed by the
 27 physician, stating that:
 28 (A) the physician or the physician assistant has explained
 29 the procedure to the unemancipated pregnant minor and
 30 the unemancipated pregnant minor's parent, legal
 31 guardian, or custodian;
 32 (B) the physician or the physician assistant has answered
 33 all of the unemancipated pregnant minor's, parent's, legal
 34 guardian's, and custodian's questions; and
 35 (C) to the best of the physician's knowledge, the
 36 unemancipated pregnant minor and the unemancipated
 37 pregnant minor's parent, legal guardian, or custodian have
 38 been adequately informed and given consent to the
 39 procedure;
 40 (8) a consent statement for the parent, legal guardian, or
 41 custodian that must be signed by the parent, legal guardian,
 42 or custodian stating that:



- 1 (A) the physician signing the declaration described in
 2 subdivision (7) is going to perform an abortion on the
 3 unemancipated pregnant minor that will end the
 4 unemancipated pregnant minor's pregnancy and result in
 5 the death of the unemancipated pregnant minor's unborn
 6 child;
- 7 (B) the parent, legal guardian, or custodian has read the
 8 consent form or someone has read the consent form to the
 9 parent, legal guardian, or custodian;
- 10 (C) the parent, legal guardian, or custodian has been given
 11 the opportunity to ask questions to the physician or the
 12 physician assistant about the information in the consent
 13 form and the surgical and medical procedures to be
 14 performed on the unemancipated pregnant minor;
- 15 (D) the parent, legal guardian, or custodian believes that
 16 he or she has sufficient information to give informed
 17 consent; and
- 18 (E) by the parent's, legal guardian's, or custodian's
 19 signature, the parent, legal guardian or custodian affirms
 20 that he or she is the unemancipated pregnant minor's
 21 father, mother, legal guardian, or custodian; and
- 22 (9) a page with a signature line for the parent, legal guardian,
 23 or custodian to sign and a space for a notary public to
 24 notarize the form.
- 25 (c) The consent form described in subsection (b) is not valid and
 26 consent is not sufficient unless:
- 27 (1) a parent, legal guardian, or custodian initials each page of
 28 the form indicating that he or she has read and understands
 29 the information on each page of the form;
- 30 (2) a parent, legal guardian, or custodian signs the last page
 31 of the form in front of a notary public;
- 32 (3) the unemancipated pregnant minor initials each list of
 33 risks and hazards as described in subsection (b)(4);
- 34 (4) the unemancipated pregnant minor signs the consent
 35 statement described in subsection (b)(6); and
- 36 (5) the physician signs the declaration described in subsection
 37 (b)(7).
- 38 ~~(b)~~ (d) ~~A~~ An unemancipated pregnant minor:
- 39 (1) who objects to having to obtain the written consent of her
 40 parent, ~~or~~ legal guardian, or custodian under this section; or
- 41 (2) whose parent or legal guardian or custodian refuses to consent
 42 to an abortion;



1 may petition, on her own behalf or by next friend, the juvenile court in
 2 the county in which the **unemancipated** pregnant minor resides or in
 3 which the abortion is to be performed, for a waiver of the parental
 4 consent requirement under subsection (a) and the parental notification
 5 requirement under subsection ~~(d)~~: **(f)**. A next friend may not be a
 6 physician or provider of abortion services, representative of the
 7 physician or provider, or other person that may receive a direct
 8 financial benefit from the performance of an abortion.

9 ~~(e)~~ **(e)** A physician who feels that compliance with the parental
 10 consent requirement in subsection (a) would have an adverse effect on
 11 the welfare of the **unemancipated** pregnant minor or on her pregnancy
 12 may petition the juvenile court within twenty-four (24) hours of the
 13 abortion request for a waiver of the parental consent requirement under
 14 subsection (a) and the parental notification requirement under
 15 subsection ~~(d)~~: **(f)**.

16 ~~(d)~~ **(f)** Unless the juvenile court finds, **by clear and convincing**
 17 **evidence**, that it is in the best interests of an unemancipated pregnant
 18 minor to obtain an abortion without parental notification following a
 19 hearing on a petition filed under subsection ~~(b)~~ **(d)** or ~~(e)~~: **(e)**, a parent,
 20 legal guardian, or custodian of a pregnant unemancipated minor is
 21 entitled to receive notice of the ~~emancipated~~ **unemancipated pregnant**
 22 minor's intent to obtain an abortion before the abortion is performed on
 23 the unemancipated pregnant minor. The attorney representing the
 24 unemancipated pregnant minor shall serve the notice required by this
 25 subsection by certified mail or by personal service and provide the
 26 court with documentation of the attorney's good faith effort to serve the
 27 notice, including any return receipt for a certified mailing. The court
 28 shall retain the documentation provided in the confidential records of
 29 the waiver proceedings held under this section.

