



ADVISORY
January 28, 2022

Attorney General Austin Knudsen and DPHHS Director Adam Meier issue the following advisory regarding the Parental Notification of Abortion Act of 2011. In November 2012, Montana voters overwhelmingly passed LR-120, the Parental Notice of Abortion Act of 2011. Over 70% of Montanans supported this commonsense law aimed at preventing the exploitation of vulnerable young girls.

This advisory serves to clarify the current status of, and Montanans' rights and obligations under, LR-120. Almost nine years ago, a Helena court enjoined House Bill 391 before it came into effect. That law would have repealed and replaced LR-120's provisions. *See Planned Parenthood v. State*, No. DDV-2013-407 (Mont. 1st Jud. Dist.) (Consent Order Granting Preliminary Injunction June 28, 2013). [LR-120, therefore, remains in effect and good law. Its provisions are located in MCA, §§ 50-20-221 to -225, -228 to -229, -232, and -235 \(2011\).](#) Montana Code books reflect that House Bill 391 (2013) repealed these provisions. However, the Montana Code doesn't account for court decisions—such as the one in *Planned Parenthood v. State*—and the discrepancy between the code books and current law is the reason for this notice. A copy of the still-in-effect provisions is appended to this notice.

Specifically, MCA § 50-20-235 imposes civil and criminal penalties for violations of Montana's Parental Notice of Abortion Act of 2011. Persons convicted of performing an abortion in violation of the law face fines of up to \$500 and six-months imprisonment. Persons convicted of illegally coercing a minor into having an abortion face fines up to \$1,000 for the first offense and \$50,000 for subsequent offenses, as well as imprisonment for up to one year for the first offense and five years for subsequent offenses.

The law requires that, at least 48 hours before a medical professional performs an abortion for a pregnant minor, the medical professional must notify at least one parent or legal guardian of the pregnant minor. This notice requirement doesn't apply if the physician certifies that a more immediate abortion is necessitated by a medical emergency, or if notice is waived by the parent or legal guardian.

Additionally, notice is not required if the minor petitions the youth court for a waiver under the law's judicial bypass provisions. If a minor petitions the youth court under the law's provisions, she remains anonymous and all judicial bypass proceedings are confidential.

Attorney General Knudsen and Director Meier recognize LR-120 remains subject to legal challenge; however, until a court finally rules on the case—and several Montana judges have refused to do so for several years—it is the law of Montana, and it will be enforced.

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Montana Code Annotated 2011

[Previous Section](#) [MCA Contents](#) [Part Contents](#) [Search](#) [Help](#) [Next Section](#)

50-20-221. Short title. This part may be cited as the "Parental Notice of Abortion Act of 2011".

History: En. Sec. 1, Ch. 307, L. 2011.

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Montana Code Annotated 2011

[Previous Section](#) [MCA Contents](#) [Part Contents](#) [Search](#) [Help](#) [Next Section](#)

50-20-222. Legislative purpose and findings. (1) The legislature finds that:

- (a) immature minors often lack the ability to make fully informed choices that take into account both immediate and long-range consequences;
 - (b) the medical, emotional, and psychological consequences of abortion are sometimes serious and can be lasting, particularly when the patient is immature;
 - (c) the capacity to become pregnant and the capacity for mature judgment concerning the wisdom of an abortion are not necessarily related;
 - (d) parents ordinarily possess information essential to a physician in the exercise of the physician's best medical judgment concerning the minor;
 - (e) parents who are aware that their minor daughter has had an abortion may better ensure that the daughter receives adequate medical care after the abortion; and
 - (f) parental consultation is usually desirable and in the best interests of the minor.
- (2) The purpose of this part is to further the important and compelling state interests of:
- (a) protecting minors against their own immaturity;
 - (b) fostering family unity and preserving the family as a viable social unit;
 - (c) protecting the constitutional rights of parents to rear children who are members of their household; and
 - (d) reducing teenage pregnancy and unnecessary abortion.

History: En. Sec. 2, Ch. 307, L. 2011.

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Montana Code Annotated 2011

[Previous Section](#) [MCA Contents](#) [Part Contents](#) [Search](#) [Help](#) [Next Section](#)

50-20-223. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

- (1) "Actual notice" means the giving of notice directly in person or by telephone.
- (2) "Coerce" means to restrain or dominate the choice of a minor female by force, threat of force, or deprivation of food and shelter.
- (3) "Emancipated minor" means a person under 18 years of age who is or has been married or who has been granted an order of limited emancipation by a court as provided in [41-3-438](#).
- (4) "Medical emergency" means a condition that, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of the woman's pregnancy to avert the woman's death or a condition for which a delay in treatment will create serious risk of substantial and irreversible impairment of a major bodily function.
- (5) "Minor" means a female under 16 years of age who is not an emancipated minor.
- (6) "Physical abuse" means any physical injury intentionally inflicted by a parent or legal guardian on a child.
- (7) "Physician" means a person licensed to practice medicine under Title 37, chapter 3.
- (8) "Sexual abuse" has the meaning given in [41-3-102](#).

History: En. Sec. 3, Ch. 307, L. 2011.

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Montana Code Annotated 2011

[Previous Section](#) [MCA Contents](#) [Part Contents](#) [Search](#) [Help](#) [Next Section](#)

50-20-224. Notice of parent required. A physician may not perform an abortion upon a minor unless the physician has given at least 48 hours' actual notice to one parent or to the legal guardian of the pregnant minor of the physician's intention to perform the abortion. The actual notice may be given by a referring physician. The physician who performs the abortion must receive the written statement of the referring physician certifying that the referring physician has given actual notice. If actual notice is not possible after a reasonable effort, the physician or the physician's agent shall give alternate notice as provided in [50-20-225](#).

