

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Health Regulation Committee

BILL: SB 2446

INTRODUCER: Senator Gardiner and others

SUBJECT: Parental Notice of Abortion

DATE: April 10, 2010

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stovall	Wilson	HR	Pre-meeting
2.			JU	
3.				
4.				
5.				
6.				

I. Summary:

The bill refines the procedures a doctor must undertake to notify a parent or guardian when a minor seeks to terminate her pregnancy. The bill also expands upon the procedure for a minor to petition the court for a judicial waiver of the parental notice requirement and the factors the judge must consider and document when rendering his or her order on the petition.

The bill expresses the Legislature’s intent not to impinge upon the constitutional prerogatives of the judiciary. Accordingly, if a court determines that any part of this act improperly encroaches on the authority of the Florida Supreme Court to determine the rules of practice and procedure in Florida courts, the Legislature intends that such provision be construed as a request for a rule change and not as a mandatory legislative directive. The bill also provides that if any provision of this act is held invalid, it does not affect the rest of the act, as the provisions of this act are severable.

This bill substantially amends s. 390.01114 of the Florida Statutes, and provides two unnumbered sections of law.

II. Present Situation:

In 1999, the Legislature enacted a law requiring parents of minors to be notified prior to the minor’s termination of a pregnancy. This law was constitutionally challenged on grounds that the act violated a person’s right to privacy under the Florida Constitution. The Florida Supreme Court concluded that the act violated Florida’s constitutional right to privacy because the minor was not afforded a mechanism by which to bypass parental notification if certain exigent

circumstances existed.¹ In response to the court's decision, the Legislature proposed a constitutional amendment authorizing the Florida Legislature, notwithstanding a minor's right to privacy under the Florida Constitution, to require a physician to notify a minor's parent or guardian prior to termination of the minor's pregnancy, which was subsequently ratified by Florida voters.² The amendment provides:

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.³

The Legislature responded to this authorization by enacting the Parental Notice of Abortion Act (Act).⁴ The Act requires a treating physician to provide actual notice, in person or by telephone, to a parent or other legal guardian of a minor seeking to terminate her pregnancy at least 48 hours before the inducement or performance of the termination of pregnancy.⁵ However, constructive notice may be provided after a physician has made reasonable efforts to contact the parents or legal guardian. To accomplish legally valid constructive notice, the physician must provide written notice, signed by the physician, and mailed at least 72 hours before the inducement or performance of the termination of pregnancy, to the last known address of the parent or legal guardian of the minor, by certified mail, return receipt requested, and delivery restricted to the parent or legal guardian. After 72 hours, delivery is deemed to have occurred.⁶

The notice may be provided by the physician who will perform or induce the termination of pregnancy or by the referring physician. If the referring physician undertakes the actual or constructive notification, the physician who will perform or induce the termination of pregnancy must receive a written statement of the referring physician certifying that the referring physician has given the notice.

If actual notice is provided by telephone, the physician must actually speak with the parent or guardian and record in the minor's medical file the name of the parent or guardian provided notice, the phone number dialed, and the date and time of the call. If constructive notice is given, the physician must document that notice by placing copies of any document related to the notice in the minor's medical file.

Notice under the Act is not required if:

- In the physician's good faith clinical judgment, a medical emergency⁷ exists and there is insufficient time for the attending physician to comply with the notification requirements;

¹ *North Florida Women's Health and Counseling Services v. State*, 866 So. 2d 612 (Fla. 2003).

² See FLA. CONST. art. X, s. 22.

³ *Id.*

⁴ Laws of Fla. 2005-52, s 2

⁵ s. 390.01114(3)(a), F.S.

⁶ s. 390.01114(2)(c), F.S.

⁷ A medical emergency is defined as a condition that, on the basis of the physician's good faith clinical judgment, so

- Notice is waived in writing by the person who is entitled to notice;
- Notice is waived by a minor who is or has been married or has had the disability of nonage removed under statute;
- Notice is waived by the patient because the patient has a minor child dependent on her; or
- A court waives the parental notification process via a bypass proceeding.⁸

Parental Notification Judicial-Bypass Proceeding

Under the Act, a minor may petition any circuit court in a judicial circuit within the jurisdiction of the District Court of Appeal in which she resides for a waiver of the notice requirements.⁹ To initiate the proceeding, a minor must file a petition with the court under a pseudonym or through the use of initials.¹⁰ The court must advise the minor that she is entitled to court-appointed counsel upon her request at no charge.¹¹ These proceedings are given precedence over other pending matters to ensure that the court reaches a decision promptly.

