



1 a right to petition the court; allowing for appeal by the  
 2 unemancipated minor to circuit court if matter is initially  
 3 heard in family court; specifying that certain orders are not  
 4 appealable; mandating that the Supreme Court of Appeals make  
 5 available a form petition for the use of unemancipated minors  
 6 seeking relief; requiring physicians to file reports to the  
 7 Department of Health and Human Resources; setting forth what  
 8 those reports are to contain; providing remedies; specifying  
 9 when notice is not required; providing that court proceedings  
 10 are confidential; providing civil and criminal penalties;  
 11 authorizing rulemaking; and providing for severability.

12 *Be it enacted by the Legislature of West Virginia:*

13 That the Code of West Virginia, 1931, as amended, be amended  
 14 by adding thereto a new section, designated §16-2F-1a; and that  
 15 §16-2F-2, §16-2F-3, §16-2F-4, §16-2F-5, §16-2F-6, §16-2F-8 and  
 16 §16-2F-9 of said code be amended and reenacted, all to read as  
 17 follows:

18 **ARTICLE 2F. PARENTAL NOTIFICATION OF ABORTIONS PERFORMED ON**  
 19 **UNEMANCIPATED MINORS.**

20 **§16-2F-1a. Jurisdiction.**

21 The circuit and family courts have concurrent jurisdiction  
 22 over matters contained in this article.

23 **§16-2F-2. Definitions.**

1 For purposes of this article: ~~unless the context in which used~~  
2 ~~clearly requires otherwise~~

3 (1) "Minor" means any person under the age of eighteen years.  
4 ~~who has not graduated from high school~~

5 (2) "Unemancipated minor" means any minor who is neither  
6 married ~~nor~~ or who has not been emancipated pursuant to applicable  
7 federal law or as provided by section twenty-seven, article seven,  
8 chapter forty-nine of this code.

9 (3) "Actual notice" means the giving of notice directly in  
10 person. ~~or by telephone~~

11 (4) "Constructive notice" means the giving of notice by  
12 certified mail to the last known address of the parents or legal  
13 guardian, return receipt requested.

14 (5) "Abortion" means the use or prescription of any  
15 instrument, medicine, drug or any other substance or device ~~with~~  
16 ~~intent~~ to intentionally terminate the pregnancy of a female known  
17 to be pregnant, ~~and with intent to~~ knowledge that the termination  
18 with those means will, with reasonable likelihood, cause the  
19 expulsion of ~~a~~ any embryo or fetus other than by live birth:

20 *Provided*, That nothing in this article ~~shall be construed so as to~~  
21 ~~prevent~~ prevents the prescription, sale or transfer of intrauterine  
22 contraceptive devices or other contraceptive devices or other  
23 generally medically accepted contraceptive devices, instruments,

1 medicines or drugs for a female who is not known to be pregnant and  
2 for whom ~~such~~ the contraceptive devices, instruments, medicines or  
3 drugs were prescribed by a physician solely for contraceptive  
4 purposes and not for the purpose of inducing or causing the  
5 termination of a known pregnancy.

6 (6) "Medical emergency" means any condition that a reasonably  
7 prudent physician with knowledge of the case and treatment  
8 possibilities with respect to the medical conditions involved would  
9 determine that a condition exists that would so complicate the  
10 medical condition of a pregnant female as to necessitate the  
11 immediate termination of her pregnancy in order to avert her death  
12 or for which delay will create a serious risk of substantial and  
13 irreversible physical impairment of a major bodily function.

14 (7) "Parent" means one parent of the pregnant female, or  
15 guardian or curator if the pregnant female has one.

