

HB 1425

2007

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 DNA samples
11 from the child and the fetus and forward the samples to
12 the Department of Law Enforcement; providing for testing
13 to identify or confirm the identity of the person
14 responsible for impregnating the child; providing for the
15 use of such evidence in certain criminal and civil
16 proceedings; authorizing the Department of Health to
17 revoke, suspend, or deny renewal of the license of a
18 health care practitioner or abortion clinic for a
19 specified time in certain circumstances; providing
20 applicability; authorizing rulemaking; providing for the
21 abrogation of the privileged quality of communications in
22 certain circumstances; providing an effective date.

23
24 WHEREAS, the Legislature finds that there is a compelling
25 state interest in prosecuting violations of ss. 794.011, 800.04,
26 and 827.04, Florida Statutes, involving victims under 16 years
27 of age, and in preventing such conduct and its consequences, and

28 WHEREAS, the Florida Supreme Court has previously noted
29 "...that the legislature had enacted numerous statutes to
30 protect minors from harmful sexual conduct, and that those laws
31 clearly invoke a policy that 'any type of sexual conduct
32 involving a child constitutes an intrusion upon the rights of
33 that child, whether or not the child consents ... [therefore]
34 society has a compelling interest in intervening to stop such
35 misconduct.'" J.A.S. v. State, 705 So.2d 1381 (Fla. 1998), and

36 WHEREAS, the Legislature agrees with the conclusion of the
37 Florida Supreme Court in J.A.S. v. State, supra, that "whatever
38 the extent of a minor's privacy rights, those rights 'do not
39 vitiating the legislature's efforts and authority to protect
40 [minors] from conduct of others.' (citation omitted).", and

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

44 WHEREAS, the Legislature finds that successful criminal
45 prosecution of sexual offenders who prey upon and impregnate
46 children under 16 years of age is in the best interests of such
47 children and also furthers a compelling state interest in
48 preserving the public safety by increasing the likelihood that
49 such sexual offenders will be imprisoned and therefore unable to
50 continue to sexually abuse children, and

51 WHEREAS, the Legislature finds that the successful criminal
52 prosecution of sexual offenders who prey on children may depend
53 heavily on the preservation of physical evidence, including DNA
54 evidence, in order to identify or confirm the identity of a

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55 person responsible for impregnating a child under 16 years of
 56 age, and

57 WHEREAS, the Legislature finds that where an impregnated
 58 child under 16 years of age seeks an abortion without
 59 voluntarily notifying her parent or guardian of the pregnancy or
 60 her intent to obtain an abortion, the state may be precluded
 61 from effectively preserving physical evidence of a sexual
 62 offense committed against the child by less intrusive means,
 63 NOW, THEREFORE,

64
 65 Be It Enacted by the Legislature of the State of Florida:

66
 67 Section 1. Mandatory reporting of child sexual abuse;
 68 collection of evidence.--

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

70 (a) "Abortion clinic" has the same meaning as in s.
 71 390.011, Florida Statutes.

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

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

76 (2) Any health care practitioner, or any person acting
 77 under the supervision or direction of a health care
 78 practitioner, who knows or reasonably should know that a child
 79 under 16 years of age is pregnant shall report the pregnancy of
 80 the child to the appropriate sheriff or municipal law
 81 enforcement agency within 24 hours after the time the person

82 ascertained or reasonably should have ascertained such
83 knowledge.

84 (3) Any employee, volunteer, or other person acting on
85 behalf of an abortion clinic or an abortion referral or
86 counseling agency who knows or reasonably should know that a
87 child under 16 years of age is pregnant shall report the
88 pregnancy of such child to the appropriate sheriff or municipal
89 law enforcement agency within 24 hours after the time the person
90 ascertained or reasonably should have ascertained such
91 knowledge.

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

104 (5) All evidence derived pursuant to the provisions of
105 this section may be used in any prosecution under ss. 794.011,
106 800.04, and 827.04, Florida Statutes, or in any other criminal
107 or civil proceeding arising in connection with the pregnancy,
108 including any action arising out of any failure to make a report
109 or collect evidence as required by this section.

110 (6) The Department of Health may revoke or suspend the
 111 license of any person or entity subject to the provisions of
 112 this section for a period not to exceed 2 years, or the
 113 department may refuse to renew such license, if it is determined
 114 in accordance with the provisions of chapter 120, Florida
 115 Statutes, that any provision of this section has been violated
 116 by that person or entity.

117 (7) This section does not apply when the child provides to
 118 the health care practitioner or abortion clinic personnel a
 119 certified copy of a marriage license that is recognizable under
 120 the laws of Florida or a certified copy of a court order
 121 indicating that the child has had the disability of nonage
 122 removed under s. 743.015, Florida Statutes, or a substantially
 123 similar statute of another jurisdiction.

124 (8) The Department of Law Enforcement is authorized to
 125 adopt rules for the administration and implementation of this
 126 section pursuant to ss. 120.536(1) and 120.54, Florida Statutes.

127 (9) The privileged quality of communication between any
 128 professional person and his or her child patient or client under
 129 16 years of age is abrogated to facilitate compliance with the
 130 requirements of this section.

131 Section 2. This act shall take effect July 1, 2007.