

CHAMBER ACTION

1 The Justice Council recommends the following:

2
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to parental notification of termination of
7 a minor's pregnancy; amending s. 390.01115, F.S.;
8 providing a popular name; providing definitions; providing
9 that actual notice shall be given by the physician who
10 will perform the termination of pregnancy procedure;
11 providing for written notice in certain circumstances;
12 specifying information required to be included in notices;
13 providing circumstances in which prior notice is not
14 required; providing that violation of the notice
15 requirements by physicians shall be considered medical
16 malpractice; providing procedures for judicial waiver of
17 notice; providing circumstances under which certain
18 circuit courts may grant a petition for a judicial waiver
19 of notice; providing for the appointment of a guardian ad
20 litem and counsel; providing time requirements for court
21 proceedings; requiring written transcripts of certain
22 proceedings; providing for confidentiality; providing for
23 the availability of an appeal under certain circumstances;

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24 | waiving filing fees and court costs for certain minors;
25 | relieving counties of certain counsel costs; requiring the
26 | Supreme Court to ensure certain proceedings are conducted
27 | expeditiously and lawfully; providing an effective date.
28 |

29 | WHEREAS, the Legislature finds that parents of children in
30 | the State of Florida have a fundamental right to raise their
31 | children free from unnecessary government interference, and

32 | WHEREAS, the United States Supreme Court has confirmed in
33 | H.L. v. Matheson, 450 U.S. 398 (1981), that states further a
34 | constitutionally permissible end by encouraging unmarried
35 | pregnant minors to seek the help and advice of their parents in
36 | making the important decision whether or not to bear a child,
37 | and

38 | WHEREAS, the Florida Supreme Court's rationale in In re
39 | T.W., 551 So. 2d 1186 (Fla. 1989) and North Florida Women's
40 | Health and Counseling Services v. State, 886 So. 2d 612 (Fla.
41 | 2003), is contrary to the rationale of the United States Supreme
42 | Court in H.L. v. Matheson, and

43 | WHEREAS, the Legislature took testimony from citizens from
44 | all over the State of Florida who overwhelmingly believe that a
45 | parent's right to know when their child is undergoing a serious
46 | medical procedure supersedes any implied right of privacy in the
47 | State Constitution, including the right to be notified before
48 | the termination of a minor child's pregnancy notwithstanding a
49 | minor's right to privacy provided in Article I, Section 23 of
50 | the Florida Constitution, and

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51 WHEREAS, the citizens of Florida amended the State
52 Constitution in 2004 and authorized the Legislature to require
53 notice to parents or guardians of minors before termination of
54 their minor child's pregnancy, and

55 WHEREAS, the Parental Notice of the Termination of a
56 Minor's Pregnancy Act of 2005 is necessary to protect the
57 fundamental right of parents to raise their children free from
58 unnecessary government interference and to comply with the
59 mandate of the citizens of Florida, NOW, THEREFORE,

60

61 Be It Enacted by the Legislature of the State of Florida:

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63 Section 1. Section 390.01115, Florida Statutes, is amended
64 to read:

65 (Substantial rewording of section. See
66 s. 390.01115, F.S., for present text.)

67 390.01115 Parental Notice of the Termination of a Minor's
68 Pregnancy Act of 2005.--

69 (1) POPULAR NAME.--This section may be cited as the
70 "Parental Notice of the Termination of a Minor's Pregnancy Act
71 of 2005."

72 (2) DEFINITIONS.--As used in this section, the term:

73 (a) "Actual notice" means notice that is a direct in-
74 person communication.

75 (b) "Child abuse" has the same meaning ascribed in s.
76 827.03.

77 (c) "Medical emergency" means a condition that, on the
78 good faith clinical judgment of a physician treating a minor, so

79 complicates the medical condition of a pregnant minor as to
 80 necessitate the immediate termination of the minor's pregnancy
 81 to avert her death, or for which a delay in the termination of
 82 her pregnancy will create certain risk of substantial and
 83 irreversible impairment of a major bodily function.

84 (d) "Sexual abuse" has the same meaning ascribed in s.
 85 39.01.

86 (3) NOTIFICATION REQUIRED.--

87 (a)1. A termination of the pregnancy of a minor may not be
 88 performed or induced upon a minor unless the physician
 89 performing or inducing the termination of pregnancy has provided
 90 actual notice of the physician's intention to perform or induce
 91 the termination of pregnancy to one parent or the legal guardian
 92 of the pregnant minor at least 48 hours prior to the
 93 commencement of the performance or inducement of the termination
 94 of pregnancy. If the physician was not able to provide actual
 95 notice after exhausting all reasonable efforts, written notice
 96 shall be provided by mail overnight delivery guaranteed, return
 97 receipt requested, with delivery restricted to a parent or legal
 98 guardian with signature confirmation of receipt, which is
 99 deposited at least 48 hours prior to the commencement of the
 100 performance or inducement of the termination of pregnancy. The
 101 physician shall document the reasonable efforts made to provide
 102 actual notice, and such records shall be kept with the minor's
 103 medical records. In instances where written notice is provided
 104 by mail pursuant to this subparagraph and the physician does not
 105 receive the return receipt within 30 days of mailing, the
 106 physician shall document the minor's name and date of birth, the

107 | date the termination of pregnancy was performed or induced, the
 108 | name and address of the minor's parent or legal guardian, and
 109 | that termination of pregnancy services were performed. The
 110 | physician must maintain such records until the minor reaches 21
 111 | years of age or for 10 years, whichever occurs first.