16 **§16-2F-3. Required proof of age prior to performing an abortion;**  
17 **medical emergency; court orders; affidavits and record**  
18 **keeping.**

19 ~~(a) No physician may perform an abortion upon an unemancipated~~  
20 ~~minor unless such physician has given or caused to be given at~~  
21 ~~least twenty-four hours actual notice to one of the parents or to~~  
22 ~~the legal guardian of the pregnant minor of his intention to~~  
23 ~~perform the abortion, or, if the parent or guardian cannot be found~~

~~1 and notified after a reasonable effort to do so, without first  
2 having given at least forty-eight hours constructive notice  
3 computed from the time of mailing to the parent or to the legal  
4 guardian of the minor: *Provided, That prior to giving the*  
5 *notification required by this section, the physician shall advise*  
6 *the unemancipated minor of the right of petition to the circuit*  
7 *court for waiver of notification: *Provided, however, That any such**  
8 *notification may be waived by a duly acknowledged writing signed by*  
9 *a parent or the guardian of the minor.*~~

~~10 (b) Upon notification being given to any parent or to the  
11 legal guardian of such pregnant minor, the physician shall refer  
12 such pregnant minor to a counselor or caseworker of any church or  
13 school or of the department of human services or of any other  
14 comparable agency for the purpose of arranging or accompanying such  
15 pregnant minor in consultation with her parents. Such counselor  
16 shall thereafter be authorized to monitor the circumstances and the  
17 continued relationship of and between such minor and her parents.~~

~~18 (c) Parental notification required by subsection (a) of this  
19 section may be waived by a physician, other than the physician who  
20 is to perform the abortion, if such other physician finds that the  
21 minor is mature enough to make the abortion decision independently  
22 or that notification would not be in the minor's best interest:  
23 *Provided, That such other physician shall not be associated*~~

1 ~~professionally or financially with the physician proposing to~~  
2 ~~perform the abortion.~~

3 (a) Except in the case of a medical emergency, a physician may  
4 not perform an abortion on a pregnant female unless:

5 (1) The physician or his or her designee has obtained proof of  
6 age which a reasonably prudent person would think demonstrates that  
7 the female is eighteen years of age or older or proof which a  
8 reasonable and prudent person would think demonstrates that the  
9 minor is emancipated; or

10 (2) A circuit court or family court judge of the county in  
11 which the female resides or in which the abortion is to be  
12 performed has entered an order authorizing a physician to perform  
13 the abortion pursuant to a petition or motion filed by a female who  
14 is unable to produce satisfactory proof demonstrating that she is  
15 not a minor or that she is an emancipated minor and after a finding  
16 by the court that the female is not a minor or that she is an  
17 emancipated minor. This order is not subject to appeal. If the  
18 judge denies the authorization that a decision is subject to review  
19 by the circuit court in an in-camera hearing. All hearings are  
20 subject to the procedural requirements of section five of this  
21 article; or

22 (3) The physician has complied with section four of this  
23 article.

1       (b) If the physician or his or her designee obtains proof of  
2 the age or emancipation of the female as provided in subdivision  
3 (1), subsection (a) of this section, the physician or his or her  
4 designee shall execute and sign for inclusion in the female's  
5 medical record an affidavit stating that, to the best information  
6 and belief, a reasonable and prudent person under similar  
7 circumstances would have relied upon the information presented as  
8 sufficient evidence of the identity of the person seeking the  
9 abortion and that she is not a minor or that she is an emancipated  
10 minor.

11       (c) To the extent applicable, the physician shall keep in the  
12 female patient's file a copy of all affidavits, proof of age and of  
13 any court order provided in this section for seven years following  
14 the date of the abortion or until five years after the minor  
15 reaches the age of majority, whichever is longer. If the female  
16 presents a government issued photographic identification showing  
17 her to have attained the age of eighteen or older, this subsection  
18 does not apply.

