

HB 0867

2004

1 A bill to be entitled

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

27  
28 WHEREAS, the Legislature finds that sexual offenders are  
29 extremely likely to use physical violence and to repeat their

HB 0867

2004

30 offenses, and that most sexual offenders commit many offenses,  
 31 have many more victims than are ever reported, and are  
 32 prosecuted for only a fraction of their crimes, and

33 WHEREAS, the Legislature finds that sexual offenders who  
 34 prey on children present an extreme threat to the public  
 35 safety, and

36 WHEREAS, the Legislature finds that the state has a  
 37 compelling interest in protecting children from becoming  
 38 victims of sexual abuse, and

39 WHEREAS, the Legislature finds that the state has a  
 40 compelling interest in preserving evidence that facilitates the  
 41 successful prosecution of persons who sexually abuse children,  
 42 and

43 WHEREAS, the Legislature finds that children under 16  
 44 years of age who experience sexual abuse are particularly  
 45 vulnerable, and

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

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

52 WHEREAS, the Legislature finds that successful criminal  
 53 prosecution of sexual offenders who prey upon and impregnate  
 54 children under 16 years of age is in the best interests of such  
 55 children and also furthers a compelling state interest in  
 56 preserving the public safety by increasing the likelihood that  
 57 such sexual offenders will be imprisoned and therefore unable  
 58 to continue to sexually abuse any child, and

HB 0867

2004

59 WHEREAS, the Legislature finds that the successful  
 60 criminal prosecution of sexual offenders who prey on children  
 61 may depend heavily on the preservation of physical evidence,  
 62 including DNA evidence, in order to identify or confirm the  
 63 identity of a person responsible for impregnating a child under  
 64 16 years of age, and

65 WHEREAS, the Legislature finds that where an impregnated  
 66 child under 16 years of age seeks an abortion without  
 67 voluntarily notifying her parent or guardian of the pregnancy  
 68 or her intent to obtain an abortion, the state may be precluded  
 69 from effectively preserving by less intrusive means physical  
 70 evidence of a sexual offense committed against the child, NOW,  
 71 THEREFORE,

72  
 73 Be It Enacted by the Legislature of the State of Florida:

74  
 75 Section 1. Mandatory reporting of child sexual abuse;  
 76 collection of evidence.--

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

78 (a) "Abortion clinic" has the same meaning as in s.  
 79 390.011, Florida Statutes.

80 (b) "Abortion referral or counseling agency" has the same  
 81 meaning as in s. 390.025, Florida Statutes.

82 (c) "Health care practitioner" has the same meaning as in  
 83 s. 456.001, Florida Statutes.

84 (2) Any health care practitioner, or any person acting  
 85 under the supervision or direction of a health care  
 86 practitioner, who knows or reasonably should know that a child  
 87 under 16 years of age is pregnant shall report the pregnancy of

HB 0867

2004

88 such child to the appropriate sheriff or municipal law  
 89 enforcement agency within 24 hours after the time the person  
 90 attained or reasonably should have attained such knowledge.

91 (3) Any employee, volunteer, or other person acting on  
 92 behalf of an abortion clinic or an abortion referral or  
 93 counseling agency who knows or reasonably should know that a  
 94 child under 16 years of age is pregnant shall report the  
 95 pregnancy of such child to the appropriate sheriff or municipal  
 96 law enforcement agency within 24 hours after the time the person  
 97 attained or reasonably should have attained such knowledge.

98 (4) Any health care practitioner who performs an abortion  
 99 on a child under 16 years of age shall collect, in accordance  
 100 with rules of the Department of Law Enforcement, a sample of  
 101 deoxyribonucleic acid (DNA) suitable for testing from the child  
 102 and the fetus. In the case of the child, a sample is suitable  
 103 for testing if it consists of properly preserved blood or oral  
 104 swabbings containing DNA. In the case of the fetus, a sample is  
 105 suitable for testing if is consists of properly preserved blood  
 106 or fetal tissue containing DNA. Samples collected pursuant to  
 107 this section shall be immediately forwarded to the Department of  
 108 Law Enforcement for testing in an effort to identify or confirm  
 109 the identity of the person responsible for impregnating the  
 110 child.

111 (5) All evidence derived pursuant to the provisions of  
 112 this section may be used in any prosecution under ss. 800.04,  
 113 794.011, and 827.04, Florida Statutes, or in any other criminal  
 114 or civil proceeding arising in connection with the pregnancy,  
 115 including any failure to make a report or collect evidence as  
 116 required by this section.

HB 0867

2004

117       (6) Any person who violates the provisions of this section  
118       commits a misdemeanor of the first degree, punishable as  
119       provided in s. 775.082 or s. 775.083, Florida Statutes. Any  
120       person previously convicted of a violation of this section shall  
121       be sentenced to not less than 6 months incarceration for any  
122       subsequent violation.

123       (7) Notwithstanding the provisions of subsection (6), the  
124       Department of Health may revoke or suspend the license of any  
125       health care practitioner or abortion clinic for a period not to  
126       exceed 2 years, or the department may refuse to renew such  
127       license, if it is determined in accordance with the provisions  
128       of chapter 120, Florida Statutes, that any provision of this  
129       section has been violated by a health care practitioner or, in  
130       the case of an abortion clinic, any health care practitioner,  
131       employee, or volunteer of such abortion clinic.

132       Section 2. Abrogation of privilege.--The privileged  
133       quality of communication between any professional person and his  
134       or her child patient or client under 16 years of age is  
135       abrogated to facilitate compliance with the requirements of this  
136       act.

137       Section 3. Rulemaking.--In accordance with chapter 120,  
138       Florida Statutes, the Department of Law Enforcement is  
139       authorized to adopt rules for the administration and  
140       implementation of this act.

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