112 | 2. Notice required under this subsection must include the
 113 | name and address of the facility performing the termination of
 114 | pregnancy, the name of the physician providing notice, the days
 115 | and hours of the facility's operation, and when the performance
 116 | or inducement of the termination of pregnancy is scheduled to be
 117 | commenced.

118 | (b) Prior notice is not required if:

119 | 1. A medical emergency exists, and there is insufficient
 120 | time for the attending physician to comply with the notification
 121 | requirements of this subsection. If a medical emergency exists,
 122 | the physician may proceed with the termination of pregnancy
 123 | procedure but must document reasons for the medical necessity in
 124 | the patient's medical records and must thereafter provide notice
 125 | as described in subsection (3) as soon as possible but, in any
 126 | event, not to exceed 24 hours after the procedure is performed;

127 | 2. Notice is waived by the minor who is or has been
 128 | married or has had the disability of nonage removed under s.
 129 | 743.015 or a similar statute of another state; or

130 | 3. Notice is waived under subsection (4).

131 | (c) Violation of this subsection by a physician
 132 | constitutes grounds for disciplinary action under s. 458.331 or
 133 | s. 459.015 and shall be considered an act of medical
 134 | malpractice.

135 (4) PROCEDURE FOR JUDICIAL WAIVER OF NOTICE.--

136 (a) The circuit court of the county in which a pregnant
 137 minor resides may grant a petition for a judicial waiver of the
 138 notice requirements provided in subsection (3) under the
 139 following circumstances:

140 1. If the pregnant minor is 16 years of age or older and
 141 the court finds, by clear and convincing evidence, that the
 142 minor is sufficiently mature to decide whether to terminate her
 143 pregnancy without the advice, counsel, and knowledge of her
 144 parent or guardian of the decision to terminate the pregnancy.
 145 In determining whether a minor who is 16 years of age or older
 146 is sufficiently mature to decide whether to terminate her
 147 pregnancy without the advice, counsel, and knowledge of her
 148 parent or guardian of the decision to terminate her pregnancy,
 149 the court shall consider all relevant evidence relating to the
 150 minor's emotional development, maturity, intellect, and
 151 understanding of the long-term and short-term consequences of
 152 her actions.

153 2. If, regardless of the minor's age, the court finds by a
 154 preponderance of the evidence that the minor has been the victim
 155 of child abuse or sexual abuse by a family or household member
 156 as defined in s. 741.28. A court granting a petition and making
 157 a finding pursuant to this subparagraph shall report the
 158 evidence of child abuse or sexual abuse of the minor petitioner
 159 to the Department of Children and Family Services or the
 160 appropriate jurisdictional law enforcement agency.

161 (b) A minor seeking a judicial waiver may participate in
 162 proceedings on her own behalf. The petition must include a

163 statement that the petitioner is pregnant and notice has not
 164 been waived. The court shall appoint a guardian ad litem for the
 165 minor. A guardian ad litem appointed under this subsection shall
 166 act to maintain the confidentiality of the proceedings. The
 167 court may appoint counsel to represent the minor in proceedings
 168 under this subsection when the services of an attorney have been
 169 recommended by the guardian ad litem based on the circumstances
 170 of the case. The court shall advise the minor of the
 171 availability of counsel authorized in this subsection and shall
 172 appoint counsel upon recommendation of the guardian ad litem.

173 (c) Court proceedings under this subsection must be given
 174 precedence over other pending matters to the extent necessary to
 175 ensure that the circuit court reaches a prompt decision. The
 176 circuit court shall rule, and issue written findings of fact and
 177 conclusions of law, no later than 7 days from the date the
 178 minor's petition is filed.

179 (d) A court that conducts proceedings under this
 180 subsection shall provide for a written transcript of all
 181 testimony and proceedings and issue written and specific factual
 182 findings and legal conclusions supporting its decision and shall
 183 order that the record of the proceedings remain confidential to
 184 the extent provided by s. 390.01116.

185 (e) An expedited appeal, confidential to the extent
 186 provided by s. 390.01116, shall be available, as the Supreme
 187 Court provides by rule consistent with this section, to any
 188 minor to whom the circuit court denies a waiver of notice to her
 189 parent or guardian. An order authorizing the minor's termination

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190 of pregnancy without notice to a parent or guardian is not
191 subject to appeal.

192 (f) No filing fees or court costs shall be required of any
193 pregnant minor who petitions the court for a waiver of parental
194 notification under this subsection at either the trial or the
195 appellate level.

196 (g) No county shall be obligated to pay the salaries,
197 costs, or expenses of any counsel appointed by the court under
198 this subsection.

199 (5) PROCEEDINGS.--The Supreme Court is requested to ensure
200 that proceedings under subsection (4) are conducted
201 expeditiously and in a manner consistent with the requirements
202 of this section.

203 Section 2. This act shall take effect July 1, 2005.