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1 A bill to be entitled
2 An act relating to abortion; creating the "Florida for
3 Life Act"; creating s. 390.0001, F.S.; providing
4 legislative findings regarding abortion; repealing s.
5 390.011, F.S., relating to definitions; creating s.
6 390.01113, F.S.; providing definitions; prohibiting
7 inducing, performing, attempting to perform, or assisting
8 in induced abortions; providing criminal penalties;
9 prohibiting inflicting serious bodily injury on a person
10 in the course of performing an abortion; providing
11 criminal penalties; providing enhanced criminal penalties
12 if the serious bodily injury results in death; prohibiting
13 operation of any facility, business, or service within
14 this state for the purpose of providing induced abortion
15 services; providing criminal penalties; prohibiting
16 termination of a pregnancy unless specified conditions are
17 met; requiring that a termination of pregnancy be
18 performed only by a physician; requiring that a
19 termination of pregnancy only be performed with voluntary,
20 informed consent; providing requirements for consent;
21 providing an exception for cases of medical emergency;
22 providing requirements for documentation of a medical
23 emergency; providing that violations may subject
24 physicians to discipline under specified provisions;
25 providing a standard of medical care to be used during a
26 termination of pregnancy performed while the patient's
27 fetus is viable; providing that the woman's life is a
28 superior consideration to the concern for the life of the

29 fetus and the woman's health is a superior consideration
30 to the concern for the health of the fetus when such life
31 or health concerns are in conflict; prohibiting a
32 physician willfully misrepresenting the gestational age or
33 stage of fetal development of a viable fetus in an entry
34 into any medical record and failing to use the prescribed
35 standard of care on a viable fetus; providing criminal
36 penalties; prohibiting experimentation on a fetus;
37 providing an exception; requiring that fetal remains be
38 disposed of according to specified standards; providing
39 criminal penalties; providing that provisions do not apply
40 to specified procedures; providing a civil cause of action
41 for violations; providing damages; requiring physicians
42 and certain personnel at a medical facility who learn that
43 a pregnant woman treated by the facility wishes to obtain
44 an induced abortion at the facility or that a woman
45 treated by the facility has had a termination of pregnancy
46 and the fetus was born alive and survives and such woman
47 does not wish to keep the child to provide the woman with
48 information concerning the availability of adoption;
49 providing that specified actions constitute compliance;
50 providing that violation of certain provisions by a
51 physician may be grounds for discipline under specified
52 provisions; providing rulemaking authority to the Agency
53 for Health Care Administration and the Department of
54 Health for specified provisions; repealing s. 390.0111,
55 F.S., relating to termination of pregnancies; amending ss.
56 743.065 and 765.113, F.S.; conforming cross-references;

57 | repealing s. 390.0112, F.S., relating to termination of
58 | pregnancy reporting; repealing s. 390.01114, F.S.,
59 | relating to the Parental Notice of Abortion Act; amending
60 | s. 390.01116, F.S.; conforming a cross-reference;
61 | repealing s. 390.012, F.S., relating to powers of the
62 | Agency for Health Care Administration, rulemaking, and the
63 | disposal of fetal remains; repealing s. 390.014, F.S.,
64 | relating to licenses and fees; repealing s. 390.015, F.S.,
65 | relating to application for license; repealing s. 390.018,
66 | F.S., relating to administrative fines; repealing s.
67 | 390.025, F.S., relating to abortion referral or counseling
68 | agencies and penalties; repealing s. 782.30, F.S.,
69 | relating to the short title for the Partial-Birth Abortion
70 | Act; repealing s. 782.32, F.S., relating to definitions
71 | for the Partial-Birth Abortion Act; repealing s. 782.34,
72 | F.S., relating to partial-birth abortion; repealing s.
73 | 782.36, F.S., relating to exceptions to the Partial-Birth
74 | Abortion Act; amending s. 39.001, F.S.; providing
75 | legislative intent concerning adoption services for women
76 | with unwanted pregnancies; requiring the Office of
77 | Adoption and Child Protection to establish and manage a
78 | statewide list of attorneys providing pro bono adoption
79 | services for women with unwanted pregnancies who would
80 | have selected abortion, if lawful, rather than adoption;
81 | providing that all federal moneys received by the state as
82 | a result of efforts made by the office shall only be spent
83 | by the office; creating s. 390.01117, F.S.; providing that
84 | the section takes effect only if s. 390.01113, F.S., is

85 | declared unconstitutional or has its enforcement enjoined;
86 | providing definitions; prohibiting termination of a
87 | pregnancy after a fetus has been determined to be viable;
88 | providing exceptions; requiring a determination of
89 | viability for women in a certain week of pregnancy or
90 | later before termination may be performed; requiring
91 | recordkeeping; providing that determination of viability
92 | and the performance of a required ultrasound may not be
93 | done by a physician providing reproductive health services
94 | at an abortion clinic; requiring that a termination of
95 | pregnancy involving a viable fetus, when not prohibited,
96 | be performed in a hospital or other medical facility;
97 | providing a standard of medical care to be used during a
98 | termination of pregnancy performed while the patient's
99 | fetus is viable; providing that the woman's life is a
100 | superior consideration to the concern for the life of the
101 | fetus and the woman's health is a superior consideration
102 | to the concern for the health of the fetus when such life
103 | or health concerns are in conflict; prohibiting a
104 | physician willfully misrepresenting the gestational age or
105 | stage of fetal development of a viable fetus in an entry
106 | into any medical record and failing to use the prescribed
107 | standard of care on a viable fetus; providing criminal
108 | penalties; providing that only a physician may perform a
109 | termination of pregnancy; requiring voluntary and informed
110 | written consent to a termination; providing requirements
111 | for such consent; providing an exception for cases of
112 | medical emergency; providing requirements for

113 | documentation of a medical emergency; providing that
114 | violations may subject physicians to discipline under
115 | specified provisions; prohibiting experimentation on a
116 | fetus; providing an exception; requiring that fetal
117 | remains be disposed of according to specified standards;
118 | providing criminal penalties; providing that no person or
119 | facility is required to participate in the termination of
120 | a pregnancy or be liable for such refusal; providing that
121 | provisions do not apply to specified procedures;
122 | prohibiting willfully inducing, performing, or assisting
123 | in a termination of pregnancy procedure on another person
124 | in violation of specified requirements; providing criminal
125 | penalties; prohibiting inflicting serious bodily injury on
126 | a person in the course of performing an abortion;
127 | providing criminal penalties; providing enhanced criminal
128 | penalties if the serious bodily injury results in death;
129 | providing a civil cause of action for violations;
130 | providing damages; requiring physicians and certain
131 | personnel at a medical facility who learn that a pregnant
132 | woman treated by the facility wishes to obtain an induced
133 | abortion at the facility or that a woman treated by the
134 | facility has had a termination of pregnancy and the fetus
135 | was born alive and survives and such woman does not wish
136 | to keep the child to provide the woman with information
137 | concerning the availability of adoption; providing that
138 | specified actions constitute compliance; providing
139 | rulemaking authority to the Agency for Health Care
140 | Administration and the Department of Health for specified

141 provisions; providing that rulemaking authority is
142 supplemental to other specified provisions; providing that
143 if the provision creating s. 390.01117, F.S., is declared
144 unconstitutional or has its enforcement enjoined, then the
145 repeal of s. 390.011, F.S., and the amendments to s.
146 39.001, F.S., are void and of no effect; providing
147 legislative intent; creating s. 390.01118, F.S.; providing
148 that the section shall become effective only in the event
149 that s. 390.01113, F.S., is declared unconstitutional or
150 has its enforcement enjoined; providing legislative
151 findings concerning parental notice of abortion; providing
152 that this section supersedes s. 390.01114, F.S., in its
153 entirety unless it is found unconstitutional, in which
154 case s. 390.01114, F.S., shall apply; providing
155 definitions; requiring a physician performing or inducing
156 an abortion or a referring physician before the
157 performance or inducement of the abortion on a minor to
158 provide actual notice to the minor's parent or guardian;
159 providing for constructive notice if actual notice is not
160 possible; providing for requirements for actual and
161 constructive notice; providing exceptions to notice
162 requirement; providing for judicial waiver of notice;
163 providing legislative findings; specifying when judicial
164 waiver is available; requiring appointment of a guardian
165 ad litem for a minor seeing waiver; providing for
166 precedence of and timeframes for waiver proceedings;
167 providing that failure to rule within the prescribed
168 timeframe may be considered nonfeasance in office;

169 providing for a standard of proof; providing requirements
 170 for orders in waiver proceedings; requiring written
 171 transcripts; providing for expedited confidential appeals;
 172 providing that a minor may not be assessed fees or court
 173 costs; providing that a county is not required to pay
 174 expenses of counsel for a minor; requiring an annual
 175 report by the Office of the State Courts Administrator
 176 concerning waiver proceedings; providing that if s.
 177 390.01113, F.S., is declared unconstitutional or has its
 178 enforcement enjoined, specified statutory repeals and
 179 amendments contained in this act are void and of no
 180 effect; providing legislative intent; providing that s.
 181 390.0001, F.S., is severable from other provisions of this
 182 act; providing an effective date.

183
 184 Be It Enacted by the Legislature of the State of Florida:

185
 186 Section 1. This act may be cited as the "Florida for Life
 187 Act."