19 **§16-2F-4 Parental notification required for abortions on**  
20 **unemancipated minors; proof of identification;**  
21 **affidavits and record keeping; exceptions; right of**  
22 **petition to family court; rule-making.**

23 ~~(a) A minor who objects to such notice being given to her~~

~~1 parent or legal guardian may petition for a waiver of such notice  
2 to the circuit court of the county in which the minor resides or in  
3 which the abortion is to be performed, or to the judge of either of  
4 such courts. Such minor may so petition and proceed in her own  
5 right or, at her option, by a next friend.~~

~~6 (b) Such petition need not be made in any specific form and  
7 shall be sufficient if it fairly sets forth the facts and  
8 circumstances of the matter, but shall contain the following  
9 information:~~

~~10 (i) The age of the petitioner and her educational level;~~

~~11 (ii) The county and state in which she resides;~~

~~12 (iii) A brief statement of petitioner's reason or reasons for  
13 the desired waiver of notification of the parent or guardian of  
14 such minor petitioner.~~

~~15 No such petition shall be dismissed nor shall any hearing  
16 thereon be refused because of any defect in the form of the  
17 petition.~~

~~18 (c) Upon the effective date of this article or as soon  
19 thereafter as may be, the Attorney General shall prepare suggested  
20 form petitions and accompanying instructions and shall make the  
21 same available to the several clerks of the circuit courts. Such  
22 clerks shall see that a sufficient number of such suggested form  
23 petitions and instructions are available in the clerk's office for~~



1 ~~the use of any person desiring to use the same for the purposes of~~  
2 ~~this section.~~

3       ~~(d) All proceedings held pursuant to this article shall be~~  
4 ~~confidential and the court shall conduct all such proceedings in~~  
5 ~~camera. The court shall inform the minor petitioner of her right~~  
6 ~~to be represented by counsel and that if she is without the~~  
7 ~~requisite funds to retain the services of an attorney, that the~~  
8 ~~court will appoint an attorney to represent her interest in the~~  
9 ~~matter. If the minor petitioner desires the services of an~~  
10 ~~attorney, an attorney shall be appointed to represent such minor~~  
11 ~~petitioner, if she advises the court under oath or affidavit that~~  
12 ~~she is financially unable to retain counsel. Any attorney~~  
13 ~~appointed to represent such minor petitioner shall be appointed and~~  
14 ~~paid for her services pursuant to the provisions of article~~  
15 ~~twenty-one, chapter twenty-nine of this code: *Provided, That the*~~  
16 ~~pay to any such attorney pursuant to such appointment shall not~~  
17 ~~exceed the sum of one hundred dollars.~~

18       ~~(e) The court shall conduct a hearing upon the petition~~  
19 ~~without delay, but in no event shall the delay exceed the next~~  
20 ~~succeeding judicial day, and the court shall render its decision~~  
21 ~~immediately upon its submission and, in any event, an order~~  
22 ~~reflecting the findings of fact and conclusions of law reached by~~  
23 ~~the court and its judgement shall be endorsed by the judge thereof~~

~~1 not later than twenty-four hours following such submission and  
2 shall be forthwith entered of record by the clerk of the court.  
3 All testimony, documents and other evidence presented to the court,  
4 as well as the petition and any orders entered thereon and all  
5 records of whatsoever nature and kind relating to the matter shall  
6 be sealed by the clerk and shall not be opened to any person except  
7 upon order of the court and, then, only upon good cause being shown  
8 therefor. A separate order book for the purposes of this article  
9 shall be maintained by such clerk and shall likewise be sealed and  
10 not open to inspection by any person save upon order of the court  
11 for good cause shown.~~

~~12 (f) Notice as required by section three of this article shall  
13 be ordered waived by the court if the court finds either:~~

~~14 (1) That the minor petitioner is mature and well informed  
15 sufficiently to make the decision to proceed with the abortion  
16 independently and without the notification or involvement of her  
17 parent or legal guardian, or~~

~~18 (2) That notification to the person or persons to whom such  
19 notification would otherwise be required would not be in the best  
20 interest of the minor petitioner.~~

~~21 (g) If or when the circuit court, or the judge thereof, shall  
22 refuse to order the waiver of the notification required by section  
23 three of this article, a copy of the petition and all orders~~

