

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 529

Introduced by Harr, 8.

Read first time January 18, 2017

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to abortion; to amend section 71-6903, Revised
- 2 Statutes Cumulative Supplement, 2016; to authorize county courts
- 3 sitting as probate courts in cases of guardianship to authorize
- 4 abortions as prescribed; and to repeal the original section.
- 5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 71-6903, Revised Statutes Cumulative Supplement,
2 2016, is amended to read:

3 71-6903 (1) The requirements and procedures under this section are
4 available to pregnant women whether or not they are residents of this
5 state.

6 (2) If a pregnant woman elects not to or is otherwise unable to
7 obtain the consent of her parents or guardians, a judge of a district
8 court, separate juvenile court, ~~or~~ county court sitting as a juvenile
9 court or county court sitting as a probate court in the case of a
10 pregnant woman for whom a guardian has been appointed pursuant to
11 sections 30-2617 to 30-2629 shall, upon petition or motion and after an
12 appropriate hearing, authorize a physician to perform the abortion if the
13 court determines by clear and convincing evidence that the pregnant woman
14 is both sufficiently mature and well-informed to decide whether to have
15 an abortion. If the court does not make the finding specified in this
16 subsection or subsection (3) of this section, it shall dismiss the
17 petition.

18 (3) If the court finds, by clear and convincing evidence, that there
19 is evidence of abuse as defined in section 28-351, sexual abuse as
20 defined in section 28-367, or child abuse or neglect as defined in
21 section 28-710 of the pregnant woman by a parent or a guardian or that an
22 abortion without the consent of a parent or a guardian is in the best
23 interest of the pregnant woman, the court shall issue an order
24 authorizing the pregnant woman to consent to the performance or
25 inducement of an abortion without the consent of a parent or a guardian.
26 If the court does not make the finding specified in this subsection or
27 subsection (2) of this section, it shall dismiss the petition.

28 (4) A facsimile copy of the petition or motion may be transmitted
29 directly to the court for filing. If a facsimile copy is filed in lieu of
30 the original document, the party filing the facsimile copy shall retain
31 the original document for production to the court if requested to do so.

1 (5) A court shall not be required to have a facsimile machine nor
2 shall the court be required to transmit orders or other material to
3 attorneys or parties via facsimile transmission.

4 (6) The pregnant woman may commence an action for waiver of the
5 consent requirement by the filing of a petition or motion personally, by
6 mail, or by facsimile on a form provided by the State Court
7 Administrator.

8 (7) The State Court Administrator shall develop the petition form
9 and accompanying instructions on the procedure for petitioning the court
10 for a waiver of consent, including the name, address, telephone number,
11 and facsimile number of each court in the state. A sufficient number of
12 petition forms and instructions shall be made available in each
13 courthouse in such place that members of the general public may obtain a
14 form and instructions without requesting such form and instructions from
15 the clerk of the court or other court personnel. The clerk of the court
16 shall, upon request, assist in completing and filing the petition for
17 waiver of consent.

18 (8) Proceedings in court pursuant to this section shall be
19 confidential and shall ensure the anonymity of the pregnant woman. The
20 pregnant woman shall have the right to file her petition in the court
21 using a pseudonym or using solely her initials. Proceedings shall be held
22 in camera. Only the pregnant woman, the pregnant woman's guardian ad
23 litem, the pregnant woman's attorney, and a person whose presence is
24 specifically requested by the pregnant woman or the pregnant woman's
25 attorney may attend the hearing on the petition. All testimony, all
26 documents, all other evidence presented to the court, the petition and
27 any order entered, and all records of any nature and kind relating to the
28 matter shall be sealed by the clerk of the court and shall not be open to
29 any person except upon order of the court for good cause shown. A
30 separate docket for the purposes of this section shall be maintained by
31 the clerk of the court and shall likewise be sealed and not opened to

1 inspection by any person except upon order of the court for good cause
2 shown.

3 (9) A pregnant woman who is subject to this section may participate
4 in the court proceedings on her own behalf, and the court may appoint a
5 guardian ad litem for her. The court shall advise the pregnant woman that
6 she has a right to court-appointed counsel and shall, upon her request,
7 provide her with such counsel. Such counsel shall receive a fee to be
8 fixed by the court and to be paid out of the treasury of the county in
9 which the proceeding was held.

10 (10) Proceedings in court pursuant to this section shall be given
11 such precedence over other pending matters so that the court may reach a
12 decision promptly and without delay to serve the best interest of the
13 pregnant woman. In no case shall the court fail to rule within seven
14 calendar days from the time the petition is filed. If the court fails to
15 rule within the required time period, the pregnant woman may file an
16 application for a writ of mandamus with the Supreme Court. If cause for a
17 writ of mandamus exists, the writ shall issue within three days.

18 (11) The court shall issue a written order which includes specific
19 factual findings and legal conclusions supporting its decision which
20 shall be provided immediately to the pregnant woman, the pregnant woman's
21 guardian ad litem, the pregnant woman's attorney, and any other person
22 designated by the pregnant woman to receive the order. Further, the court
23 shall order that a confidential record of the evidence and the judge's
24 findings and conclusions be maintained. At the hearing, the court shall
25 hear evidence relating to the emotional development, maturity, intellect,
26 and understanding of the pregnant woman.

27 Sec. 2. Original section 71-6903, Revised Statutes Cumulative
28 Supplement, 2016, is repealed.