188 Section 2. Section 390.0001, Florida Statutes, is created
 189 to read:

190 390.0001 Legislative findings regarding abortion.—

191 (1) Consistent with the self-evident truths expressed in
 192 this nation's Declaration of Independence dated July 4, 1776,
 193 the people of the State of Florida declare and acknowledge that
 194 all persons are endowed by their Creator with certain
 195 unalienable rights, and that first among these rights is the
 196 right to life.

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197 (2) The Legislature finds that the Preamble to the
198 Constitution of the State of Florida contains the sovereign
199 peoples' acknowledgment of the Creator as the source of
200 constitutional liberty saying: "We, the people of the State of
201 Florida, being grateful to Almighty God for our constitutional
202 liberty, in order to secure its benefits, perfect our
203 government, insure domestic tranquility, maintain public order,
204 guarantee equal civil and political rights to all, do ordain and
205 establish this constitution."

206 (3) The Legislature of the people of the State of Florida
207 finds that all life comes from the Creator and begins at
208 conception.

209 (4) The Legislature further finds the ultimate sovereign
210 authority in every state of the United States of America resides
211 in the people and that fundamental to the governmental structure
212 ordained and established by the people in the Constitution of
213 the United States is the right of the people to self-government
214 as set forth therein and as further set forth in their
215 respective state constitutions. As the Supreme Court of the
216 United States has stated, "The government of the Union ... is
217 emphatically and truly, a government of the people. In form, and
218 in substance, it emanates from them." (McCulloch v. Maryland, 17
219 U.S. 316, 404-405 (1819)).

220 (5) The Legislature finds that the United States
221 Constitution expresses no qualification for, or limitation on,
222 the ability of the states to protect life in a manner consistent
223 with the moral consensus of the people, and reflecting the
224 peoples' belief in a Creator, and respecting life as being a

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225 divine gift of the highest value which is deserving of paramount
226 importance among all other unalienable rights expressed or
227 implied in the United States Constitution.

228 (6) The Legislature finds that once life begins the state
229 has a compelling interest in protecting the natural course of
230 its development from that moment through birth, as surely as
231 after birth. Any act of a person detrimental to an unborn human
232 life, when not necessary in defense of the life of the mother
233 bearing such unborn life, which unnaturally terminates that
234 life, is a deprivation of an unalienable right which the people
235 have the sovereign discretion to protect through laws enacted by
236 their respective legislatures.

237 (7) The Legislature finds that the United States Supreme
238 Court in *Roe v. Wade*, 410 U.S. 113 (1973) ("Roe"), and *Planned*
239 *Parenthood of Southern Pennsylvania v. Casey*, 505 U.S. 833
240 (1992) ("Casey"), declared that a woman's interest in having an
241 abortion is a liberty interest protected under the Due Process
242 Clause of the Fourteenth Amendment to the United States
243 Constitution. The Legislature also finds that to devise into the
244 United States Constitution a liberty interest in one person to
245 take the life of another when not necessary for defense of one's
246 life is repugnant to the principles expressed in the United
247 States Constitution as established and ordained by the people.
248 Personal liberty is not a license to kill an innocent life under
249 any provision of the United States Constitution.

250 (8) The Legislature finds that the United States Supreme
251 Court's decisions noted in subsection (7) and those which adhere
252 to them subordinate the unalienable right to life to a "liberty"

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253 interest devised by man which is inconsistent with, and cannot
254 supersede, the right to life given the peoples' accepted source
255 of authority for all unalienable rights. A liberty right to
256 abortion denies the authority of the Creator in all matters of
257 life, and the people through the exercise of their right of
258 self-government have the sovereign authority to regard all human
259 life with the highest reverence. As Thomas Jefferson wrote in "A
260 Summary View of the Rights of British America" (1774), "The god
261 who gave us life, gave us liberty at the same time: the hand of
262 force may destroy, but cannot disjoin them."

263 (9) The Legislature finds that Casey and its proclaimed
264 reaffirmation of the "essential" holding of Roe should be
265 reviewed by the United States Supreme Court for many of the same
266 reasons the court found it necessary to review Roe when it
267 considered Casey. First, the passage of time has shown there
268 remains among the states doubt as to the meaning and reach of
269 the court's opinion in Casey. Second, state legislatures and
270 courts throughout the nation still lack adequate guidance as
271 they seek to address abortion regulations in conformance with
272 putative precedents interpreting the United States Constitution.
273 In addition, since the time Roe was decided, more information
274 has become known related to the factual assumptions which
275 motivated the court's decision that significantly call into
276 question the correctness of the Roe decision and the propriety
277 of perpetuating its essential holding through Casey.

278 (10) The Legislature finds that despite the court's
279 finding in Casey that it is "imperative to review once more the
280 principles that define the rights of the woman and the

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281 legitimate authority of the State respecting ... abortion
282 procedures" (Casey at 845), that neither Casey nor its progeny
283 have adequately defined the constitutional scope of the
284 Legislature's authority to protect unborn human life to the
285 maximum extent allowed by law.

286 (11) The Legislature finds that nowhere in the lead
287 plurality opinion of Casey is there any expression of confidence
288 that Roe was correctly decided or that it assigned adequate
289 weight to the state's interest in protecting unborn human life,
290 but merely that Roe's "essential holding" had to be followed to
291 preserve the court's legitimacy. (See Casey at 867 and 869).
292 Further, the court expressed a lack of concern over adequately
293 determining a state's interest in protecting unborn human life
294 saying: "Even on the assumption that the central holding of Roe
295 was in error, that error would go only to the strength of the
296 state interest in fetal protection, not to the recognition
297 afforded by the Constitution to the women's liberty." (Casey at
298 858).

299 (12) The Legislature finds that it is fundamentally unfair
300 to have the constitutionality of this state's laws determined by
301 balancing the state's interest in protecting unborn human life
302 against the liberty interest of a woman to terminate her
303 pregnancy when the United States Supreme Court's lead analysis
304 of the state's legitimate interest in protecting life reflects
305 indifference to the prospect that the state's life interest is
306 being undervalued. (See Casey at 853 and 858.)

307 (13) The Legislature finds that the value attributed to
308 human life from its beginning through to its end is a moral

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309 value judgment for the people to decide in accordance with the
310 republican form of government established in the United States
311 Constitution and is not a matter which can be legitimately
312 removed by any branch of government from their sovereign
313 authority to decide within their respective states.

314 (14) The Legislature finds that the Constitution of the
315 United States does not vest in the United States Supreme Court
316 the power to determine moral questions on behalf of the citizens
317 of any state without their consent. Further, the Legislature
318 finds that the justices of the United States Supreme Court are
319 not qualified to determine, establish, or define the moral
320 values of the people of the United States and specifically for
321 the people of Florida. The Supreme Court's removal of moral and
322 political questions from the political power of the people to
323 determine, under color of constitutional adjudication, is a
324 violation of the peoples' right to self-government guaranteed
325 under the Constitution of the United States. (See *Carter v.*
326 *Carter Coal*, 298 U.S. 238, 295 (1936)).

327 (15) The Legislature finds that the legal standard set
328 forth in *Casey* prohibiting legislation which places an "undue"
329 burden on a woman seeking an abortion denies protection to the
330 life of the unborn child which state legislatures should be
331 constitutionally entitled to protect. The legal standard of
332 *Casey* is arbitrary and subjective with no ascertainable
333 guidelines, leaving state legislatures to guess as to what
334 actions can be taken to grant unborn human life the full
335 protection of the laws.

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336 (16) The Legislature finds that the legal standard set
337 forth in *Roe* and reaffirmed in *Casey*, which establishes
338 viability as the point after which the state may restrict
339 abortions if the law contains exceptions for pregnancies which
340 endanger a woman's life or health, provides inadequate guidance
341 for the state to enact meaningful and enforceable protections
342 for fetal life from the moment the state's interest in
343 protecting such life matures to state authority to lawfully
344 restrict abortions. Further, the Legislature finds that
345 "viability" as the demarcation line at which the state may act
346 to prohibit, restrict, or regulate abortions is an arbitrary
347 point in time with no basis in the United States Constitution.

348 (17) The Legislature finds that the application of the
349 health exception required to be included in post-viability
350 abortion regulations, as described in *Doe v. Bolton*, 410 U.S.
351 179 (1973), inadequately protects the maternal health of women
352 seeking or obtaining post-viability abortions; fails to promote
353 the long-term physical, emotional, familial, and psychological
354 well-being of women obtaining abortions; and undermines the
355 state's interest in protecting viable fetal life.

356 (18) The Legislature finds that despite the recognition by
357 the United States Supreme Court in *Roe* and *Casey* that "the State
358 has legitimate interests from the outset of the pregnancy in
359 protecting the health of the woman and the life of the fetus
360 that may become a child" (*Casey* at 846, emphasis added), the
361 state's interest in protecting a life which "may become a child"
362 has proven illusory in the context of regulating abortion, in
363 that the purpose of an abortion procedure extends beyond the

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364 termination of a woman's pregnancy and proceeds to the removal
365 of a dead or fatally injured fetus rather than the removal of a
366 live fetus from the womb while he or she still possesses any
367 meaningful chance of survival to "become a child."

368 (19) The Legislature finds that there have been
369 approximately 50 million human lives aborted in the United
370 States since the Roe decision. The Legislature further finds
371 that every life lost to abortion was sacred and of the highest
372 value.

