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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/07/11

SPONSOR Sharer LAST UPDATED \_\_\_\_\_ HB 229

SHORT TITLE Parental Notice of Abortion Act SB \_\_\_\_\_

ANALYST Hanika-Ortiz

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY11	FY12	FY13		
	\$5.0	\$5.0	Recurring	Various

(Parenthesis ( ) Indicate Revenue Decreases)

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>		\$5.0 - \$50.0	\$5.0 - \$50.0	\$10.0-\$100.0	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Department of Health (DOH)

Administrative Office of the Courts (AOC)

### SUMMARY

#### Synopsis of Bill

House Bill 229 enacts the parental notice of abortion act (act) which prohibits an abortion of an unemancipated or incapacitated pregnant minor without prior notification of the parent, guardian or conservator.

Section 1: cites the act;

Section 2: provides for definitions including *fetus* to mean "... from fertilization until birth";

Section 3: provides that no abortion be performed until forty-eight hours after written notice delivered personally to parent by physician;

Section 4: removes the reporting requirement if the abortion is necessary to prevent the pregnant minor's death;

Section 5: provides guidelines for the courts when to allow an abortion without the notification of parent, rights of the pregnant minor to participate in judicial proceedings, and an expedited appeal process if a petition is denied;

Section 6: establishes penalties, a violation of the act is a criminal misdemeanor and grounds for civil action by a parent wrongfully denied notification;

Section 7: requires DOH to establish reporting requirements for physicians on abortions performed, subjects physicians who fail to perform pursuant to the act to monetary penalties and sanctions for civil contempt, requires DOH to provide public statistical reports on abortions performed, subjects DOH to sanctions for civil contempt for failure to perform;

Section 8: repeals Section 30-5-3 NMSA 1978 which imposes a fourth degree felony on criminal abortion and a second degree felony if an abortion results in the death of the woman;

Section 9: provides for severability; and

Section 10: establishes the effective date of the act as July 1, 2011.

### **FISCAL IMPLICATIONS**

The bill allows a pregnant female to participate in court proceedings on her own behalf or with a court appointed guardian ad litem and/or court-appointed counsel. The bill also allows a pregnant female access to the appellate courts twenty-four hours a day and seven days a week for purposes of appeal. There is no appropriation in the bill to support these costs.

HB 229 imposes a late fee of \$500 on any physician that does not submit timely reports on abortions performed. The bill does not identify the state entity responsible for assessing and managing the fees. It is unlikely that the imposed fees will cover the cost of administering the statute. The revenue estimate above is based on ten physicians being fined \$500 each for failing to submit a timely report. The bill suspends filing fees for pregnant females at both the trial and appellate level.

AOC estimates that the district court caseload could increase by 100 cases statewide at an average cost of \$722 per case. The bill requires that court staff and attorneys be available 24 hours a day 7 days a week. While larger courts may be able to rotate staff to be available nights and weekends smaller courts will be required to pay “stand-by” pay, at \$1.25 per hour, to ensure staff’s availability. AOC estimates that this could increase individual court’s costs for these hearings by about 8%. Finally, there will also be costs associated with opening buildings and providing for security for courts that have to be opened after hours. The operating budget impact in the table above reflects a range of costs that may incur for court-appointed counsel and court functions depending upon activities.

There will be additional duties for DOH staff to comply with provisions in the bill. DOH will also be assessed a \$500 fine for each month its public report is overdue.

### **SIGNIFICANT ISSUES**

The bill will require a judge to determine that the pregnant female is mature and capable of informed consent when she elects not to notify her parent. If she is found to be immature, the judge shall determine whether it would be in her best interests to not notify her parent.

The Vital Statistic Act mandates that all abortions occurring in New Mexico be reported to the State Registrar for statistical purposes and not be part of the permanent records of the vital

records system. Reports do not include the name and address of the patient or attending physician.

In 2009, there were 370 abortions performed in New Mexico on females less than 18 years of age. Thirty-seven of those were on females less than 15 years of age. DOH notes that studies show that most adolescents consult parents on issues of pregnancy and when they do not consult a parent, they consult another interested adult.

### **PERFORMANCE IMPLICATIONS**

The AG provided the following for a similar bill in a previous session:

The issue of parental notification was discussed by the United States Supreme Court in *Bellotti v. Baird*. In that case, four justices held that a minor must have the opportunity to go directly to court without consulting or notifying her parents prior to having an abortion. In *H.L. v. Matheson*, the United States Supreme Court ruled that a Utah statute which required a physician to “*notify, if possible, the parents or guardian of the woman upon whom the abortion is to be performed, if she is a minor...*” before performing an abortion on a minor was constitutional since the parent could not veto the adolescent’s final decision to have an abortion. The court stated “*The Utah statute gives neither parents nor judges a veto power over the minor’s abortion decision*”. This bill makes a minor’s decision to have an abortion without parental notification subject to court ruling, which could violate that ruling.

The bill’s statistical reporting requirements and penalties for physicians may be seen as placing an undue burden on a female minor’s right to have an abortion under *Roe V. Wade*.

NMSA Section 24-14-18 currently requires physicians to submit reports of induced abortions for statistical compilation by DOH.

### **ADMINISTRATIVE IMPLICATIONS**

AOC notes that courts are typically open to the public from 8:00 a.m. to 5:00 p.m. Monday through Friday. The bill will require that court employees and attorneys be available day or night to conduct a full evidentiary hearing. Although judges are available to issue bench warrants during non-business hours these do not require a full evidentiary hearing as contemplated by the bill.

DOH will be required to pursue and bring into compliance physicians who have not submitted timely reports.

### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

HB 229 duplicates SB 230, except that HB 229 includes a definition of “emancipated minor.”

### **TECHNICAL ISSUES**

The bill defines “fetus” as “...from fertilization until birth” on page 2 line 1. There are legal and widely used contraceptives that act after fertilization but before implantation.

The bill includes guardians and conservators when referring to the term “parent”. Guardians and conservators may have limited court appointed and statutory duties.

It is unclear how the bill provisions will apply in the case of a minor female impregnated by her parent, guardian or conservator.

### **OTHER SUBSTANTIVE ISSUES**

The New Mexico Supreme Court ruled in *Right To Choose v. Johnson* that an abortion was “medically necessary” when a pregnancy aggravates a preexisting condition, makes treatment of a condition impossible, interferes with or hampers a diagnosis, or has a profound negative impact upon the physical or mental health of an individual.

### **ALTERNATIVES**

A number of state statutes now afford persons 14 and older with rights similar to those of adults with relation to consent to their own medical and mental health treatment.

### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

New Mexico will not have a “parental notification” law with regard to abortions performed on minors.

AHO/mew:bym