After a petition is filed, the court must rule, and issue written findings of fact and conclusions of law, within 48 hours.¹² In order to grant the petition, the court must:

- Find, by clear and convincing evidence, that the minor is sufficiently mature to decide whether to terminate her pregnancy;
- Find, by a preponderance of the evidence, that there is evidence of child abuse or sexual abuse of the minor by one or both of her parents or her guardian; or
- Find, by a preponderance of the evidence that the notification of a parent or guardian is not in the best interest of the minor.¹³

The rule adopted by the Florida Supreme Court defines “48 hours” as meaning exactly 48 hours from the filing of the petition and specifically includes weekends, holidays, and times after regular business hours of the court.¹⁴ If the court fails to issue a ruling within the 48-hour period and an extension of time has not been requested by the minor, the petition is granted, and the notice requirement is waived.¹⁵

The court is required to hear evidence relating to the emotional development, maturity, intellect, and understanding of the minor, in addition to all other relevant evidence. The court must:

- Provide for a written transcript of all testimony and proceedings;
- Issue written and specific factual findings and legal conclusions to support its decision; and
- Order that a confidential record be maintained.

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.

⁸ s. 390.01114(3)(b), F.S.

⁹ s. 390.01114(4)(a), F.S.

¹⁰ Id. No filing fees or court costs are required of any pregnant minor who petitions a court for a waiver of parental notification under the Act. Section 390.01114(4)(g), F.S.

¹¹ s. 390.01114(4)(a), F.S.

¹² s. 390.01114(4)(b), F.S. The 48-hour period may be extended only upon the request of the minor.

¹³ s. 390.01114(4)(c) and (d), F.S.

¹⁴ Rule 8.820(d), Florida Rules of Juvenile Procedure.

¹⁵ s. 390.01114(4)(b), F.S.

In 2008 and 2009, 595 and 476, respectively, petitions were filed to bypass parental notification. The following chart depicts the disposition of these petitions.¹⁶

<i>Year</i>	<i>Petitions Filed</i>	<i>Granted</i>	<i>Dismissed</i>	<i>Granted without Judicial order*</i>	<i>Total Disposed</i>
2008	595	567	27	2	596**
2009	476	448	27	1	476

* 48 hours expired without the court entering an order.

** One petition was filed in calendar year 2007.

Judicial Considerations

In re Petition of Jane Doe,¹⁷ the Second District Court of Appeal of Florida provided an in-depth review of considerations by courts throughout the country in assessing maturity, for purposes of determining whether to permit a judicial waiver of the parental notification requirement for an abortion.

The *Jane Doe* case noted that the trial courts have drawn inferences from the minor's composure, analytic ability, appearance, thoughtfulness, tone of voice, expressions, and her ability to articulate her reasoning and conclusions.¹⁸ The *Jane Doe* case also noted that another court,¹⁹ in its attempt to define maturity, observed:

Manifestly, as related to a minor's abortion decision, maturity is not solely a matter of social skills, level of intelligence or verbal skills. More importantly, it calls for experience, perspective and judgment. As to experience, the minor's prior work experience, experience in living away from home, and handling personal finances are some of the pertinent inquiries. Perspective calls for appreciation and understanding of the relative gravity and possible detrimental impact of each available option, as well as realistic perception and assessment of possible short term and long-term consequences of each of those options, particularly the abortion option. Judgment is of very great importance in determining maturity. The exercise of good judgment requires being fully informed so as to be able to weigh alternatives independently and realistically. Among other things, the minor's conduct is a measure of good judgment. Factors such as stress

¹⁶ The 2008 data came from The Open Government Sunset Review of Section 390.01116, F.S., Parental Notice of Abortion Act Interim Report 2010-224, prepared by the Florida Senate Judiciary Committee, available at: <http://www.flsenate.gov/data/Publications/2010/Senate/reports/interim_reports/pdf/2010-224ju.pdf>, (Last visited on April 10, 2010). The 2009 data came from the Florida Office of the State Courts Administrator, Parental Notice of Abortion Act, Petitions Filed and Disposed By Circuit and County, January through December 2009 (January 20, 2010), on file with the Senate Health Regulation Committee.