~~1 entered in the matter and all other documents and papers submitted  
2 to the circuit court, may be presented to the Supreme Court of  
3 Appeals, or to any justice thereof if such court then be in  
4 vacation, and such court or justice if deemed proper, may thereupon  
5 order the waiver of notification otherwise required by section  
6 three of this article. The Supreme Court of Appeals or justice  
7 thereof shall hear and decide the matter without delay and shall  
8 enter such orders as such court or justice may deem appropriate.~~

~~9 (h) If either the circuit court or the Supreme Court of  
10 Appeals, or any judge or justice thereof if either of such courts  
11 be then in vacation, shall order a waiver of the notification  
12 required by section three of this article, any physician to whom a  
13 certified copy of said order shall be presented may proceed to  
14 perform the abortion to the same extent as if such physician were  
15 in compliance with the provisions of said section three and,  
16 notwithstanding the fact that no notification is given to either  
17 the parent or legal guardian of any such unemancipated minor, any  
18 such physician shall not be subject to the penalty provisions which  
19 may be prescribed by this article for such failure of notification.~~

~~20 (I) No filing fees may be required of any minor who avails  
21 herself of any of the procedures provided by this section.~~

~~22 (a) A physician may not perform an abortion upon an  
23 unemancipated minor unless notice is given to the parent of the~~

1 unemancipated pregnant minor prior to a physician performing an  
2 abortion. Notice shall be given at least forty-eight hours prior  
3 to the performance of the procedure and a copy of the notice shall  
4 be kept in the minor's medical records for at least seven years or  
5 until five years after she reaches the age of majority, whichever  
6 is longer. A parent may receive:

7 (1) Actual notice and may waive the forty-eight hour notice  
8 period, except that this waiver does not waive any period mandated  
9 by section two, article two-I of this chapter; or

10 (2) Constructive notice sent via the United States Post Office  
11 to the parent's last known address, restricted delivery, return  
12 receipt requested. The information concerning the address of the  
13 parent must be such which a reasonable and prudent person, under  
14 similar circumstances, would have relied upon as sufficient  
15 evidence that the parent resides at that address. The  
16 forty-eight-hour period for written notice begins to run at twelve  
17 o'clock noon on the next day on which regular mail delivery takes  
18 place, subsequent to the date of the mailing.

19 (b) Prior to performing an abortion, a physician, or his or  
20 her designee, shall obtain from the parent to whom actual notice is  
21 given, proof of identification which a reasonable and prudent  
22 person, under similar circumstances, would have relied upon as  
23 sufficient evidence that the person is the parent of the minor

1 female. A copy of this information or specific details concerning  
2 the proof provided shall be included in the minor's medical records  
3 for at least seven years or until five years after the minor  
4 reaches the age of majority, whichever is longer.

5 (c) The physician performing the abortion, or his or her  
6 designee, shall execute an affidavit certifying the information  
7 presented by the female of her age or emancipation was such which  
8 a reasonable and prudent person, under similar circumstances would  
9 have relied upon as sufficient evidence of her age or emancipation.  
10 This affidavit shall be included in the female's medical records  
11 for at least seven years, unless the female has presented a  
12 government-issued photograph identification showing her to have  
13 attained the age of eighteen or older.

14 (d) The physician performing the abortion, or his or her  
15 designee, shall execute an affidavit certifying the information  
16 presented by the parent receiving actual notice was sufficient  
17 evidence of his or her identity which a reasonable and prudent  
18 person, under similar circumstances, would have relied upon as  
19 sufficient evidence that the person is the parent of the minor.  
20 This affidavit shall be included in the minor's medical records for  
21 at least seven years or until five years after the minor reaches  
22 the age of majority, whichever is longer.

