



Alliance Advocates - Idaho

Idaho H.B. 98

This bill amends the definition of “human trafficking” in the Idaho code to include “[r]ecruiting, harboring, or transporting a pregnant minor with the intent to deprive the pregnant minor's parent of knowledge of, and to procure, a criminal abortion.” The penalty for such recruitment, harboring, or transporting is two to five years imprisonment.

The bill also amends Idaho’s current total abortion ban to provide that an adult who procures a “criminal abortion” or obtains an “abortion-inducing drug” for a minor *with the intent to conceal* the unlawful abortion from the minor’s parents or guardian commits “human trafficking.” The bill would make it an affirmative defense to if the parent or guardian of the minor consented to “trafficking the minor.” It would **not** be an affirmative defense if the abortion provider “is located in another state.”

Further, the bill provides that the Idaho Attorney General has the authority to prosecute a person for violations of the ban *if* the prosecuting attorney otherwise authorized refuses to do so.

Finally, the bill adds a number of provisions to the portion of the code that governs civil action to enforce the ban. Among these are:

- A limitation on compensatory or punitive damages if a person demonstrates that a person has already paid damages for a particular violation;
- Restrictions on the payment of damages awards related to abortion. Such awards could not be paid or reimbursed by an insurance policy or subject to limitations on medical malpractice awards;
- A prohibition on enforcement actions brought by a person who impregnated the patient through rape, sexual assault, incest, or “other criminal conduct”;
- A series of limitations on what may not serve as defenses to an action, including, among other things: that the pregnant person or a pregnant minor’s parent consented to the abortion, that any provision of the section is or was unconstitutional; and non-mutual issue preclusion.
- A prohibition against courts awarding attorney’s fees and costs to a defendant in an action *unless* the action is “frivolous, without foundation, or brought in bad faith or for the sole reason of delay”;

- A prohibition against courts awarding attorney’s fees and costs to a prevailing plaintiff in a case challenging the constitutionality of the provision, unless the defense is “frivolous, without foundation, or brought in bad faith or for the sole reason of delay,” but a court **may** award attorney’s fees to a party defending the constitutionality of the provision;
- A limitation on application of the ban to clarify that it may not be construed to impose liability on speech or “conduct protected by the first amendment.”
- A six-year statute of limitations.

Key Messages

- Abortion is a safe, legal, and time-sensitive health care procedure. Preventing people – including minors – from accessing abortion is dangerous and irresponsible.
- All Idahoans should be paying attention to this extreme attempt at government overreach to control our movements in and out of the state of Idaho. This is merely the tip of the iceberg, and we won’t stand for it.
- This bill would discourage young people in potentially risky situations from talking to trusted adults and seeking the help they need.
- In addition to being callous and dangerous, this bill is outside of the legislature’s authority. It is not the place of Idaho’s legislature to criminalize legal health care in other states.
- This bill is cruel, and would have lifelong impacts on minors in Idaho. Studies show the impact of not getting a wanted abortion can be devastating – a pregnant person who is denied a wanted abortion is 4 times more likely to live below the Federal Poverty Level during their life; is more likely to experience complications during the pregnancy; and is more likely to stay in a relationship with an abusive partner.
- At the same time, Idaho is facing a maternal mortality crisis, adding to the inhumanity of this bill. The pregnancy-related mortality rate in Idaho tripled between 2019 and 2020, according to a December 2022 report by the Idaho Department of Health and Welfare. To know we are forcing that fate on the children of Idaho with this bill is beyond comprehension.
- Planned Parenthood remains fully committed to Idaho. We are committed to helping people seeking abortion in Idaho access the care they need out of state as long as we’re legally able. It is currently legal to seek an abortion, even though providers are unable to operate. Anyone looking for an abortion or hoping to learn more about their options should reach out to our Planned Parenthood Idaho health centers.

Additional Talking Points:

Young people tend to include their parents in the decision to get an abortion, but some are unable to for fear of abuse, retaliation

- The majority of young people facing an unexpected pregnancy do choose to involve their parents in their decision-making. Unfortunately, though, not all young people have a healthy relationship with their parents and forcing a young person to disclose their pregnancy to a parent can precipitate abuse, especially for already-vulnerable youth.
- Young people who have a supportive relationship with their parents are likely to consult them about an abortion decision, but those who do not disclose their pregnancy or their reproductive choices to parents have a good reason.

- Jane’s Due Process (JDP), an organization that works to ensure legal representation for minors seeking abortions in Texas, reported that more than a third of the young women it serves fear physical, emotional, or sexual abuse if they were to tell a parent about their pregnancy.

This bill hurts the very people it aims to protect: the young people of Idaho

- Rather than protecting young people by supporting them, this bill could put vulnerable young people at significant risk by forcing them to disclose their pregnancy status in unsafe environments. This danger makes it more difficult for young people to access needed care.
- For young people living in abusive households, disclosing sexual activity or pregnancy can trigger physical or emotional abuse, including direct physical or sexual violence, or being thrown out of the home. The risks of abuse are especially acute for queer and trans youth.
- One study found that of the young people who do not seek advice from parents, nearly half—forty-five percent—experience significant negative consequences when a parent finds out about pregnancy, from punishment to abuse to being forced to leave the home.
- A Massachusetts study found that of minors who chose not to inform a parent, almost one-quarter feared that they would face family conflict, physical harm, or other abuse if they told a parent about the pregnancy.

Young people are capable of understanding the consequences of abortion and do not need state-mandated parental involvement to make the decisions that are right for them

- According to experts, most young people are mature enough to weigh whether to carry a pregnancy or seek an abortion, and most seek out advice on their own from parents or trusted adults. In fact, studies have found that not only is there not a significant cognitive difference between people as young as fifteen and adults, but adolescents actually perceive greater risks than adults do in some cases.
- By the time a young person is fifteen or sixteen years old, studies show that many adolescents have developed intellectual and cognitive abilities similar to adults, including logical reasoning regarding moral, social and interpersonal matters; the ability to understand consequences, such as the risks and benefits of decisions; and the ability to process information and reason.
- While adolescents tend to be less cognitively developed than adults in terms of having impulse control and resisting peer pressure, pregnancy decisions do not rely on either of these modes of thinking.