History: En. Sec. 4, Ch. 307, L. 2011.

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Montana Code Annotated 2011

[Previous Section](#) [MCA Contents](#) [Part Contents](#) [Search](#) [Help](#) [Next Section](#)

50-20-225. Alternative notification. In lieu of the actual notice required by [50-20-224](#), notice may be made by certified mail addressed to the parent at the usual place of residence of the parent with return receipt requested and delivery restricted to the addressee, which means a postal employee may deliver the mail only to the authorized addressee. Time of delivery is considered to occur at noon on the next day on which regular mail delivery takes place after mailing.

History: En. Sec. 5, Ch. 307, L. 2011.

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Montana Code Annotated 2011

[Previous Section](#) [MCA Contents](#) [Part Contents](#) [Search](#) [Help](#) [Next Section](#)

50-20-228. Exceptions. Notice is not required under [50-20-224](#) or [50-20-225](#) if:

- is insufficient time to provide notice;
- (1) the attending physician certifies in the patient's medical record that a medical emergency exists and there is insufficient time to provide notice;
 - (2) notice is waived, in writing, by the person entitled to notice; or
 - (3) notice is waived under [50-20-232](#).

History: En. Sec. 6, Ch. 307, L. 2011.

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Montana Code Annotated 2011

[Previous Section](#) [MCA Contents](#) [Part Contents](#) [Search](#) [Help](#) [Next Section](#)

50-20-229. Coercion prohibited. A parent, a guardian, or any other person may not coerce a minor to have an abortion. If a minor is denied financial support by the minor's parents, guardian, or custodian because of the minor's refusal to have an abortion, the minor must be considered an emancipated minor for the purposes of eligibility for public assistance benefits. The public assistance benefits may not be used to obtain an abortion.

History: En. Sec. 7, Ch. 307, L. 2011.

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Montana Code Annotated 2011

[Previous Section](#) [MCA Contents](#) [Part Contents](#) [Search](#) [Help](#) [Next Section](#)

50-20-232. Procedure for judicial waiver of notice. (1) The requirements and procedures under this section are available to minors whether or not they are residents of this state.

(2) The minor may petition the youth court for a waiver of the notice requirement and may participate in the proceedings on the person's own behalf. The petition must include a statement that the petitioner is pregnant and is not emancipated. The court may appoint a guardian ad litem for the petitioner. A guardian ad litem is required to maintain the confidentiality of the proceedings. The youth court shall advise the petitioner of the right to assigned counsel and shall order the office of state public defender, provided for in [47-1-201](#), to assign counsel upon request.

(3) Proceedings under this section are confidential and must ensure the anonymity of the petitioner. All proceedings under this section must be sealed. The petitioner may file the petition using a pseudonym or using the petitioner's initials. All documents related to the petition are confidential and are not available to the public. The proceedings on the petition must be given preference over other pending matters to the extent necessary to ensure that the court reaches a prompt decision. The court shall issue written findings of fact and conclusions of law and rule within 48 hours of the time that the petition is filed unless the time is extended at the request of the petitioner. If the court fails to rule within 48 hours and the time is not extended, the petition is granted and the notice requirement is waived.

(4) If the court finds that the petitioner is competent to decide whether to have an abortion, the court shall issue an order authorizing the minor to consent to the performance or inducement of an abortion without the notification of a parent or guardian.

(5) The court shall issue an order authorizing the petitioner to consent to an abortion without the notification of a parent or guardian if the court finds that:

(a) there is evidence of physical abuse, sexual abuse, or emotional abuse of the petitioner by one or both parents, a guardian, or a custodian; or

(b) the notification of a parent or guardian is not in the best interests of the petitioner.

(6) If the court does not make a finding specified in subsection (4) or (5), the court shall dismiss the petition.

(7) A court that conducts proceedings under this section shall issue written and specific findings of fact and conclusions of law supporting its decision and shall order that a confidential record of the evidence, findings, and conclusions be maintained.

(8) The supreme court may adopt rules providing an expedited confidential appeal by a petitioner if the youth court denies a petition. An order authorizing an abortion without notice is not subject to appeal.

(9) Filing fees may not be required of a pregnant minor who petitions a court for a waiver of parental notification or appeals a denial of a petition.

History: En. Sec. 8, Ch. 307, L. 2011.

Montana Code Annotated 2011

[Previous Section](#) [MCA Contents](#) [Part Contents](#) [Search](#) [Help](#) [Next Section](#)

50-20-235. Criminal and civil penalties. (1) A person convicted of performing an abortion in violation of [50-20-224](#) or [50-20-225](#) shall be fined an amount not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(2) Failure to provide the notice required under [50-20-224](#) or [50-20-225](#) is prima facie evidence in an appropriate civil action for a violation of a professional obligation. The evidence does not apply to issues other than failure to notify the parents or guardian. A civil action may be based on a claim that the failure to notify was the result of a violation of the appropriate legal standard of care. Failure to provide notice is presumed to be actual malice pursuant to the provisions of [27-1-221](#). This part does not limit the common-law rights of parents.

(3) A person who coerces a minor to have an abortion is guilty of a misdemeanor and upon conviction shall be fined an amount not to exceed \$1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both. On a second or subsequent conviction, the person shall be fined an amount not less than \$500 and not more than \$50,000 and be imprisoned in the state prison for a term not less than 10 days and not more than 5 years, or both.

(4) A person not authorized to receive notice under [50-20-225](#) who signs a notice of waiver as provided in [50-20-228\(2\)](#) is guilty of a misdemeanor.

History: En. Sec. 9, Ch. 307, L. 2011.

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