23 (e) The physician performing the abortion, or his or her

1 designee, shall execute an affidavit certifying the information  
2 provided by the minor concerning the last known address of the  
3 parent for constructive notice was such which a reasonable and  
4 prudent person, under similar circumstances, would have relied upon  
5 as sufficient evidence of the parent's last known address. This  
6 affidavit shall be included in the minor's medical records and kept  
7 for at least seven years or until five years after the minor  
8 reaches the age of majority, whichever is longer.

9 (f) Notice to the parent is not required if:

10 (1) A circuit court or family court judge of the county in  
11 which the unemancipated minor resides or where the abortion is to  
12 be performed issues an order authorizing the unemancipated minor to  
13 consent to the abortion as provided by section five of this  
14 article; or

15 (2) The physician performing an abortion concludes a medical  
16 emergency exists. The physician is required to certify to the  
17 Department of Health and Human Resources, on a form provided by the  
18 department, the medical justification supporting the physician's  
19 judgment that a medical emergency existed. A copy of this form  
20 shall be maintained in the minor's medical records.

21 (g) The physician shall keep a copy of the medical records of  
22 a minor for five years past the minor's age of majority or for  
23 seven years following the date of the abortion, whichever is

1 greater.

2 (h) Unless the unemancipated minor gives notice of her intent  
3 to seek a judicial waiver, the attending physician or the  
4 physician's agent shall verbally inform the parent within  
5 twenty-four hours after the performance of a medical emergency  
6 abortion, that a medical emergency abortion was performed on the  
7 unemancipated minor and shall also send a written notice, in the  
8 manner described in subdivision (2), subsection (a) of this  
9 section, of the performed medical emergency abortion. If the  
10 unemancipated minor, upon whom a medical emergency abortion was  
11 performed, elects not to allow the notification of her parent, any  
12 judge of a family court of the county in which the unemancipated  
13 minor resides or where the abortion was performed shall, upon  
14 petition or motion and after an appropriate hearing, authorize the  
15 waiving of the required notice of the performed abortion if the  
16 judge determines, by clear and convincing evidence, that the  
17 unemancipated minor is mature and capable of determining whether  
18 notification should be given or that the waiver would be in the  
19 unemancipated minor's best interest.

20 (I) The Department of Health and Human Resources may propose  
21 rules for legislative approval in accordance with article three,  
22 chapter twenty-nine-a of this code to propose all forms, affidavits  
23 and certifications required by this section.

1       (j) The Supreme Court of Appeals shall make available a form  
2 petition for the use of unemancipated minors seeking relief  
3 pursuant to section five of this article.

4 **§16-2F-5. Petition to circuit or family court; review by circuit**  
5 **court; confidentiality.**

6       ~~The notification requirements of section three of this article~~  
7 ~~do not apply where there is an emergency need for an abortion to be~~  
8 ~~performed if the continuation of the pregnancy constitutes an~~  
9 ~~immediate threat and grave risk to the life or health of the~~  
10 ~~pregnant minor and the attending physician so certifies in writing~~  
11 ~~setting forth the nature of such threat or risk and the~~  
12 ~~consequences which may be attendant to the continuation of the~~  
13 ~~pregnancy. Such writing shall be maintained with the other medical~~  
14 ~~records relating to such minor which are maintained by the~~  
15 ~~physician and the facility at which such abortion is performed.~~

16       (a) If a circuit or family court judge of the county in which  
17 the minor resides or in which the abortion is to be performed hears  
18 a petition or motion filed by an unemancipated minor who elects not  
19 to allow notification of her parent, then the judge shall authorize  
20 a physician to perform the abortion without notice to the parent if  
21 the judge determines, by clear and convincing evidence, that the  
22 pregnant minor is mature and capable of giving informed consent to  
23 the abortion. If the judge determines that the pregnant minor is



1 not mature, or if the pregnant minor does not claim to be mature,  
2 the judge shall determine, by clear and convincing evidence,  
3 whether the performance of an abortion upon her without  
4 notification of her parent would be in her best interest. The  
5 judge shall enter an order authorizing the physician to perform the  
6 abortion without notification if the judge concludes that the  
7 pregnant minor's best interests would be served. This authorization  
8 is not subject to appeal. If a family court judge denies the  
9 authorization, that decision is subject to review by the circuit  
10 court in an in-camera hearing. All hearings are subject to the  
11 procedural requirements of section five of this article.

