

**The Florida Senate**  
**PROFESSIONAL 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: Judiciary Committee

BILL: CS/CS/SB 1602

INTRODUCER: Judiciary Committee, Health Regulation Committee, and Senators Storms and Gaetz

SUBJECT: Abortion/Parental Notice

DATE: April 25, 2007

REVISED: \_\_\_\_\_

|    | ANALYST        | STAFF DIRECTOR | REFERENCE | ACTION        |
|----|----------------|----------------|-----------|---------------|
| 1. | <u>Bedford</u> | <u>Wilson</u>  | <u>HR</u> | <u>Fav/CS</u> |
| 2. | <u>Cibula</u>  | <u>Maclure</u> | <u>JU</u> | <u>Fav/CS</u> |
| 3. | _____          | _____          | _____     | _____         |
| 4. | _____          | _____          | _____     | _____         |
| 5. | _____          | _____          | _____     | _____         |
| 6. | _____          | _____          | _____     | _____         |

**I. Summary:**

The bill amends the Parental Notice of Abortion Act to require the appointment of a guardian ad litem for a minor who petitions for a waiver of the parental notice requirements. The bill also specifies additional factors that a court must consider in determining whether a minor is sufficiently mature to decide whether to terminate her pregnancy. Accordingly, a court must consider a minor's:

- Age;
- Overall intelligence;
- Emotional stability;
- Credibility and demeanor as a witness;
- Ability to accept responsibility;
- Ability to assess the future consequences of her choices; and
- Ability to understand and explain the medical consequences of her decision.

A court must also consider whether there has been any intimidation or undue influence on the minor's decision to terminate the pregnancy. Black's Law Dictionary, defines "undue influence" as "[t]he improper use of power or trust in a way that deprives a person of free will and substitutes another's objective."<sup>1</sup>

The bill substantially amends section 390.01114, Florida Statutes.

<sup>1</sup> BLACK'S LAW DICTIONARY (8th ed. 2004).

## II. Present Situation:

In 1999, the Florida Legislature passed legislation requiring parental notification before a minor could obtain an abortion in s. 390.01115, F.S. The Legislature also provided for a judicial bypass or waiver under some circumstances. However, in 2003 the Florida Supreme Court held in *North Florida Women's Health and Counseling Services, Inc., v. State* that s. 390.01115, F.S., violated a minor's right of privacy under article I, section 23 of the Florida Constitution.<sup>2</sup>

In 2004, the voters approved an amendment, creating article X, section 22 of the Florida Constitution, which created an exception to the constitutional right of privacy. This exception to the right of privacy permitted the Legislature to require parental notification of a minor's intent to have an abortion. Under the authority of the amendment, the Florida Legislature passed chapter 2005-52, Laws of Florida, which repealed the former parental notice law in s. 390.01115, F.S., and created s. 390.01114, the Parental Notice of Abortion Act.<sup>3</sup>

The Parental Notice of Abortion Act requires parental notification before a minor may obtain an abortion but allows for the judicial waiver of the notification requirement. During a hearing on a request for a waiver of parental notification, a court must hear evidence relating to the emotional development, maturity, intellect, and understanding of the minor, and all other relevant evidence.<sup>4</sup> A court must waive parental notification if it makes one of the following findings:

- 1) The minor is sufficiently mature to decide whether to terminate her pregnancy;<sup>5</sup>
- 2) The minor was subjected to child abuse or sexual abuse by a parent;<sup>6</sup> or
- 3) Notification of a parent is not in the best interest of a minor.<sup>7</sup>

More specifically, existing s. 390.01114, F.S., sets forth two independent paragraphs under which a judicial waiver of parental notification must be granted. Under paragraph (c) of subsection (4), a court must grant a judicial waiver if a minor has sufficient maturity to decide whether to terminate her pregnancy. Under paragraph (d) of subsection (4), a court must grant a judicial waiver if the minor was subjected to child abuse or sexual abuse by a parent or if parental notification is not in the best interest of the minor. As a result, a child satisfying the criteria of paragraph (d) is not required to have sufficient maturity to decide whether to terminate her pregnancy.

## III. Effect of Proposed Changes:

The bill amends the Parental Notice of Abortion Act to require the appointment of a guardian ad litem for a minor who petitions for a waiver of the parental notice requirements. The bill also specifies factors that a court must consider in determining whether a minor is sufficiently mature to decide whether to terminate her pregnancy. Under existing law, to find that a minor is

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<sup>2</sup> *North Florida Women's Health and Counseling Services, Inc. v. State*, 866 So. 2d 612 (Fla. 2003).

<sup>3</sup> *In re Amendments to the Florida Rules of Juvenile Procedure; Forms for Use with Rules of Juvenile Procedure; and the Florida Rules of Appellate Procedure-Judicial Waiver of Parental Notice of Termination of Pregnancy*, 907 So. 2d 1161 (Fla. 2005).

<sup>4</sup> Section 390.01114(4)(e), F.S.

<sup>5</sup> Section 390.01114(4)(c), F.S.

<sup>6</sup> Section 390.01114(4)(d), F.S.

