

By Senator Fasano

11-1274-04

See HB 867

1 A bill to be entitled
2 An act relating to child sexual abuse reporting
3 and evidence collection; providing definitions;
4 requiring health care practitioners, personnel
5 of abortion clinics or abortion referral or
6 counseling agencies, and other specified
7 persons to report the pregnancy of a child
8 under 16 years of age to certain law
9 enforcement agencies under certain
10 circumstances; requiring a health care
11 practitioner who performs an abortion on a
12 child under 16 years of age to collect and
13 preserve specified samples of deoxyribonucleic
14 acid (DNA) from such child and the fetus;
15 providing for the forwarding of such samples to
16 the Department of Law Enforcement; providing
17 for testing to identify or confirm the identity
18 of the person responsible for impregnating the
19 child; providing for the use of such evidence
20 in certain criminal and civil proceedings;
21 providing criminal penalties; providing for a
22 mandatory minimum term of incarceration for
23 subsequent violations; authorizing the
24 Department of Health to revoke, suspend, or
25 deny renewal of the license of a health care
26 practitioner or abortion clinic for a specified
27 time in certain circumstances; providing
28 applicability; providing for the abrogation of
29 the privileged quality of communications in
30 certain circumstances; authorizing the
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1 Department of Law Enforcement to adopt rules;
2 providing an effective date.

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4 WHEREAS, the Legislature finds that sexual offenders
5 are extremely likely to use physical violence and to repeat
6 their offenses, and that most sexual offenders commit many
7 offenses, have many more victims than are ever reported, and
8 are prosecuted for only a fraction of their crimes, and

9 WHEREAS, the Legislature finds that sexual offenders
10 who prey on children present an extreme threat to the public
11 safety, and

12 WHEREAS, the Legislature finds that the state has a
13 compelling interest in protecting children from becoming
14 victims of sexual abuse, and

15 WHEREAS, the Legislature finds that the state has a
16 compelling interest in preserving evidence that facilitates
17 the successful prosecution of persons who sexually abuse
18 children, and

19 WHEREAS, the Legislature finds that children under 16
20 years of age who experience sexual abuse are particularly
21 vulnerable, and

22 WHEREAS, it is unlawful for any person to impregnate or
23 otherwise engage in sexual activity with a child under 16
24 years of age, and

25 WHEREAS, the Legislature finds that a child who is
26 pregnant and also under 16 years of age embodies evidence that
27 a crime has been committed, and

28 WHEREAS, the Legislature finds that successful criminal
29 prosecution of sexual offenders who prey upon and impregnate
30 children under 16 years of age is in the best interests of
31 such children and also furthers a compelling state interest in

1 preserving the public safety by increasing the likelihood that
2 such sexual offenders will be imprisoned and therefore unable
3 to continue to sexually abuse any child, and

4 WHEREAS, the Legislature finds that the successful
5 criminal prosecution of sexual offenders who prey on children
6 may depend heavily on the preservation of physical evidence,
7 including DNA evidence, in order to identify or confirm the
8 identity of a person responsible for impregnating a child
9 under 16 years of age, and

10 WHEREAS, the Legislature finds that where an
11 impregnated child under 16 years of age seeks an abortion
12 without voluntarily notifying her parent or guardian of the
13 pregnancy or her intent to obtain an abortion, the state may
14 be precluded from effectively preserving by less intrusive
15 means physical evidence of a sexual offense committed against
16 the child, NOW, THEREFORE,

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18 Be It Enacted by the Legislature of the State of Florida:

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20 Section 1. Mandatory reporting of child sexual abuse;
21 collection of evidence.--

22 (1) As used in this section, the term:

23 (a) "Abortion clinic" has the same meaning as in
24 section 390.011, Florida Statutes.

25 (b) "Abortion referral or counseling agency" has the
26 same meaning as in section 390.025, Florida Statutes.

27 (c) "Health care practitioner" has the same meaning as
28 in section 456.001, Florida Statutes.

29 (2) Any health care practitioner, or any person acting
30 under the supervision or direction of a health care
31 practitioner, who knows or reasonably should know that a child

1 under 16 years of age is pregnant shall report the pregnancy
2 of such child to the appropriate sheriff or municipal law
3 enforcement agency within 24 hours after the time the person
4 has attained or reasonably should have attained such
5 knowledge.

6 (3) Any employee, volunteer, or other person acting on
7 behalf of an abortion clinic or an abortion referral or
8 counseling agency who knows or reasonably should know that a
9 child under 16 years of age is pregnant shall report the
10 pregnancy of such child to the appropriate sheriff or
11 municipal law enforcement agency within 24 hours after the
12 time the person has attained or reasonably should have
13 attained such knowledge.

14 (4) Any health care practitioner who performs an
15 abortion on a child under 16 years of age shall collect, in
16 accordance with rules of the Department of Law Enforcement, a
17 sample of deoxyribonucleic acid (DNA) suitable for testing
18 from the child and the fetus. In the case of the child, a
19 sample is suitable for testing if it consists of properly
20 preserved blood or oral swabbings containing DNA. In the case
21 of the fetus, a sample is suitable for testing if is consists
22 of properly preserved blood or fetal tissue containing DNA.
23 Samples collected pursuant to this section shall be
24 immediately forwarded to the Department of Law Enforcement for
25 testing in an effort to identify or confirm the identity of
26 the person responsible for impregnating the child.

27 (5) All evidence derived pursuant to the provisions of
28 this section may be used in any prosecution under sections
29 800.04, 794.011, and 827.04, Florida Statutes, or in any other
30 criminal or civil proceeding arising in connection with the
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1 pregnancy, including any failure to make a report or collect
2 evidence as required by this section.

3 (6) Any person who violates the provisions of this
4 section commits a misdemeanor of the first degree, punishable
5 as provided in section 775.082 or section 775.083, Florida
6 Statutes. Any person previously convicted of a violation of
7 this section shall be sentenced to not less than 6 months'
8 incarceration for any subsequent violation.

9 (7) Notwithstanding the provisions of subsection (6),
10 the Department of Health may revoke or suspend the license of
11 any health care practitioner or abortion clinic for a period
12 not to exceed 2 years, or the department may refuse to renew
13 such license, if it is determined in accordance with the
14 provisions of chapter 120, Florida Statutes, that any
15 provision of this section has been violated by a health care
16 practitioner or, in the case of an abortion clinic, any health
17 care practitioner, employee, or volunteer of such abortion
18 clinic.

19 Section 2. Abrogation of privilege.--The privileged
20 quality of communication between any professional person and
21 his or her child patient or client under 16 years of age is
22 abrogated to facilitate compliance with the requirements of
23 this act.

24 Section 3. Rulemaking.--In accordance with chapter
25 120, Florida Statutes, the Department of Law Enforcement is
26 authorized to adopt rules for the administration and
27 implementation of this act.

28 Section 4. This act shall take effect upon becoming a
29 law, and shall apply to offenses committed on or after the
30 effective date.

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