30 **(g) Before the juvenile court rules on a petition filed by an**
 31 **unemancipated pregnant minor under subsection (d) or by the**
 32 **unemancipated pregnant minor's physician under subsection (e),**
 33 **the juvenile court may require the unemancipated pregnant minor**
 34 **to participate in an evaluation and counseling session with a mental**
 35 **health professional. An evaluation under this subsection is**
 36 **confidential, must be scheduled expeditiously, and must be**
 37 **reported back to the court to comply with the timing requirements**
 38 **set forth in subsection (h).**

39 ~~(e)~~ **(h)** The juvenile court must rule on a petition filed by ~~a~~ **an**
 40 **unemancipated** pregnant minor under subsection ~~(b)~~ **(d)** or by her
 41 physician under subsection ~~(e)~~ **(e)** within forty-eight (48) hours of the
 42 filing of the petition. Before ruling on the petition, the court shall



1 consider the concerns expressed by the **unemancipated** pregnant
 2 minor and her physician. The requirement of parental consent under
 3 this section shall be waived by the juvenile court if the court finds, **by**
 4 **clear and convincing evidence**, that the **unemancipated pregnant**
 5 minor is mature enough to make the abortion decision independently
 6 or that an abortion would be in the **unemancipated pregnant** minor's
 7 best interests. The juvenile court shall waive the requirement of
 8 parental notification under subsection ~~(d)~~ **(f)** if the court finds, **by clear**
 9 **and convincing evidence**, that obtaining an abortion without parental
 10 notification is in the best interests of the unemancipated pregnant
 11 minor. If the juvenile court does not find that obtaining an abortion
 12 without parental notification is in the best interests of the
 13 unemancipated pregnant minor, the court shall, subject to an appeal
 14 under subsection ~~(g)~~; **(k)**, order the attorney representing the
 15 unemancipated pregnant minor to serve the notice required under
 16 subsection ~~(d)~~; **(f)**.

17 **(i) In considering whether an unemancipated pregnant minor is**
 18 **mature enough to make the abortion decision independently under**
 19 **subsection (h), the court may consider:**

- 20 **(1) the unemancipated pregnant minor's age;**
- 21 **(2) the unemancipated pregnant minor's experience working**
 22 **outside of the home;**
- 23 **(3) whether the unemancipated pregnant minor has lived**
 24 **away from home;**
- 25 **(4) whether the unemancipated pregnant minor travels on her**
 26 **own;**
- 27 **(5) whether the unemancipated pregnant minor handles her**
 28 **own personal finances;**
- 29 **(6) whether the unemancipated pregnant minor has made**
 30 **other significant decisions;**
- 31 **(7) what steps the unemancipated pregnant minor took to**
 32 **explore her options concerning her pregnancy;**
- 33 **(8) the extent the unemancipated pregnant minor considered**
 34 **and weighed potential consequences of her options concerning**
 35 **her pregnancy;**
- 36 **(9) the unemancipated pregnant minor's judgment since**
 37 **learning of her pregnancy; and**
- 38 **(10) the unemancipated pregnant minor's intellectual ability**
 39 **to understand her option to make an informed decision.**

40 ~~(f)~~ **(j)** Unless the juvenile court finds that the **unemancipated**
 41 pregnant minor is already represented by an attorney, the juvenile court
 42 shall appoint an attorney to represent the **unemancipated** pregnant



1 minor in a waiver proceeding brought by the **unemancipated pregnant**
 2 minor under subsection ~~(b)~~ **(d)** and on any appeals. The cost of legal
 3 representation appointed for the **unemancipated pregnant** minor
 4 under this section shall be paid by the county.

5 ~~(g)~~ **(k)** ~~☆~~ **An unemancipated pregnant** minor or the
 6 **unemancipated pregnant** minor's physician who desires to appeal an
 7 adverse judgment of the juvenile court in a waiver proceeding under
 8 subsection ~~(b)~~ **(d)** or ~~(c)~~ **(e)** is entitled to an expedited appeal, under
 9 rules to be adopted by the supreme court.

10 ~~(h)~~ **(l)** All records of the juvenile court and of the supreme court or
 11 the court of appeals that are made as a result of proceedings conducted
 12 under this section are confidential.

13 ~~(i)~~ **(m)** ~~☆~~ **An unemancipated pregnant** minor who initiates legal
 14 proceedings under this section is exempt from the payment of filing
 15 fees.

16 ~~(j)~~ **(n)** This section does not apply where there is an emergency need
 17 for a medical procedure to be performed to avert the **unemancipated**
 18 pregnant minor's death or a substantial and irreversible impairment of
 19 a major bodily function of the **unemancipated** pregnant minor, and the
 20 attending physician certifies this in writing.

21 ~~(k)~~ **(o)** A physician receiving parental consent under subsection (a)
 22 shall execute an affidavit for inclusion in the unemancipated pregnant
 23 minor's medical record. The affidavit must contain the following
 24 information:

25 (1) The physician's name.

26 (2) Certification that, to the physician's best information and
 27 belief, a reasonable person under similar circumstances would
 28 rely on the information provided by the unemancipated pregnant
 29 minor and the unemancipated pregnant minor's parent or legal
 30 guardian or custodian as sufficient evidence of identity and
 31 relationship.

32 (3) The physician's signature.

33 ~~(l)~~ **(p)** A person who, with intent to avoid the parental notification
 34 requirements described in subsection (a), falsely claims to be the parent
 35 or legal guardian or custodian of an unemancipated pregnant minor by:

36 (1) making a material misstatement while purportedly providing
 37 the written consent described in subsection (a)(1); or

38 (2) providing false or fraudulent identification to meet the
 39 requirement described in subsection (a)(2);

40 commits a Level 6 felony.