12 (b) A minor may file the petition or motion on her own behalf  
13 and the court may appoint a guardian ad litem for her. The court  
14 shall advise her that she has a right to court-appointed counsel  
15 and shall, upon her request, provide her with such counsel. The  
16 attorney shall be paid for his or her services in accordance with  
17 article twenty-one, chapter twenty-nine of this code.

18 (c) Proceedings under this section are confidential and shall  
19 be given precedence over other pending matters so that the judge  
20 may reach a decision promptly and without delay so as to serve the  
21 best interests of the pregnant minor. In no event may the  
22 proceeding be later than the third judicial day after the day that  
23 the complaint is filed. A judge who conducts proceedings under

1 this section shall make written factual findings and legal  
2 conclusions supporting the decision and shall order a record of the  
3 evidence to be maintained including the judge's own findings and  
4 conclusions. All records of proceedings in these proceedings shall  
5 be kept in the office of the clerk of the circuit court in a sealed  
6 file and shall be kept in a locked or sealed cabinet, vault or  
7 other container and may not be opened to inspection or copy by  
8 anyone unless upon court order for good cause shown.

9 (d) If the action is filed in family court and the proceeding  
10 is not held before a family court judge by the third judicial day  
11 after the complaint is filed, jurisdiction is transferred to the  
12 circuit court and the minor has the right to an immediate expedited  
13 confidential hearing to the circuit court.

14 **§16-2F-6. Reporting requirements for physicians and the Department**  
15 **of Health and Human Services; rule-making;**  
16 **injunctions; penalties.**

17 (a) Any physician performing an abortion upon an unemancipated  
18 minor shall provide the Department of Health and Human Resources a  
19 written report of the procedure within thirty days after having  
20 performed the abortion. Nothing in the report may personally  
21 identify any individual female. The Department of Health and Human  
22 Resources shall provide reporting forms for this purpose to all  
23 physicians and public health facilities required to be licensed

1 pursuant to article five-b of this chapter. The following  
2 information, in addition to any other information which may be  
3 required by the Department of Health and Human Resources, regarding  
4 the minor receiving the abortion shall be included in ~~such~~ the  
5 reporting form:

6 (1) Age;

7 (2) Educational level;

8 (3) Previous pregnancies;

9 (4) Previous live births;

10 (5) Previous abortions;

11 (6) Complications, if any, of the abortion being reported;

12 ~~(7) Reason for waiver of notification of the minor's parent or~~  
13 ~~guardian, if such notice was waived; and~~

14 ~~(8) (7)~~ (7) The city and county in which the abortion was  
15 performed.

16 ~~Any such report shall not contain the name, address or other~~  
17 ~~information by which the minor receiving the abortion may be~~  
18 ~~identified.~~

19 (b) Any physician performing abortions upon unemancipated  
20 minors shall provide the Department of Health and Human Resources  
21 a written report containing the information listed below. Nothing  
22 in the report may personally identify any individual female. The  
23 following information, in addition to any other information which

1 may be required by the Department of Health and Human Resources,  
2 regarding the minor receiving the abortion shall be included in the  
3 reporting form:

4 (1) The number of females whose parent was notified pursuant  
5 to section four of this article and the manner in which they were  
6 notified;

7 (2) The number of females who, to the best of the reporting  
8 physician's information and belief, went on to obtain the abortion;

9 (3) The number of females upon whom the physician performed an  
10 abortion without providing the notice described in section four of  
11 this article, including the number who were emancipated minors;

12 (4) The number of abortions performed upon a female by the  
13 physician after receiving judicial authorization to do so without  
14 parental notification; and

15 (5) The number of abortions performed for medical emergency  
16 reasons.