373 (20) The Legislature finds that women with unwanted
374 pregnancies choose abortion for a variety of reasons which are
375 difficult, deeply personal, and highly emotional. The
376 Legislature categorically rejects the notion suggested by the
377 Supreme Court in footnote 54 of Roe that exclusion of women
378 seeking abortion from criminal prosecution implies a
379 contradiction with the granting full constitutional protection
380 for unborn human life. The Legislature reserves for itself the
381 right to determine what is in the public interest in regard to
382 assigning criminal liability for abortion and possesses
383 constitutional competence superior to any court's to make such
384 determination.

385 (21) The Legislature finds the jurisprudence of this state
386 and of the nation is such that it protects the lives of persons
387 guilty of the most wretched, atrocious, heinous, and brutal
388 crimes to a far greater degree than it permits protecting the
389 lives of absolutely innocent, yet unborn, human beings. Great
390 protections are established before the state may execute a
391 person convicted of a capital crime, while virtually nothing

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392 exists to protect the life of an unwanted unborn child from a
393 personal choice of his or her mother not to complete the natural
394 course of her pregnancy. It has been noted by the United States
395 Supreme Court that underlying the Eighth Amendment's prohibition
396 against cruel and unusual punishment is "nothing less than the
397 dignity of man ... The Amendment must draw its meaning from the
398 evolving standards of decency that mark the progress of a
399 maturing society." The court quoted a remark of Justice Stewart
400 in this regard: "Even one day in prison would be cruel and
401 unusual punishment for the 'crime' of having a common cold."
402 (Atkins v. Virginia, 536 U.S. 304 (2002), quoting Robinson v.
403 California, 370 U.S. 660, 666-667 (1962)). The Legislature finds
404 that the dignity of man is also measured by the level of
405 protection afforded defenseless innocent life whose only "crime"
406 is to be unwanted by his or her mother or conceived at an
407 inopportune time or as an undesired gender. The Legislature
408 finds that by any standard of basic human decency, innocent and
409 defenseless human life is entitled to respect and meaningful
410 protection under the law.

411 (22) The Legislature finds that in the years following the
412 Roe opinion, the standard of decency of the people of this state
413 has evolved to such a degree that at this time they demand the
414 right to exercise their political power as guaranteed under the
415 United States Constitution and under the Constitution of the
416 State of Florida to enact legislation prohibiting unnecessary
417 abortion in Florida and providing penalties for violation of
418 such prohibition. Statistical information reflects that the
419 frequency of abortion is generally declining in Florida as well

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420 as in other states across the nation. Recent Gallup polls
421 reflect significant changes in public opinion on abortion with a
422 majority of people, 51 percent, considering themselves "Pro-
423 Life" versus a minority of people, 42 percent, considering
424 themselves "Pro-Choice." In addition, state legislative efforts
425 across the country reflect a persistent and intensive effort to
426 offer more protection for life through a variety of proposals
427 and enactments including comprehensive abortion bans to become
428 effective in the event Roe is overturned.

429 (23) The Legislature finds that further evidence of the
430 evolving standards of decency concerning unborn human life is
431 found in the subsequent action taken by Norma McCorvey, formerly
432 known as Jane Roe, the appellant of the Roe v. Wade opinion. Ms.
433 McCorvey has changed her mind concerning the wisdom of the Roe
434 v. Wade opinion and filed a motion under Rule 60(b), Federal
435 Rules of Civil Procedure, with the district court in an effort
436 to have it revisit the Supreme Court's Roe v. Wade decision in
437 order to reverse its effect. (See McCorvey v. Hill, 385 F.3d
438 846, (5th Cir. 2004)). In seeking relief, Ms. McCorvey submitted
439 "serious and substantial evidence" which went "to the heart of
440 the balance Roe struck between the choice of a mother and the
441 life of her unborn child." (See Judge Edith H. Jones,
442 concurring, McCorvey, supra at 850).

443 (24) The Legislature finds that it is axiomatic that the
444 Constitution of the State of Florida cannot provide less
445 protection for the right to life than that which is provided in
446 the United States Constitution and therefore this act could not
447 be properly declared unconstitutional under the State

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448 Constitution if the right to life is protected to a greater
449 extent than the right of a woman to obtain an abortion when not
450 necessary in defense of her own life.

451 (25) The Legislature finds that the decision of whether or
452 not to have an abortion is a decision regarding whether a
453 pregnant woman will carry her unborn child through to a point in
454 time when there is a reasonable expectation that it will result
455 in the live birth of a child capable of sustaining life outside
456 the mother's womb with or without artificial support. Further,
457 the Legislature finds that the decision regarding having an
458 abortion is a separate and distinct decision from one concerning
459 whether or not the pregnant woman will keep and be a parent to
460 the child.

461 (26) The Legislature finds that adoption is a viable and
462 preferable alternative to abortion for women with unwanted
463 pregnancies.

464 (27) The Legislature finds that the United States Supreme
465 Court's jurisprudence on the minimum constitutional requirements
466 for statutes requiring parental notification of minors seeking
467 abortions lacks clarity and has provided this state with
468 inadequate guidance leaving its legislature to guess as to what
469 actions can be taken to grant full protection of the laws to the
470 fundamental right of parents to make decisions concerning the
471 care, custody, upbringing, and control of their children. (See
472 *Troxel v. Granville*, 530 U.S. 57 (2000)). Specifically, the
473 United States Supreme Court has failed to definitively address
474 whether judicial bypass provisions of the type in *Bellotti v.*

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475 Baird, 443 U.S. 622 (1979), are constitutionally required for
476 one-parent notification statutes.

477 (28) The Legislature finds, based on data obtained from
478 the Office of the State Courts Administrator for Florida for
479 calendar years 2006, 2007, and 2008, that judicial waivers of
480 minors petitioning to obtain abortions without parental
481 notification have been granted at an average rate of 95 percent,
482 rendering its Parental Notification Act of 2005 virtually
483 meaningless and ineffective at providing parents with notice of
484 their minor's intention to seek an abortion. The Legislature
485 finds that the ineffectiveness of its parental notification
486 statute is due primarily, if not entirely, on the inclusion of a
487 judicial bypass provision which may not be constitutionally
488 necessary.

489 (29) The Legislature also finds that the ex parte nature
490 of judicial bypass provisions in parental notification statutes
491 deprives parents of minors of their fundamental right regarding
492 the care, custody, upbringing, and control of their children
493 without due process of law.

494 (30) The Legislature finds that it has long been the
495 public policy of this state that minors under 16 years of age
496 cannot lawfully consent to sexual intercourse with another
497 person. The Legislature further finds that the fact that a minor
498 is under 16 years of age and pregnant is sufficient cause to
499 warrant further investigation by appropriate law enforcement
500 agencies or the Department of Children and Family Services into
501 the commission of a crime against the minor. The Legislature
502 finds that without the knowledge that their minor child is

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503 pregnant or is considering an abortion, parents may never learn
 504 of the fact that their minor child has been the victim of a
 505 crime and may forever lose the opportunity to report the crime
 506 to the proper authorities. The Legislature further finds that
 507 the present United States Supreme Court jurisprudence respecting
 508 parental notification statutes impedes the state's interest in
 509 prosecuting offenders committing sexual crimes against minors
 510 and facilitates the destruction of evidence in connection with
 511 such crimes.

512 (31) The Legislature urges the United States Supreme Court
 513 to overturn *Roe v. Wade*, 410 U.S. 113 (1973), and *Planned*
 514 *Parenthood of Southern Pennsylvania v. Casey*, 505 U.S. 833
 515 (1992), without delay and return this moral and political
 516 question back to the people to decide through their respective
 517 legislatures consistent with the principles of the Constitution
 518 of the United States as established and ordained by the people
 519 of the United States and consistent with the principles of a
 520 free society governed as a nation of laws and not as a nation of
 521 men.

522 Section 3. Section 390.011, Florida Statutes, is repealed.

523 Section 4. Section 390.01113, Florida Statutes, is created
 524 to read:

525 390.01113 Abortion unlawful; termination of pregnancies
 526 circumstances authorized.—

527 (1) DEFINITIONS.—As used in this section, the term:

528 (a) "Induced abortion" means a medically initiated
 529 termination of a human pregnancy with the intent to kill a human
 530 embryo or fetus which is not dying of natural causes. For

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531 purposes of this paragraph, the term "medically initiated"
532 refers to the ingestion or administration of pharmaceutical
533 abortifacients by any means, surgical procedures, or use of any
534 device or instrument, as well as any combination thereof.

535 (b) "Medical emergency" means a condition that, on the
536 basis of a physician's good faith clinical judgment, so
537 complicates the medical condition of a pregnant woman as to
538 necessitate the immediate termination of her pregnancy to avert
539 her death, or for which a delay in the termination of her
540 pregnancy will create serious risk of substantial and
541 irreversible impairment of a major bodily function or
542 unreasonably reduce the likelihood of successful treatment of a
543 life-threatening disease.

544 (c) "Patient" means the woman or minor upon whom an
545 abortion or termination of pregnancy is performed or induced.

546 (d) "Physician" means a physician licensed under chapter
547 458 or chapter 459 or a physician practicing medicine or
548 osteopathic medicine in the employment of the United States.

549 (e) "Termination of pregnancy" means the termination of a
550 human pregnancy under circumstances not prohibited by this
551 section.

552 (f) "Viability" means that stage of fetal development
553 when, in the judgment of a physician based on the particular
554 facts of the case before him or her and in light of the most
555 advanced medical technology and information available, there is
556 a reasonable probability of sustained survival of the unborn
557 child outside his or her mother's womb with or without
558 artificial support.

