

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Health Care Committee

BILL: SB 1908

SPONSOR: Senator Dockery and others

SUBJECT: Parental Notice of Abortion Act

DATE: March 28, 2005

REVISED: 03/30/05

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Harkey</u>	<u>Wilson</u>	<u>HE</u>	<u>Fav/4 amendments</u>
2.	<u></u>	<u></u>	<u>JU</u>	<u></u>
3.	<u></u>	<u></u>	<u></u>	<u></u>
4.	<u></u>	<u></u>	<u></u>	<u></u>
5.	<u></u>	<u></u>	<u></u>	<u></u>
6.	<u></u>	<u></u>	<u></u>	<u></u>

Please see last section for Summary of Amendments

Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

This bill would implement s. 22, Art. X, State Constitution, which authorizes the Legislature to require by general law for notification to a parent or guardian of a minor before the termination of the minor's pregnancy. The bill:

- Prohibits the performing or inducement of a termination of pregnancy upon a minor without 48-hours' notice to one parent or the legal guardian of the pregnant minor;
- Provides for disciplinary action against a physician for violation of the notice requirement;
- Prescribes notice requirements and provides exceptions to the requirement for notice;
- Prescribes a procedure for judicial waiver of notice;
- Provides for notice of right to counsel;
- Provides for issuance of a court order authorizing consent to a termination of pregnancy without notification;
- Requires the issuance of written findings of fact and legal conclusions;
- Provides for expedited appeal;
- Provides for waiver of filing fees and court costs;
- Precludes assumption of certain expenses by counties;
- Requests the Supreme Court to adopt rules and forms for petitions; and

- Requires the Supreme Court to report annually to the Governor and the Legislature on the number of petitions filed, and the timing and manner of disposal of the petitions.

This bill repeals s. 390.01115, F.S., and creates s. 390.01114, F.S.

II. Present Situation:

Parental Notification Laws

Twenty states have enacted parental notification laws which require that a pregnant minor's parent be notified before the pregnant minor may undergo a termination of her pregnancy. In six of the states, the law has been blocked by a court or was otherwise not enforced.

The 1999 Legislature passed a parental notification law, the Parental Notice of Abortion Act, requiring a physician to give at least 48 hours' actual notice to one parent or to the legal guardian of a pregnant minor before terminating the pregnancy of the minor. The act provides a procedure for judicial waiver. This act was never enforced. Both the trial and district courts barred implementation of the act because of concerns regarding its constitutionality. The act¹ was declared unconstitutional by the Florida Supreme Court in 2003 on the grounds that it violated a minor's right to privacy under Article I, section 23 of the State Constitution.²

The controlling law in the Supreme Court's review of this statute in *North Florida Women's Health and Counseling Services, Inc., et al., v. State of Florida*, was *In re: T.W.*,³ and the court found that in this case, as in *In re: T.W.*, the government failed to provide a compelling state interest for intruding upon the privacy rights of the minor. The Supreme Court approved the trial court's decision permanently enjoining enforcement of the Parental Notice of Abortion Act.

Right to Privacy

Only ten states have privacy provisions in their constitutions. Florida's Constitution provides for a right to privacy in Article I, section 23, as follows:

Every natural person has the right to be let alone and free from governmental intrusion into the person's private life except as otherwise provided herein. This section shall not be construed to limit the public's right of access to public records and meetings as provided by law.

The Florida Supreme Court has held that the express right of privacy in Article I, section 23 of the State Constitution provides broader protection than that afforded by the U.S. Constitution.⁴ Therefore, any state regulation of a fundamental right is subject to the higher standard of review, i.e., strict scrutiny. The Florida Supreme Court has held that the right of privacy is "clearly implicated in a woman's decision of whether or not to continue her pregnancy."⁵

¹ See s. 390.01115, F.S.

² *North Florida Women's Health and Counseling Services, Inc., et al., v. State of Florida* (2003 WL 21546546 (Fla.))