17 (c) The Department of Health and Human Resources may propose  
18 legislative rules in accordance with article three, chapter  
19 twenty-nine-a of this code to develop reporting forms as described  
20 in this section. The rules shall ensure that copies of the  
21 reporting forms, described in this section, together with a reprint  
22 of this article, are provided:

23 (1) By December 1 of every year, other than the calendar year

1 in which forms are distributed in accordance with this section, to  
2 all physicians licensed to practice in this state; and

3 (2) To each physician who subsequently becomes newly licensed  
4 to practice in this state at the same time as official notification  
5 to that physician that the physician is so licensed.

6 (d) By February 28 of each year following a calendar year in  
7 any part of which this article was in effect, each physician or his  
8 or her designee who provided the notice described in section four  
9 of this article and any physician who knowingly performed an  
10 abortion upon a pregnant minor or upon a female for whom a guardian  
11 or curator had been appointed pursuant to applicable federal law or  
12 as provided by sections three and four, article ten, chapter  
13 forty-four of this code because of a finding of incompetency of the  
14 pregnant minor during the previous calendar year shall submit to  
15 the Department of Health and Human Resources a copy of the forms  
16 described in this section with the requested data entered  
17 accurately and completely. The information included in the reports  
18 may not personally identify any individual female.

19 (e) Reports that are not submitted within thirty days  
20 following the due date are subject to a late fee of \$500 for the  
21 first month and \$1,000 for each additional thirty-day period or  
22 portion of a thirty-day period they are overdue. Any physician  
23 required to report in accordance with this section who has not

1 submitted a report, or has submitted only an incomplete report,  
2 more than one year following the due date, may, in an action  
3 brought by the Department of Health and Human Resources, be  
4 directed by a circuit court of the county in which the physician  
5 resides or practices to submit a complete report within a period  
6 stated by court order or be subject to sanctions for civil  
7 contempt.

8       (f) By June 30 of each year, the Department of Health and  
9 Human Resources shall issue a public report providing statistics  
10 for the previous calendar year compiled from all of the reports  
11 covering that year submitted in accordance with this article. The  
12 report shall also include statistics which shall be obtained from  
13 the Supreme Court of Appeals giving the total number of petitions  
14 or motions filed under subsection (a), section five of this  
15 article, including the number in which the court appointed a  
16 guardian ad litem, the number in which the court appointed counsel,  
17 the number in which the family court judge issued an order  
18 authorizing an abortion without notification, the number in which  
19 the family court judge denied such an order, the number of denials  
20 from which an appeal was filed, the number of appeals that resulted  
21 in the denials being affirmed and the number of appeals that  
22 resulted in reversals of denials. Each report shall provide the  
23 statistics from late or corrected reports for all previous calendar

1 years. The information included in the public reports may not  
2 personally identify any individual female.

3 (g) If the Department of Health and Human Resources fails to  
4 issue the public report required by subsection (f) of this section,  
5 any group of ten or more citizens of this state may seek an  
6 injunction in the circuit court of Kanawha County against the  
7 Secretary of the Department of Health and Human Resources requiring  
8 that a complete report be issued within a period stated by court  
9 order.

10 (h) The Department of Health and Human Resources may propose  
11 rules for legislative approval pursuant to section five, article  
12 three, chapter twenty-nine-a of this code to alter the dates  
13 established by subdivision (1), subsection (b) of this section or  
14 subsection (c) or (f) of this section or consolidate the forms or  
15 reports to achieve administrative convenience or fiscal savings or  
16 to reduce the burden of reporting requirements, so long as  
17 reporting forms are sent to all licensed physicians in the state at  
18 least once every year and the report described in subsection (f) of  
19 this section is issued at least once every year.