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559 (2) INDUCED ABORTION PROHIBITED.—

560 (a) Induced abortion for any purpose is unlawful. Any
561 person who induces, performs, attempts to perform, or assists
562 another in the performance of an induced abortion on another
563 person commits a felony of the first degree, punishable as
564 provided in s. 775.082, s. 775.083, or s. 775.084.

565 (b) Any person who during the course of performing an
566 induced abortion on another person inflicts serious bodily
567 injury on the person commits a felony of the first degree,
568 punishable by imprisonment for a term of years not exceeding
569 life as provided in s. 775.082, s. 775.083, or s. 775.084.

570 (c) Any person who during the course of performing an
571 induced abortion on another person inflicts serious bodily
572 injury on the person which results in the death of the person
573 commits a life felony, punishable as provided in s. 775.082, s.
574 775.083, or s. 775.084.

575 (3) OPERATING ABORTION SERVICES PROHIBITED.—A person who
576 operates any facility, business, or service from any location
577 within this state for the purpose of providing induced abortion
578 services commits a felony of the first degree, punishable by
579 imprisonment for a term of years not exceeding life as provided
580 in s. 775.082, s. 775.083, or s. 775.084.

581 (4) TERMINATION OF PREGNANCY.—A termination of pregnancy
582 may not be performed unless:

583 (a) Two physicians certify in writing to the fact that, to
584 a reasonable degree of medical certainty, the termination of
585 pregnancy is necessary to prevent the death of the pregnant
586 woman;

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587 (b) Two physicians certify in writing to the fact that, to
588 a reasonable degree of medical certainty, the termination of
589 pregnancy is necessary because to continue the pregnancy would
590 unreasonably reduce the likelihood of successful treatment of a
591 life-threatening disease of the pregnant woman; or

592 (c) A physician certifies in writing that a medical
593 emergency existed and another physician was not available for
594 consultation prior to the time necessary to perform the
595 termination of pregnancy. The physician's written certification
596 must clearly describe the medical emergency.

597 (5) PERFORMANCE BY PHYSICIAN REQUIRED.—No termination of
598 pregnancy may be performed at any time except by a physician.

599 (6) CONSENTS REQUIRED.—A termination of pregnancy may not
600 be performed or induced except with the voluntary and informed
601 written consent of the patient or, in the case of a mentally
602 incompetent patient, the voluntary and informed written consent
603 of her court-appointed guardian or, in the case of a minor
604 patient, notwithstanding s. 743.065, the voluntary informed
605 consent of the minor's parent or legal guardian.

606 (a) Except in the case of a medical emergency, consent to
607 a termination of pregnancy is voluntary and informed only if the
608 physician who is to perform the procedure or the referring
609 physician has, at a minimum, orally and in person, informed the
610 patient, or the court-appointed guardian if the patient is
611 mentally incompetent or a parent or guardian if the patient is a
612 minor, of:

613 1. The nature and risks of undergoing or not undergoing
614 the proposed procedure that a reasonable patient similarly

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615 situated may consider relevant to making an informed decision of
616 whether to terminate a pregnancy.

617 2. The medical risks to the patient and fetus of carrying
618 the pregnancy to term.

619
620 Nothing in this paragraph relieves a physician of his or her
621 duty to disclose any other material fact a reasonable patient
622 similarly situated might consider relevant to making an informed
623 decision regarding the termination of her pregnancy.

624 (b) In the event a medical emergency exists and a
625 physician cannot comply with the requirements for informed
626 consent, a physician may terminate a pregnancy if he or she has
627 obtained at least one corroborative medical opinion attesting to
628 the medical necessity for emergency medical procedures and to
629 the fact that, to a reasonable degree of medical certainty, the
630 continuation of the pregnancy would threaten the life of the
631 pregnant woman. In the event no second physician is available
632 for a corroborating opinion, the physician may proceed but shall
633 document reasons for the medical necessity in the patient's
634 medical records.

635 (c) Violation of this subsection by a physician
636 constitutes grounds for disciplinary action under s. 458.331 or
637 s. 459.015. Substantial compliance or reasonable belief that
638 complying with the requirements of informed consent would
639 threaten the life of the patient may be raised as a defense to
640 any action brought for a violation of this subsection.

641 (7) STANDARD OF MEDICAL CARE TO BE USED DURING VIABILITY.—

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642 (a) If a termination of pregnancy is performed while the
643 patient's fetus is viable, no person who performs or induces the
644 termination of pregnancy shall fail to use that degree of
645 professional skill, care, and diligence to preserve the life and
646 health of the fetus that such person would be required to
647 exercise in order to preserve the life and health of a fetus
648 intended to be born and not aborted. Notwithstanding the
649 provisions of this subsection, the woman's life shall constitute
650 an overriding and superior consideration to the concern for the
651 life of the fetus, and the woman's health shall constitute an
652 overriding and superior consideration to the concern for the
653 health of the fetus when such life or health concerns are in
654 conflict. For purposes of this subsection, health considerations
655 refer to medical judgment exercised in light of factors
656 exclusively regarding the physical well-being of the patient.

657 (b) Any physician who, once the matter of the fetus'
658 viability or nonviability has been determined within a
659 reasonable degree of medical probability, knowingly and
660 willfully misrepresents the gestational age or stage of fetal
661 development of a viable fetus in an entry into any medical
662 record and who fails to use the standard of care required under
663 paragraph (a) on any fetus determined to be viable commits a
664 felony of the first degree, punishable as provided in s.
665 775.082, s. 775.083, or s. 775.084.

666 (8) EXPERIMENTATION ON FETUS PROHIBITED; EXCEPTION.—No
667 person shall use any live fetus or live, premature infant for
668 any type of scientific, research, laboratory, or other kind of
669 experimentation prior to or subsequent to any termination of

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670 pregnancy procedure except as necessary to protect or preserve
671 the life and health of such fetus or premature infant.

672 (9) FETAL REMAINS.—Fetal remains shall be disposed of in a
673 sanitary and appropriate manner and in accordance with standard
674 health practices, as provided by rule of the Department of
675 Health. A person who fails to dispose of fetal remains in
676 accordance with department rules commits a misdemeanor of the
677 first degree, punishable as provided in s. 775.082 or s.
678 775.083.

679 (10) EXCLUSION FROM APPLICATION.— The provisions of this
680 section do not apply to the performance of a procedure that
681 terminates a pregnancy in order to deliver a live child or to
682 remove a dead or dying fetus whose demise was not the product of
683 an induced abortion.

684 (11) CIVIL ACTIONS REGARDING ABORTION; RELIEF.—

685 (a) Any person inducing, performing, or assisting in the
686 performance of an induced abortion prohibited under this section
687 is liable for damages as provided in paragraph (b). A cause of
688 action for damages under this subsection may be brought by the
689 patient or her spouse, if married, her estate if the patient is
690 deceased, or her parents or legal guardian if the patient is a
691 minor. Any waiver of liability for a person inducing,
692 performing, or assisting in the performance of an induced
693 abortion is void and unenforceable.

694 (b) In a civil action under this subsection, appropriate
695 relief includes:

696 1. Monetary damages for all injury or harm, psychological,
697 emotional, and physical, occasioned by the violation.

698 2. Damages equal to three times the cost of the induced
 699 abortion.

700 (c) Notwithstanding any other law, an action for damages
 701 under this subsection may be commenced within 30 years after the
 702 date of the performance of the induced abortion.

703 (12) ADOPTION ALTERNATIVE INFORMATION.—Any physician or
 704 authorized personnel of a medical facility authorized to treat a
 705 patient who learns that a pregnant woman treated by the
 706 physician or facility personnel wishes to obtain an induced
 707 abortion at the facility or that a woman treated by the
 708 physician or facility personnel has had a termination of
 709 pregnancy at the facility under circumstances where the fetus
 710 was born alive and survives and who does not wish to keep the
 711 child shall provide the woman with information concerning the
 712 availability of adoption for her unwanted child. Compliance with
 713 this subsection may be accomplished by providing the woman with
 714 the address and telephone number of the Office of Adoption and
 715 Child Protection within the Executive Office of the Governor and
 716 informing her of the existence of the statewide list of
 717 attorneys available to provide pro bono legal services for
 718 adoption maintained by that office.

719 (13) PENALTIES FOR CERTAIN VIOLATIONS.—Violation of
 720 subsection (4), subsection (7), or subsection (8) by a physician
 721 constitutes grounds for disciplinary action under s. 458.331 or
 722 s. 459.015.

723 (14) RULEMAKING AUTHORITY.—

724 (a) Except for subsection (9), the Agency for Health Care
 725 Administration may adopt rules pursuant to ss. 120.536(1) and

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726 120.54 to implement the provisions of this section. These rules
 727 shall be for the purpose of protecting the health and safety of
 728 women and unborn human life and for the purpose of securing
 729 compliance with the requirements of this section and to
 730 facilitate the enforcement of sanctions for those violations to
 731 which administrative penalties apply.

732 (b) The Department of Health may adopt rules pursuant to
 733 ss. 120.536(1) and 120.54 to implement the provisions of
 734 subsection (9).