³ *In re: T.W.*, 551 So.2d 1186, 1192 (1989)

⁴ See *Winfield v. Division of Pari-Mutual Wagering*, 477 So.2d 544 (Fla. 1985)

⁵ *In re: T.W.*, 551 So.2d 1186, 1192 (1989)

Constitutional Amendment 1 (2004)

Under Article XI, section 1 of the State Constitution, amendments to the constitution may be proposed by joint resolution agreed to by three-fifths of the membership of each house of the Legislature. The 2004 Legislature passed HJR 1 proposing an amendment to be placed on the ballot for the creation of section 22 in Article X of the State Constitution, to create an exception to the right of privacy for a minor who seeks an abortion.

*Section 22. Parental notice of termination of a minor's pregnancy.--
The legislature shall not limit or deny the privacy right guaranteed to a minor under the United States Constitution as interpreted by the United States Supreme Court. Notwithstanding a minor's right of privacy provided in Section 23 of Article I, the Legislature is authorized to require by general law for notification to a parent or guardian of a minor before the termination of the minor's pregnancy. The Legislature shall provide exceptions to such requirement for notification and shall create a process for judicial waiver of the notification.*

This amendment was approved by 4.6 million voters in the 2004 General Election.

Termination of Pregnancy

Section 390.0111, F.S., prohibits the termination of a pregnancy at any time by anyone other than a physician licensed under ch. 458, F.S., or ch. 459, F.S. Under s. 797.03, F.S., it is unlawful for any person to perform or assist in performing an abortion except in an emergency care situation, other than in a licensed abortion clinic, licensed hospital, or physician's office.

According to the Office of Vital Statistics in the Department of Health, 89,995 pregnancies were terminated in Florida in 2003. The number of minors who had pregnancies terminated is not known.

Child Abuse/Domestic Violence

Chapter 39, F.S., provides for judicial proceedings relating to children. Section 39.0015, F.S., defines *child abuse* and s. 39.01, F.S., defines *sexual abuse of a child*.

Section 741.28, F.S., provides definitions for statutes governing domestic violence. *Family or household member* is defined as spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as if a family or who have resided together in the past as if a family, and persons who are parents of a child in common regardless of whether they have been married. With the exception of persons who have a child in common, the family or household members must be currently residing or have in the past resided together in the same single dwelling unit.

III. Effect of Proposed Changes:

Section 1. Repeals s. 390.01115, F.S., the Parental Notification of Abortion Act, which was never implemented because it was found to be unconstitutional.

Section 2. Creates s. 390.01114, F.S., to require parental notification prior to the termination of a pregnancy of a minor.

Subsection (1) provides a short title. The statute may be cited as the “Parental Notice of Abortion Act.”

Subsection (2) provides definitions, as follows:

Actual notice means notice that is given directly, in person, or by telephone.

Child abuse has the meaning ascribed in s. 39.0015(3), F.S., and refers to the acts of child abuse against a minor by a family member as defined in s. 741.28, F.S.

Constructive notice means notice that is given by certified mail to the last known address of the parent or legal guardian of a minor, with delivery deemed to have occurred 48 hours after the certified notice is mailed.

Medical emergency means a condition that, on the basis of a physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate termination of her pregnancy to avert her death, or for which a delay in the termination of her pregnancy will create serious risk of substantial and irreversible impairment of a major bodily function.

Sexual abuse has the meaning ascribed in s. 39.01, F.S., and refers to the acts of sexual abuse against a minor by a family member as defined in s. 741.28, F.S.

Subsection (3) establishes requirements for notification of a parent. A termination of pregnancy may not be performed or induced upon a minor unless the physician performing or inducing the termination of pregnancy has given at least 48 hours’ actual notice to one parent or to the legal guardian of the pregnant minor of his or her intention to perform or induce the termination of pregnancy. The notice may be given by a referring physician. The physician who performs the termination of pregnancy must receive the written statement of the referring physician certifying that the referring physician has given notice. If actual notice is not possible after a reasonable effort has been made, the physician or his or her agent must give 48 hours’ constructive notice. The notice is not required if:

- A medical emergency exists and there is insufficient time for the attending physician to comply with the notification requirements. If a medical emergency exists, the physician may proceed but must document reasons for the medical necessity in the patient's medical records;
- Notice is waived in writing by the person who is entitled to notice;
- Notice is waived by the minor who is or has been married or has had the disability of nonage removed under s. 743.015 or a similar statute of another state;

- Notice is waived by the patient because the patient has a minor child dependent on her; or
- Notice is waived under the judicial waiver process established in the bill.