20 **§16-2F-8. Civil and criminal Penalties.**

21 ~~Any person who knowingly performs an abortion upon an~~  
22 ~~unemancipated minor in violation of this article or who knowingly~~  
23 ~~fails to conform to any requirement of this article shall be guilty~~

1 ~~of a misdemeanor, and, upon conviction thereof, shall be fined not~~  
2 ~~less than five hundred dollars nor more than one thousand dollars~~  
3 ~~or imprisoned in the county jail not more than thirty days, or both~~  
4 ~~fined and imprisoned.~~

5 (a) A person who uses a false governmental record or makes a  
6 false representation or statement in order to obtain an abortion  
7 for a minor or who signs an affidavit or certification required by  
8 section three or four of this article that is false is guilty of  
9 false swearing as defined in section two, article five, chapter  
10 sixty-one of this code.

11 (b) Any person who uses a false governmental record or makes  
12 a false representation or statement in order to obtain an abortion  
13 for a minor or who signs an affidavit or certification required by  
14 section three or four of this article that is false is civilly  
15 liable to the person or persons entitled to receive parental notice  
16 for pain and suffering and any subsequent costs of medical or  
17 psychiatric treatment a minor might require because of  
18 complications resulting from the abortion.

19 (c) Any person who knowingly or recklessly performs an  
20 abortion on a pregnant unemancipated minor in violation of this  
21 article is guilty of a felony and, upon conviction, shall be  
22 imprisoned in a state correctional facility not less than three nor  
23 more than ten years.



1 (d) Any person who knowingly, recklessly or negligently  
2 performs an abortion on an unemancipated minor in violation of this  
3 article is civilly liable to the person or persons entitled to  
4 receive parental notice for pain and suffering and any subsequent  
5 costs of medical or psychiatric treatment a minor might require  
6 because of complications resulting from the abortion.

7 (e) It is not a defense to a claim brought pursuant to this  
8 section that the minor gave informed and voluntary consent.

9 (f) An unemancipated minor does not have capacity to consent  
10 to any action that violates this article.

11 **§16-2F-9. Severability.**

12 ~~The provisions of subsection (cc), section ten, article two,~~  
13 ~~chapter two of this code shall apply to the provisions of this~~  
14 ~~article to the same extent as if said subsection were set forth in~~  
15 ~~extenso herein.~~

16 If any one or more provision, section, subsection, sentence,  
17 clause, phrase or word of this article or its application to any  
18 person or circumstance is found to be unconstitutional, it is  
19 severable and the balance of this article remains effective  
20 notwithstanding the unconstitutionality. The Legislature declares  
21 that it would have passed this article, and each provision,  
22 section, subsection, sentence, clause, phrase or word of this  
23 article, irrespective of the fact any one or more provision,

1 section, subsection, sentence, clause, phrase or word is determined  
2 to be unconstitutional.

NOTE: The purpose of this bill relates to parental involvement in a minor's decision to obtain an abortion. The bill requires that the circuit and family court have concurrent jurisdiction. The bill provides that a physician may only perform a nonmedical emergency abortion if there is proof the woman is over eighteen, a court has issued an order authorizing the abortion or has parental consent if she is an unemancipated minor. The bill requires records be kept. The bill requires an affidavit be executed. The bill requires parental notification. The bill sets forth specifics of the notice. The bill defines terms. The bill provides for a waiver. The bill requires notice to minors of a right to petition the court. The bill allows for appeal by the unemancipated minor to circuit court if matter is initially heard in family court. The bill specifies that certain orders are not appealable. The bill requires physicians to file reports to the Department of Health and Human Resources. The bill sets forth what those reports are to contain. The bill provides remedies. The bill specifies when notice is not required. The bill provides that court proceedings are confidential. The bill provides civil and criminal penalties. The bill authorizes rule-making. The bill provides for severability.

§16-2F-1a is new; therefore, strike-throughs and underscoring have been omitted.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.