735 Section 5. Section 390.0111, Florida Statutes, is
 736 repealed.

737 Section 6. Subsection (3) of section 743.065, Florida
 738 Statutes, is amended to read:

739 743.065 Unwed pregnant minor or minor mother; consent to
 740 medical services for minor or minor's child valid.—

741 ~~(3) Nothing in this act shall affect the provisions of s.~~
 742 ~~390.0111.~~

743 Section 7. Subsection (2) of section 765.113, Florida
 744 Statutes, is amended to read:

745 765.113 Restrictions on providing consent.—Unless the
 746 principal expressly delegates such authority to the surrogate in
 747 writing, or a surrogate or proxy has sought and received court
 748 approval pursuant to rule 5.900 of the Florida Probate Rules, a
 749 surrogate or proxy may not provide consent for:

750 (2) Withholding or withdrawing life-prolonging procedures
 751 from a pregnant patient prior to viability as described ~~defined~~
 752 in s. 390.01113(7) ~~390.0111(4)~~.

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- 753 Section 8. Section 390.0112, Florida Statutes, is
 754 repealed.
- 755 Section 9. Section 390.01114, Florida Statutes, is
 756 repealed.
- 757 Section 10. Section 390.01116, Florida Statutes, is
 758 amended to read:
- 759 390.01116 Waiver of notice petition; confidentiality.—When
 760 a minor petitions a circuit court for a waiver, as provided in
 761 s. 390.01118 ~~390.01114~~, of the notice requirements pertaining to
 762 a minor seeking to terminate her pregnancy, any information in a
 763 record held by the circuit court or an appellate court which
 764 could be used to identify the minor is confidential and exempt
 765 from s. 119.07(1) and s. 24(a), Art. I of the State
 766 Constitution.
- 767 Section 11. Section 390.012, Florida Statutes, is
 768 repealed.
- 769 Section 12. Section 390.014, Florida Statutes, is
 770 repealed.
- 771 Section 13. Section 390.015, Florida Statutes, is
 772 repealed.
- 773 Section 14. Section 390.018, Florida Statutes, is
 774 repealed.
- 775 Section 15. Section 390.025, Florida Statutes, is
 776 repealed.
- 777 Section 16. Section 782.30, Florida Statutes, is repealed.
- 778 Section 17. Section 782.32, Florida Statutes, is repealed.
- 779 Section 18. Section 782.34, Florida Statutes, is repealed.
- 780 Section 19. Section 782.36, Florida Statutes, is repealed.

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781 Section 20. Subsection (6) and paragraph (c) of subsection
782 (7) of section 39.001, Florida Statutes, are amended to read:

783 39.001 Purposes and intent; personnel standards and
784 screening.—

785 (6) LEGISLATIVE INTENT FOR THE PREVENTION OF ABUSE,
786 ABANDONMENT, AND NEGLECT OF CHILDREN; ADOPTION SERVICES FOR
787 WOMEN WITH UNWANTED PREGNANCIES.—The incidence of known child
788 abuse, abandonment, and neglect has increased rapidly in recent
789 ~~over the past 5~~ years. The impact that abuse, abandonment, or
790 neglect has on the victimized child, siblings, family structure,
791 and inevitably on all citizens of the state has caused the
792 Legislature to determine that the prevention of child abuse,
793 abandonment, and neglect shall be a priority of this state. In
794 addition, to provide assistance for women with unwanted
795 pregnancies who would have selected abortion, if lawful in this
796 state, rather than adoption as an alternative for their unborn
797 child, the Legislature has determined to offer such women,
798 through the provision of volunteer or pro bono legal services,
799 legal representation to accomplish an appropriate adoptive
800 placement for such newborn child. To further these ends ~~this~~
801 ~~end~~, it is the intent of the Legislature that an Office of
802 Adoption and Child Protection be established.

803 (7) OFFICE OF ADOPTION AND CHILD PROTECTION.—

804 (c) The office is authorized and directed to:

805 1. Oversee the preparation and implementation of the state
806 plan established under subsection (8) and revise and update the
807 state plan as necessary.

808 2. Provide for or make available continuing professional

809 education and training in the prevention of child abuse and
 810 neglect.

811 3. Work to secure funding in the form of appropriations,
 812 gifts, and grants from the state, the Federal Government, and
 813 other public and private sources in order to ensure that
 814 sufficient funds are available for the promotion of adoption,
 815 support of adoptive families, and child abuse prevention
 816 efforts.

817 4. Make recommendations pertaining to agreements or
 818 contracts for the establishment and development of:

819 a. Programs and services for the promotion of adoption,
 820 support of adoptive families, and prevention of child abuse and
 821 neglect.

822 b. Training programs for the prevention of child abuse and
 823 neglect.

824 c. Multidisciplinary and discipline-specific training
 825 programs for professionals with responsibilities affecting
 826 children, young adults, and families.

827 d. Efforts to promote adoption.

828 e. Postadoptive services to support adoptive families.

829 5. Monitor, evaluate, and review the development and
 830 quality of local and statewide services and programs for the
 831 promotion of adoption, support of adoptive families, and
 832 prevention of child abuse and neglect and shall publish and
 833 distribute an annual report of its findings on or before January
 834 1 of each year to the Governor, the Speaker of the House of
 835 Representatives, the President of the Senate, the head of each
 836 state agency affected by the report, and the appropriate

837 substantive committees of the Legislature. The report shall
 838 include:

839 a. A summary of the activities of the office.

840 b. A summary of the adoption data collected and reported
 841 to the federal Adoption and Foster Care Analysis and Reporting
 842 System (AFCARS) and the federal Administration for Children and
 843 Families.

844 c. A summary of the child abuse prevention data collected
 845 and reported to the National Child Abuse and Neglect Data System
 846 (NCANDS) and the federal Administration for Children and
 847 Families.

848 d. A summary detailing the timeliness of the adoption
 849 process for children adopted from within the child welfare
 850 system.

851 e. Recommendations, by state agency, for the further
 852 development and improvement of services and programs for the
 853 promotion of adoption, support of adoptive families, and
 854 prevention of child abuse and neglect.

855 f. Budget requests, adoption promotion and support needs,
 856 and child abuse prevention program needs by state agency.

857 6. Work with the direct-support organization established
 858 under s. 39.0011 to receive financial assistance.

859 7. Establish and manage a statewide list of attorneys
 860 providing pro bono adoption services for women with unwanted
 861 pregnancies who would have selected abortion, if lawful in this
 862 state, rather than adoption.

863 8. Have deposited, directed, and budgeted in the full
 864 amount for its use, in addition to funds that would have or are

865 otherwise budgeted for it, all moneys received by or otherwise
 866 awarded to the state from the Federal Government, the United
 867 States Treasury, or any other federal agency as a result of
 868 efforts made by the office.

869 Section 21. Section 390.01117, Florida Statutes, is
 870 created to read:

871 390.01117 Termination of pregnancies.-

872 (1) APPLICATION.-This section is superseded by s.
 873 390.01113 and shall become effective only in the event that s.
 874 390.01113 is declared unconstitutional or has its enforcement
 875 enjoined. In the event this section becomes effective, it shall
 876 supersede s. 390.0111.

877 (2) DEFINITIONS.-As used in this section and elsewhere in
 878 this chapter, the term:

879 (a) "Abortion" means the termination of human pregnancy
 880 with an intention other than to produce a live birth or to
 881 remove a fetus which died of natural causes.

882 (b) "Abortion clinic" or "clinic" means any facility in
 883 which abortions are performed. The term does not include:

884 1. A hospital; or

885 2. A physician's office, provided that the office is not
 886 used primarily for the performance of abortions.

887 (c) "Agency" means the Agency for Health Care
 888 Administration.

889 (d) "Department" means the Department of Health.

890 (e) "Hospital" means a facility as defined in s.
 891 395.002(12) and licensed under chapter 395 and part II of
 892 chapter 408.

893 (f) "Physician" means a physician licensed under chapter
 894 458 or chapter 459 or a physician practicing medicine or
 895 osteopathic medicine in the employment of the United States.

896 (g) "Viability" means that stage of fetal development
 897 when, in the judgment of the physician based on the particular
 898 facts of the case before him or her and in light of the most
 899 advanced medical technology and information available, there is
 900 a reasonable probability of sustained survival of the unborn
 901 child outside his or her mother's womb with or without
 902 artificial support.

903 (3) TERMINATION AFTER VIABILITY PROHIBITED; EXCEPTION.—No
 904 termination of pregnancy shall be performed on any human being
 905 when it has been determined, in accordance with subsection (4),
 906 that the fetus is viable unless:

907 (a) Two physicians certify in writing to the fact that, to
 908 a reasonable degree of medical certainty, the termination of
 909 pregnancy is necessary to prevent the death of the pregnant
 910 woman or avert a significant risk to her physical health;

911 (b) Two physicians certify in writing to the fact that, to
 912 a reasonable degree of medical certainty, the termination of
 913 pregnancy is necessary because to continue the pregnancy would
 914 unreasonably reduce the likelihood of successful treatment of a
 915 life-threatening disease of the pregnant woman; or

916 (c) The physician certifies in writing to the medical
 917 necessity for legitimate emergency medical procedures for the
 918 termination of pregnancy and another physician is not available
 919 for consultation. The physician's written certification must
 920 clearly describe the medical emergency.

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921 (4) DETERMINATION OF VIABILITY.—No termination of
922 pregnancy may be induced or performed on any woman who is in the
923 23rd week of pregnancy or later without first obtaining an
924 ultrasound from a physician to determine the stage of fetal
925 development. The physician shall estimate as accurately as
926 possible the stage of fetal development and shall indicate on
927 the patient's medical records the gestational age, length and
928 weight, and lung maturity of the fetus. The physician shall also
929 indicate on the patient's medical records whether, within a
930 reasonable degree of medical probability, the fetus is viable.
931 The determination of viability and the performance of the
932 ultrasound required under this subsection may not be done by a
933 physician who provides reproductive health services at an
934 abortion clinic.