A physician's failure to provide notice to a parent or guardian as required in subsection (3), F.S., constitutes grounds for disciplinary action under s. 458.331, F.S., or s. 459.015, F.S.

Subsection (4) provides a procedure for judicial waiver of notice. A minor may petition any circuit court for a waiver of the notice requirements of subsection (3) and may participate in proceedings on her own behalf. The petition must include a statement that the petitioner is pregnant and notice has not been waived. The court may appoint a guardian ad litem for her. A guardian ad litem appointed under this subsection must act to maintain the confidentiality of the proceedings. The circuit court must advise the minor that she has a right to court-appointed counsel and must provide her with counsel upon her request.

Court proceedings under this subsection must be given precedence over other pending matters to the extent necessary to ensure that the court reaches a decision promptly. The court must rule, and issue written findings of fact and conclusions of law, within 48 hours after the petition is filed, except that the 48-hour limitation may be extended at the request of the minor. If the court fails to rule within the 48-hour period and an extension has not been requested, the petition is granted, and the notice requirement is waived.

If the court finds, by clear evidence, that the minor is sufficiently mature to decide whether to terminate her pregnancy, the court must issue an order authorizing the minor to consent to the performance or inducement of a termination of pregnancy without the notification of a parent or guardian. If the court does not find that the minor is sufficiently mature to decide, that there is evidence of child abuse, or that there is evidence of sexual abuse, it must dismiss the petition.

If the court finds, by clear evidence, that there is evidence of child abuse or sexual abuse of the petitioner by one or both of her parents or her guardian, or that the notification of a parent or guardian is not in the best interest of the petitioner, the court must issue an order authorizing the minor to consent to the performance or inducement of a termination of pregnancy without the notification of a parent or guardian. If the court does not make the finding specified in this paragraph or that the minor is sufficiently mature to decide whether to terminate her pregnancy, it must dismiss the petition.

The court must provide for a written transcript of all testimony and proceedings and issue written and specific factual findings and legal conclusions supporting its decision and must order that a confidential record of the evidence and the judge's findings and conclusions be maintained. At the hearing, the court must hear evidence relating to the emotional development, maturity, intellect, and understanding of the minor.

An expedited confidential appeal must be available, as the Supreme Court provides by rule, to any minor to whom the circuit court denies a waiver of notice. An order authorizing a termination of pregnancy without notice is not subject to appeal.

No filing fees or court costs will be required of any pregnant minor who petitions a court for a waiver of parental notification at either the trial or the appellate level. No county will be obligated to pay the salaries, costs, or expenses of any counsel appointed by the court.

Subsection (5) requests the Supreme Court to adopt rules and forms for petitions to ensure that proceedings under subsection (4) are handled expeditiously and in a manner that will satisfy the requirements of state and federal courts.

Subsection (6) requires the Supreme Court, through the Office of the State Courts Administrator, to report by February 1 of each year to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the number of petitions filed under subsection (4) for the preceding year, and the timing and manner of disposal of such petitions by each circuit court.

Section 3. Provides an effective date of July 1, 2005.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Art. I, s. 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Physicians who perform abortions would have to give 48 hours' notice to the parent or legal guardian of a minor before terminating the pregnancy of the minor.

C. Government Sector Impact:

The state would incur the expense of judicial review including the cost of court-appointed counsel for a minor who petitioned the court for judicial bypass of the notification requirements.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

VIII. Summary of Amendments:

Barcode 985204 by Health Care:

Provides that the agent of a physician may give actual notice to the parent or guardian.

Barcode 160262 by Health Care:

Adds a qualification that a medical emergency would be determined by the physician's good-faith clinical judgment.

Barcode 664748 by Health Care:

Requires the court to authorize the minor to consent to the termination of pregnancy if the court finds evidence of child abuse or sexual abuse of the petitioner, and removes the previous limitation that this only applies if the abuse was by a parent or guardian.

Barcode 540200 by Health Care

Requests the Supreme Court to adopt rules to ensure the confidentiality of hearings for judicial bypass.