<sup>7</sup> *Id.*

sufficiently mature, a “court need only find that the minor has the necessary emotional development, intellect and understanding to make an informed decision regarding terminating her pregnancy.”<sup>8</sup> Additionally, a court may consider “all other relevant evidence.”<sup>9</sup> A non-exclusive list of factors for determining whether a minor has sufficient maturity has been identified by case law.<sup>10</sup>

The table below sets forth for comparison the existing factors from case law and the factors from the bill to determine a minor’s maturity level.

| <b>Existing Factors From Case Law</b>  | <b>Maturity Factors Under the Bill</b>   |
|--|--|
| <ul style="list-style-type: none"> <li>• Age</li> <li>• Consideration of options other than abortion                             <ul style="list-style-type: none"> <li>• Demeanor and seeking of advice or emotional support from an adult</li> <li>• Future educational and life plans</li> <li>• Employment</li> <li>• Understanding of the medical risks associated with an abortion as well as emotional consequences</li> <li>• Involvement in civic activities</li> </ul> </li> </ul> | <ul style="list-style-type: none"> <li>• Age</li> <li>• Overall intelligence</li> <li>• Emotional stability</li> <li>• Credibility and demeanor</li> <li>• Ability to accept responsibility</li> <li>• Ability to assess future consequences of choices                             <ul style="list-style-type: none"> <li>• Ability to understand and explain the medical consequences of terminating her pregnancy and to apply that understanding                                     <ul style="list-style-type: none"> <li>• Whether there has been any intimidation or undue influence<sup>11</sup> on the minor’s decision to terminate her pregnancy<sup>12</sup></li> </ul> </li> </ul> </li> </ul> |

The bill deletes the requirement for a court to “hear evidence relating to the emotional development, maturity, intellect, and understanding of the minor, and all other relevant evidence.”<sup>13</sup> As a result, the bill may require a court to consider only the new factors and preclude consideration of other evidence.

<sup>8</sup> In re Jane Doe, 924 So. 2d 935, 939 (Fla. 1st DCA 2006); *see also* s. 390.01114(4)(e), F.S.

<sup>9</sup> Section 390.01114(4)(e), F.S.

<sup>10</sup> In re Jane Doe, 924 So. 2d at 939.

<sup>11</sup> The term “undue influence” means “[t]he improper use of power or trust in a way that deprives a person of free will and substitutes another’s objective.” BLACK’S LAW DICTIONARY (8th ed. 2004).

<sup>12</sup> In effect, by requiring a court to consider intimidation and undue influence, a court may be required to determine whether the decision to terminate a pregnancy was the minor’s decision and not the decision of another person. However, the existence of intimidation and undue influence do not appear related directly to a minor’s level of maturity. Perhaps, the Legislature may wish to make consideration of intimidation and undue influence separate from a minor’s level of maturity by placing that language in a separate paragraph of subsection (4) of s. 390.01114, F.S.

<sup>13</sup> Section 394.01114(4)(e), F.S.

Lastly, the bill revises the findings that a court must make in a judicial waiver proceeding.

| <b>Findings Under Existing Statute</b>  | <b>Findings Under the Bill</b>  |
|---|---|
| Issue written and specific factual findings and legal conclusions supporting its decision | Issue a final written order containing factual findings and legal conclusions supporting its decision, including factual findings and legal conclusions relating to the maturity of the minor as provided under paragraph (c) |

As under existing law, a court must make written findings in a judicial waiver proceeding. It is not clear to what extent the bill requires a court to make more findings than are required under existing law.

Moreover, the bill in paragraph (e) of subsection (4) of s. 390.01114, F.S., requires a court to make written findings related to the maturity of a minor “under paragraph (c).” However, it is not clear what findings are required relating to the maturity of a minor if a judicial waiver is granted under paragraph (d). That paragraph permits a judicial waiver if the minor was subjected to child abuse or sexual abuse by a parent or if parental notification is not in the best interest of a minor. As a result of the cross-reference to paragraph (c), when a judicial waiver is granted under paragraph (d), a court could find that:

- Paragraph (c) is not applicable;
- The minor has a sufficient level of maturity in addition to satisfying the criteria under paragraph (d); or
- The minor does not have a sufficient level of maturity to decide whether to terminate her pregnancy even though she satisfies the criteria under paragraph (d).

The Legislature may wish to clarify potential ambiguities resulting from the application of the cross-reference to paragraph (c) in the case of a judicial waiver granted under paragraph (d). The Legislature may wish to revise the bill to clarify whether the requirements for findings under paragraph (c) are applicable to judicial waivers granted under paragraph (d). Additionally, if the Legislature intends for a court to make more findings than are required under existing law, the Legislature may wish to revise provisions relating to findings in the bill. To require courts to make findings with more detail, the Legislature may wish to require findings for *each* factor considered under paragraph (c) for judicial waivers based on the maturity level of a minor.

The bill takes effect upon becoming a law.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

This bill does not appear to require that a guardian ad litem from the Guardian Ad Litem Program (program) serve as a guardian ad litem in judicial waiver proceedings. As such, the bill does not appear to have a fiscal impact on the program. There also may be costs to the court administrator in facilitating the appointment of a guardian ad litem in each case.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.



## **VIII. Summary of Amendments:**

None.

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This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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