935 (5) STANDARD OF MEDICAL CARE TO BE USED DURING VIABILITY.—

936 (a) A termination of pregnancy involving a viable fetus,
937 when not prohibited in accordance with subsection (3), must be
938 performed in a hospital or other medical facility capable of
939 providing lifesaving or life-sustaining medical services to the
940 viable fetus.

941 (b) If a termination of pregnancy is performed while the
942 patient's fetus is viable, no person who performs or induces the
943 termination of pregnancy shall fail to use that degree of
944 professional skill, care, and diligence to preserve the life and
945 health of the fetus which such person would be required to
946 exercise in order to preserve the life and health of any fetus
947 intended to be born and not aborted. Notwithstanding the
948 provisions of this subsection, the woman's life shall constitute

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949 an overriding and superior consideration to the concern for the
950 life of the fetus, and the woman's health shall constitute an
951 overriding and superior consideration to the concern for the
952 health of the fetus when such life or health concerns are in
953 conflict. For purposes of this section, health considerations
954 refer to medical judgment exercised in light of factors
955 exclusively regarding the physical well-being of the patient.
956 Violation of this subsection by a physician constitutes grounds
957 for disciplinary action under s. 458.331 or s. 459.015.

958 (c) Any physician who, once the matter of the fetus'
959 viability or nonviability has been determined within a
960 reasonable degree of medical probability, knowingly and
961 willfully misrepresents the gestational age or stage of fetal
962 development of a viable fetus in an entry into any medical
963 record and who fails to use the standard of care required under
964 paragraph (b) on any fetus determined to be viable commits a
965 felony of the first degree, punishable as provided in s.
966 775.082, s. 775.083, or s. 775.084.

967 (6) PERFORMANCE BY PHYSICIAN REQUIRED.—No termination of
968 pregnancy may be performed at any time except by a physician.

969 (7) CONSENTS REQUIRED.—A termination of pregnancy may not
970 be performed or induced except with the voluntary and informed
971 written consent of the pregnant woman or, in the case of a
972 mentally incompetent pregnant woman, the voluntary and informed
973 written consent of her court-appointed guardian or, in the case
974 of a pregnant minor, notwithstanding s. 743.065, the voluntary
975 informed consent of the minor's parent or guardian.

976 (a) Except in the case of a medical emergency, consent to

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977 a termination of pregnancy is voluntary and informed only if:

978 1. The physician who is to perform the procedure or the
979 referring physician has, at a minimum, orally and in person,
980 informed the pregnant woman, or the court-appointed guardian if
981 the pregnant woman is mentally incompetent or a parent or
982 guardian in the case of a pregnant minor, of:

983 a. The nature and risks of undergoing or not undergoing
984 the proposed procedure that a reasonable patient similarly
985 situated may consider relevant to making an informed decision of
986 whether to terminate a pregnancy.

987 b. The probable gestational age of the fetus at the time
988 the termination of pregnancy is to be performed.

989 c. The medical risks to the woman and fetus of carrying
990 the pregnancy to term.

991 d. If an ultrasound has been performed and it reveals the
992 sex of the fetus, she shall be advised of the fact that the sex
993 of the fetus has been determined. The sex of the fetus may be
994 disclosed only upon the request of the pregnant woman.

995 e. All other factors, physical, emotional, psychological,
996 and familial, relevant to the short-term and long-term well-
997 being of the patient, including emotional and psychological
998 impact relating to the loss of the life of a child.

999 2. Printed materials prepared and provided by the
1000 department have been provided to the pregnant woman, if she
1001 chooses to view these materials, including:

1002 a. A description of the fetus.

1003 b. A list of agencies that offer alternatives to
1004 terminating the pregnancy.

1005 c. Detailed information on the availability of medical
 1006 assistance benefits for prenatal care, childbirth, and neonatal
 1007 care.

1008 3. The woman acknowledges in writing, before the
 1009 termination of pregnancy, that the information required to be
 1010 provided under this subsection has been provided.

1011
 1012 Nothing in this paragraph relieves a physician of his or her
 1013 duty to disclose any other material fact a reasonable patient
 1014 similarly situated might consider relevant to making an informed
 1015 decision regarding the termination of her pregnancy.

1016 (b) In the event a medical emergency exists and a
 1017 physician cannot comply with the requirements for informed
 1018 consent, a physician may terminate a pregnancy if he or she has
 1019 obtained at least one corroborative medical opinion attesting to
 1020 the medical necessity for emergency medical procedures and to
 1021 the fact that, to a reasonable degree of medical certainty, the
 1022 continuation of the pregnancy would threaten the life of the
 1023 pregnant woman. In the event no second physician is available
 1024 for a corroborating opinion, the physician may proceed but shall
 1025 document reasons for the medical necessity in the patient's
 1026 medical records.

1027 (c) Violation of this subsection by a physician
 1028 constitutes grounds for disciplinary action under s. 458.331 or
 1029 s. 459.015. Substantial compliance or reasonable belief that
 1030 complying with the requirements of informed consent would
 1031 threaten the life or health of the patient may be raised as a
 1032 defense to any action brought under this subsection.

1033 (8) EXPERIMENTATION ON FETUS PROHIBITED; EXCEPTION.—No
 1034 person shall use any live fetus or live, premature infant for
 1035 any type of scientific, research, laboratory, or other kind of
 1036 experimentation prior to or subsequent to any termination of
 1037 pregnancy procedure except as necessary to protect or preserve
 1038 the life and health of such fetus or premature infant. Violation
 1039 of this subsection by a physician constitutes grounds for
 1040 disciplinary action under s. 458.331 or s. 459.015.

1041 (9) FETAL REMAINS.—Fetal remains shall be disposed of in a
 1042 sanitary and appropriate manner and in accordance with standard
 1043 health practices, as provided by rule of the Department of
 1044 Health. A person who fails to dispose of fetal remains in
 1045 accordance with department rules commits a misdemeanor of the
 1046 first degree, punishable as provided in s. 775.082 or s.
 1047 775.083.

1048 (10) REFUSAL TO PARTICIPATE IN TERMINATION PROCEDURE.—
 1049 Nothing in this section shall require any hospital or any person
 1050 to participate in the termination of a pregnancy, nor shall any
 1051 hospital or any person be liable for such refusal. No person who
 1052 is a member of, or associated with, the staff of a hospital, nor
 1053 any employee of a hospital or physician in which or by whom the
 1054 termination of a pregnancy has been authorized or performed, who
 1055 states an objection to such procedure on moral or religious
 1056 grounds shall be required to participate in the procedure which
 1057 will result in the termination of pregnancy. The refusal of any
 1058 such person or employee to participate shall not form the basis
 1059 for any disciplinary or other recriminatory action against such
 1060 person.

1061 (11) EXCLUSION FROM APPLICATION.—The provisions of this
 1062 section do not apply to the performance of a procedure that
 1063 terminates a pregnancy in order to deliver a live child or to
 1064 remove a dead or dying fetus whose demise was not the product of
 1065 an induced abortion.

1066 (12) PENALTIES FOR VIOLATION.—

1067 (a) Any person who willfully induces, performs, or assists
 1068 in a termination of pregnancy procedure on another person in
 1069 violation of the requirements of subsection (4), paragraph
 1070 (5) (a), or subsection (6) commits a felony of the second degree,
 1071 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

1072 (b) Any person who willfully induces, performs, or assists
 1073 in a termination of pregnancy procedure on another person in
 1074 violation of subsection (3) commits a felony of the first
 1075 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 1076 775.084.

1077 (c) Any person who willfully induces, performs, or assists
 1078 in a termination of pregnancy procedure on another person in
 1079 violation of subsection (3) which results in serious bodily
 1080 injury to the person commits a felony of the first degree,
 1081 punishable by imprisonment for a term of years not exceeding
 1082 life as provided in s. 775.082, s. 775.083, or s. 775.084.

1083 (d) Any person who induces, performs, or assists in a
 1084 termination of pregnancy procedure on another person in
 1085 violation of the provisions of this section which results in the
 1086 death of the person commits a life felony, punishable as
 1087 provided in s. 775.082, s. 775.083, or s. 775.084.

1088 (13) CIVIL ACTIONS REGARDING ABORTION; RELIEF.—

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1089 (a) Any person inducing, performing, or assisting in the
 1090 performance of an induced abortion is liable for damages as
 1091 provided in paragraph (b). A cause of action for damages under
 1092 this subsection may be brought by the patient or her spouse, if
 1093 married, her estate if the patient is deceased, or her parents
 1094 or legal guardian if the patient is a minor. Any waiver of
 1095 liability for a person inducing, performing, or assisting in the
 1096 performance of an induced abortion is void and unenforceable.

1097 (b) In a civil action under this subsection, appropriate
 1098 relief includes:

1099 1. Monetary damages for all injury or harm, psychological,
 1100 emotional, and physical, occasioned by the abortion or by the
 1101 failure to comply with the consent requirements of subsection
 1102 (7).

1103 2. Damages equal to three times the cost of the induced
 1104 abortion.

1105 (c) Notwithstanding any other law, an action for damages
 1106 under this subsection may be commenced within 30 years after the
 1107 date of the performance of the abortion.

1108 (14) ADOPTION ALTERNATIVE INFORMATION.—Any physician or
 1109 authorized personnel of a medical facility who learns that a
 1110 pregnant woman treated by the physician or facility personnel
 1111 wishes to obtain an induced abortion of a viable fetus at the
 1112 facility under circumstances prohibited by this section or that
 1113 a woman treated by the physician or facility personnel has had a
 1114 termination of pregnancy at the facility under circumstances
 1115 where the fetus was born alive and survives and who does not
 1116 wish to keep the child shall provide the woman with information

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1117 concerning the availability of adoption for her unwanted child.
 1118 Compliance with this subsection may be accomplished by providing
 1119 the woman with the address and telephone number of the Office of
 1120 Adoption and Child Protection within the Executive Office of the
 1121 Governor and informing her of the existence of the statewide
 1122 list of attorneys available to provide pro bono legal services
 1123 for adoption maintained by that office.

1124 (15) RULEMAKING AUTHORITY.—Except for subsection (9), the
 1125 Agency for Health Care Administration may adopt rules pursuant
 1126 to ss. 120.536(1) and 120.54 to implement the provisions of this
 1127 section. These rules shall be for the purpose of protecting the
 1128 health and safety of women and unborn human life. These rules
 1129 are also for the purpose of securing compliance with the
 1130 requirements of this section and to facilitate the enforcement
 1131 of sanctions for those violations to which administrative
 1132 penalties apply. The Department of Health may adopt rules
 1133 pursuant to ss. 120.536(1) and 120.54 to implement the
 1134 provisions of subsection (9). The rulemaking authority granted
 1135 in this subsection is supplemental to the rulemaking authority
 1136 provided in s. 390.012.

1137 Section 22. If section 21 of this act, creating s.
 1138 390.01117, Florida Statutes, is declared unconstitutional or has
 1139 its enforcement enjoined, the repeal of s. 390.011, Florida
 1140 Statutes, in section 3 of this act, and the provisions of
 1141 section 20 of this act, amending section 39.001, Florida
 1142 Statutes, shall be deemed to be void and of no effect, it being
 1143 the legislative intent that these provisions would not have been
 1144 adopted had the provisions of section 4 of this act, creating s.

1145 390.01113, Florida Statutes, or section 21 of this act, creating
 1146 s. 390.01117, Florida Statutes, not been included.

1147 Section 23. Section 390.01118, Florida Statutes, is
 1148 created to read:

1149 390.01118 Parental notice of abortion.—

1150 (1) SECTION SUPERSEDED.—This section is superseded by s.
 1151 390.01113 and shall become effective only in the event that s.
 1152 390.01113 is declared unconstitutional or has its enforcement
 1153 enjoined.

1154 (2) LEGISLATIVE FINDINGS.—

1155 (a) The Legislature enacted s. 390.01114, the "Parental
 1156 Notice of Abortion Act," in 2005 to implement s. 22, Art. X of
 1157 the State Constitution. Section 390.01114(6) required annual
 1158 reporting to the Governor, the President of the Senate, and the
 1159 Speaker of the House of Representatives on the number of
 1160 petitions filed seeking a judicial waiver of the act's notice
 1161 requirements and on the timing and manner of disposal of such
 1162 petitions.

1163 (b) Data collected in compliance with the reporting
 1164 requirements of s. 390.01114(6) revealed that in 2006, 2007, and
 1165 2008 petitions seeking judicial waiver of that act's
 1166 notification requirements were granted in over 94 percent of the
 1167 cases in which a petition for judicial waiver was filed.

1168 (c) The Legislature finds that human life is precious and
 1169 that a decision to have an abortion is among the most difficult
 1170 decisions a person may make during her lifetime and one which a
 1171 minor should not make alone. The Legislature further finds that
 1172 s. 22, Art. X of the State Constitution embodies a public policy

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1173 to protect the fundamental right of parents in the care,
1174 custody, and management of their minor children which includes
1175 providing an unmarried pregnant minor help and advice in making
1176 the very important decision of whether or not to bear a child.

1177 (3) APPLICATION.—This section supersedes s. 390.01114 in
1178 its entirety unless it is found unconstitutional, in which case
1179 s. 390.01114 shall apply in lieu of this section.

1180 (4) DEFINITIONS.—As used in this section, the term:

1181 (a) "Actual notice" means notice that is given directly,
1182 in person, or by telephone to a parent or legal guardian of a
1183 minor by a physician at least 48 hours before the inducement or
1184 performance of an abortion and documented in the minor's medical
1185 record.

1186 (b) "Child abuse" means aggravated child abuse, child
1187 abuse, or neglect of a child, as defined in s. 827.03.

1188 (c) "Constructive notice" means notice that is given in
1189 writing, signed by the physician, and mailed at least 72 hours
1190 before the inducement or performance of the abortion to the last
1191 known address of the parent or legal guardian of the minor by
1192 certified mail, return receipt requested, and delivery
1193 restricted to the parent or legal guardian. After the 72 hours
1194 have passed, delivery is deemed to have occurred.

1195 (d) "Family member" means a parent, stepparent, sibling,
1196 persons related by blood or marriage, persons who are presently
1197 residing together as if a family or who have resided together in
1198 the past as if a family, and persons who are parents of a child
1199 in common regardless of whether they have been married.

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1200 (e) "Medical emergency" means a condition that, on the
 1201 basis of a physician's good faith clinical judgment, so
 1202 complicates the medical condition of a pregnant woman as to
 1203 necessitate the immediate termination of her pregnancy to avert
 1204 her death, or for which a delay in the termination of her
 1205 pregnancy will create serious risk of substantial and
 1206 irreversible impairment of a major bodily function.

1207 (f) "Minor" means a person under the age of 18 years.

1208 (g) "Sexual activity" has the same meaning as provided in
 1209 s. 800.04.

1210 (h) "Sexual exploitation" means allowing, encouraging, or
 1211 forcing the minor to engage in prostitution as defined in s.
 1212 796.07 or a sexual performance as defined in s. 827.071.

1213 (i) "Unfit" means that the parents or legal guardian
 1214 abused, abandoned, or neglected the minor, as those terms are
 1215 defined in s. 39.01.

1216 (5) NOTIFICATION REQUIRED.—

1217 (a) Actual notice shall be provided by the physician
 1218 performing or inducing the abortion or by a referring physician
 1219 before the performance or inducement of the abortion on a minor.
 1220 Regardless of whether actual notice is provided by the physician
 1221 performing or inducing the abortion or by the referring
 1222 physician, the physician performing or inducing the abortion
 1223 must affirm that actual notice has been provided. Before
 1224 affirming that actual notice has been provided, the physician
 1225 who performs or induces the abortion must receive a written
 1226 statement of the referring physician certifying that the
 1227 referring physician has given notice. If actual notice is not

1228 possible after a reasonable effort has been made, the physician
 1229 performing or inducing the abortion or the referring physician
 1230 must give constructive notice. Notice given under this
 1231 subsection by the physician performing or inducing the abortion
 1232 must include the name and address of the facility providing the
 1233 abortion and the name of the physician providing notice. Notice
 1234 given under this subsection by a referring physician must
 1235 include the name and address of the facility where he or she is
 1236 referring the minor and the name of the physician providing
 1237 notice. If actual notice is provided by telephone, the physician
 1238 must actually speak with the parent or legal guardian and must
 1239 record in the minor's medical file the name of the parent or
 1240 legal guardian provided notice, the phone number dialed, and the
 1241 date and time of the call. If constructive notice is given, the
 1242 physician must document that notice by placing copies of any
 1243 document related to the constructive notice, including, but not
 1244 limited to, a copy of the letter and the return receipt, in the
 1245 minor's medical record. If actual notice is provided by
 1246 telephone, the physician shall also send written notice
 1247 confirming the actual notice provided by telephone to the last
 1248 known address of the parent or legal guardian of the minor by
 1249 certified mail, return receipt requested, and delivery
 1250 restricted to the parent or legal guardian within 48 hours after
 1251 performing the abortion.

1252 (b) The notice required in paragraph (a) is not required
 1253 if:

1254 1. In the physician's good faith clinical judgment a
 1255 medical emergency exists and there is insufficient time for the

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1256 attending physician to comply with the notification requirements
1257 of this subsection. In the event an abortion is performed as the
1258 result of a medical emergency, the physician must document in
1259 writing in the minor's medical records the nature of the medical
1260 emergency that existed which preceded or necessitated the
1261 performance of the abortion and the reason the abortion
1262 procedure was necessary to avert the minor's death or otherwise
1263 avert a serious risk of substantial and irreversible impairment
1264 of a major bodily function of the minor. Subsequent to an
1265 abortion performed on a minor due to a medical emergency, the
1266 physician shall notify the minor's parent or legal guardian of
1267 the abortion within 24 hours after the abortion procedure. The
1268 physician performing the abortion who treated the minor's
1269 medical emergency shall provide the parent or legal guardian
1270 with a copy of the medical record documenting the reason the
1271 abortion was necessary as described in this subparagraph if
1272 requested by the parent or legal guardian. The Legislature finds
1273 that abortions performed pursuant to this exception are
1274 performed solely due to exigent circumstances arising from a
1275 bona fide medical emergency and are not performed on minors
1276 exercising a personal choice to obtain an abortion without
1277 parental notice. Therefore, no provision for waiver of the post-
1278 abortion parental notification required under this subparagraph
1279 is necessary, appropriate, or authorized.

1280 2. The minor obtains a waiver of the notification
1281 requirement pursuant to subsection (6) and provides the
1282 attending physician with a certified copy of the court order

1283 granting the petition for waiver issued pursuant to that
 1284 subsection.

1285 (c) Violation of this subsection by a physician
 1286 constitutes grounds for disciplinary action under s. 458.331 or
 1287 s. 459.015.

1288 (6) JUDICIAL WAIVER OF NOTICE OF PARENT OR GUARDIAN.—

1289 (a) The Legislature finds that judicial waiver proceedings
 1290 are conducted in a nonadversarial manner and that frequently the
 1291 only person providing testimonial evidence to the court is the
 1292 minor seeking the judicial waiver. The Legislature further finds
 1293 that while the parent or legal guardian has a fundamental
 1294 liberty interest in the rearing and raising of his or her
 1295 children, that interest is not represented in these proceedings.
 1296 The Legislature finds that the United States Supreme Court has
 1297 approved parental notification statutes which provide for ex
 1298 parte hearings without addressing the deprivation of the
 1299 fundamental liberty interest of fit parents to rear and raise
 1300 their children. This Legislature therefore accommodates such
 1301 waiver proceedings in this subsection. The Legislature urges the
 1302 United States Supreme Court to carefully reexamine the
 1303 governmental intrusion into the parent-child relationship of
 1304 such bypass provisions and the ongoing and routine denial of the
 1305 fundamental liberty interest of parents without due process of
 1306 law that its current jurisprudence has condoned but not
 1307 specifically addressed with respect to one-parent notification
 1308 statutes.

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1309 (b) A minor may petition the circuit court in which she
1310 resides for a waiver of the notice requirements of subsection
1311 (5) under any of the following circumstances:

1312 1. The minor is or has been married or has had the
1313 disability of nonage removed under s. 743.015 or a similar
1314 statute of another state, and the minor has provided to the
1315 court a certified copy of the marriage certificate, divorce
1316 decree, or court order showing removal of disability of nonage.
1317 A marriage annulment does not satisfy this exception to the
1318 notice requirements of subsection (5).

1319 2. The minor's parents are or legal guardian is currently
1320 unaware of the pregnancy, and the minor or her sibling has
1321 previously been the victim of child abuse by a parent or legal
1322 guardian with whom she currently resides, regardless of whether
1323 the parent or legal guardian has been previously charged or
1324 convicted of child abuse.

1325 3. The minor's pregnancy was the result of sexual activity
1326 with a family member or sexual exploitation by a family member.

1327 4. It is in the minor's best interest to have an abortion
1328 without first seeking the advice and support of her parents or
1329 legal guardian. In making this determination there is a
1330 rebuttable presumption that it is in the minor's best interest
1331 to have the support and advice of her parents or legal guardian
1332 when deciding whether to have an abortion. The minor has the
1333 burden of overcoming the presumption by clear and convincing
1334 evidence that her parents are or legal guardian is unfit to
1335 offer advice, support, or guidance to the minor regarding the
1336 best course of action for her pregnancy. A finding that a

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1337 minor's parents are or legal guardian is unfit may not be based
1338 solely on the testimony of the minor seeking the abortion. If
1339 the court finds the parents or legal guardian unfit under this
1340 paragraph, it must set forth specific findings of fact in
1341 support of that conclusion.

1342 5. From the date of filing the petition, the minor is 190
1343 days or less from reaching 18 years of age and has demonstrated
1344 that she is sufficiently mature to decide whether to have an
1345 abortion without any advice, support, or guidance from her
1346 parents or legal guardian. In determining whether the minor is
1347 sufficiently mature, the court must find that the following
1348 criteria have been proven:

1349 a. That neither of the minor's parents nor her legal
1350 guardian is currently aware of the pregnancy.

1351 b. That the minor understands the consequences of her
1352 decision to her and her unborn child.

1353 c. That the minor has given thorough and mature
1354 consideration of the alternatives to abortion.

1355 d. That the minor understands that the decision to have an
1356 abortion once acted upon is irrevocable and terminates a human
1357 life.

1358 e. That the decision of the minor to seek an abortion
1359 without notification to her parents or legal guardian is not the
1360 result of improper or undue influence of another person. For
1361 purposes of this sub-subparagraph, improper or undue influence
1362 may be found in circumstances, including, but not limited to,
1363 where another person who stands to monetarily benefit from the
1364 performance of an abortion has encouraged the minor's decision

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1365 to have an abortion or discouraged the minor from considering
1366 alternatives, or any circumstance where there is a reasonable
1367 probability that, absent the influence of another person, the
1368 minor would not be seeking an abortion or seeking to avoid
1369 parental involvement in her decision.

1370 (c) The court shall appoint a guardian ad litem for a
1371 minor seeking a waiver under this subsection. The guardian ad
1372 litem shall maintain the confidentiality of the proceedings. The
1373 circuit court shall appoint legal counsel for a minor seeking a
1374 waiver under this subsection upon her request and at no cost.

1375 (d) Court proceedings under this subsection must be given
1376 precedence over all other pending matters as necessary to ensure
1377 that the court reaches a decision promptly. The court shall
1378 conduct a hearing, rule, and issue written findings of fact and
1379 conclusions of law within 48 hours, excluding Saturdays and
1380 Sundays, after the petition is filed, except that the 48-hour
1381 limitation may be extended at the request of the minor. The
1382 chief judge of the circuit shall be responsible for ensuring the
1383 assignment of the petition to a judge capable of complying with
1384 the time requirements of this paragraph. Failure of the assigned
1385 judge to rule within 48 hours shall not constitute an order
1386 granting or denying the petition but may be considered
1387 nonfeasance in office. Any petition not ruled upon within the
1388 48-hour period shall be immediately forwarded to the chief judge
1389 of the circuit who shall issue a ruling within 24 hours after
1390 the expiration of the 48-hour period. The chief judge of the
1391 circuit shall report to the Judicial Qualifications Commission
1392 and to the Speaker of the House of Representatives and the

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1393 President of the Senate the name of any judge assigned to a
1394 petition who fails to rule within the 48-hour period required
1395 under this paragraph.

1396 (e) The court may receive evidence on any issue of fact
1397 necessary to rule on the petition and may on its own motion
1398 examine and review public records, records of the Comprehensive
1399 Case Information System, and any other records which may be
1400 judicially noticed under s. 90.202. If the court finds that the
1401 minor has demonstrated by clear and convincing evidence that she
1402 qualifies for a waiver under paragraph (b), the court shall
1403 issue an order granting the petition for waiver. In cases where
1404 the waiver is granted pursuant to subparagraph (b)3., the order
1405 granting the petition shall include a finding that the minor is
1406 a victim of sexual activity with a family member or sexual
1407 exploitation by a family member. In cases where the court grants
1408 the petition pursuant to subparagraph (b)2. or subparagraph
1409 (b)3., the court shall forward a copy of such order to the
1410 Department of Children and Family Services. If the court finds
1411 that the minor has failed to establish her qualification for a
1412 waiver under paragraph (b) by clear and convincing evidence, the
1413 court shall deny the petition. All orders issued pursuant to
1414 this subsection shall indicate the minor's age.

1415 (f) A court that conducts proceedings under this
1416 subsection shall provide for a written transcript of all
1417 testimony and proceedings and issue written and specific factual
1418 findings and legal conclusions supporting its decision and shall
1419 order that a confidential record of the evidence and the judge's

1420 findings and conclusions be maintained as required under s.
 1421 390.01116.

1422 (g) An expedited confidential appeal shall be available,
 1423 as the Supreme Court provides by rule, to any minor denied a
 1424 waiver pursuant to this subsection.

1425 (h) No filing fees or court costs shall be required of any
 1426 pregnant minor who petitions a court for a waiver of parental
 1427 notification under this subsection at the trial or the appellate
 1428 level.

1429 (i) No county shall be obligated to pay the salaries,
 1430 costs, or expenses of any counsel appointed by the court under
 1431 this subsection.

1432 (7) REPORT.—The Supreme Court, through the Office of the
 1433 State Courts Administrator, shall report by February 1 of each
 1434 year to the Governor, the President of the Senate, and the
 1435 Speaker of the House of Representatives on the number of
 1436 petitions filed under subsection (6) for the preceding year and
 1437 the timing and manner of disposal of the petitions by each
 1438 circuit court.

1439 Section 24. If section 4 of this act, creating s.
 1440 390.01113, Florida Statutes, is declared unconstitutional or has
 1441 its enforcement enjoined, the statutory repeals and amendments
 1442 contained in sections 5 through 19 of this act shall be deemed
 1443 to be void and of no effect, and the text of any amended
 1444 provisions shall revert to that in existence on the effective
 1445 date of this act, except that any amendments to such text
 1446 enacted other than by this act shall be preserved and continue
 1447 to operate, it being the legislative intent that these

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1448 provisions would not have been adopted had the provisions of
1449 section 4 of this act, creating s. 390.01113, Florida Statutes,
1450 not been included.

1451 Section 25. It is the intent of the Legislature that if
1452 any provisions of this act are held invalid, such invalidity
1453 shall not affect the validity of section 2 of this act, creating
1454 s. 390.0001, Florida Statutes, and to this end section 2 of this
1455 act, creating s. 390.0001, Florida Statutes, is severable from
1456 all other provisions of this act.

1457 Section 26. This act shall take effect July 1, 2010.