¹⁷ *In re Petition of Jane Doe*, 973 So. 2d 548 (Fla. 2d DCA 2008). The motion for rehearing en banc was denied. In this case, the court held that the juvenile failed to prove by clear and convincing evidence that she was sufficiently mature to warrant waiving the requirement for parental notification of abortion and also failed to establish that parental notification concerning abortion was not in her best interest.

¹⁸ *Id.* at 552, citing *Ex parte Anonymous*, 806 So.2d 1269, 1274 (Ala. 2001).

¹⁹ *Id.* at 551, citing *H.B. v. Wilkinson*, 639 F.Supp. 952, 954 (D.Utah 1986), which cited *Am. Coll. of Obstetricians & Gynecologists v. Thornburgh*, 737 F.2d 283, 296 (Pa. 3d Cir.1984), *affirmed* 476 U.S. 747 (1986).

and ignorance of alternatives have been recognized as impediments to the exercise of proper judgment by minors, who because of those factors “may not be able intelligently to decide whether to have an abortion.”

The *Jane Doe* case continued, similarly, another court has stated that when evaluating maturity, pertinent factors include, but are not limited to, the minor’s physical age, her understanding of the medical risks associated with the procedure as well as emotional consequences, her consideration of options other than abortion, her future educational and life plans, her involvement in civic activities, any employment, her demeanor and her seeking advice or emotional support from an adult.²⁰

Finally, the *Jane Doe* case discussed that, after surveying the decisions of other courts, the Supreme Court of Texas wrote that those courts had inquired into how a minor might respond to certain contingencies, particularly assessing whether the minor will seek counseling in the event of physical or emotional complications. Many courts have assessed the minor’s school performance and activities, as well as the minor’s future and present life plans. A few courts have explicitly assessed the minor’s character and judgment directly. Most of the decisions have also considered the minor’s job experience and experience handling finances, particularly assessing whether the minor is aware of the financial obligations inherent in raising a child. Almost all courts conduct the maturity inquiry, either explicitly or implicitly, against the background circumstances of the minor’s experience. These include the minor’s relationship with her parents, whether she has social and emotional support, particularly from the male who would be a father, and other relevant life experiences.²¹

The *Jane Doe* case also addressed the contention that notification of the parent or guardian was not in the appellant’s best interest. The court stated, some factors to be considered are: the minor’s emotional or physical needs; the possibility of intimidation, other emotional injury, or physical danger to the minor; the stability of the minor’s home and the possibility that notification would cause serious and lasting harm to the family structure; the relationship between the parents and the minor and the effect of notification on that relationship; and the possibility that notification may lead the parents to withdraw emotional and financial support from the minor.²²

III. Effect of Proposed Changes:

Modifications to the Notice Provisions

The definition of constructive notice is amended to include notification by first-class mail, in addition to notification by certified mail, return receipt requested, and delivery restricted to the parent or legal guardian.

The bill requires actual notice given by telephone to be confirmed in writing, signed by the physician, and mailed to the last known address of the parent or legal guardian of the minor. This

²⁰ Id. at 551-552, citing *In re Doe*, 924 So.2d 935, 939 (Fla. 1st DCA 2006).

²¹ Id. at 552, citing *In re Doe 2*, 19 S.W.3d 249, 256 (Tex. 2000).

²² Id. at 553, citing *In re Doe*, 932 So.2d 278, at 285-86 (Fla. 2d DCA 2005); see also *In re Doe 2*, 166 P.3d 293, 296 (Colo. App. 2007); *In re Doe*, 19 Kan.App.2d 204, 866 P.2d 1069, 1075 (1994); *In re Doe 2*, 19 S.W.3d 278, 282 (Tex. 2000).

confirmation must be sent by first-class mail and by certified mail, return receipt requested, with delivery restricted to the parent or legal guardian.

If a medical emergency exists, the physician must make reasonable attempts, whenever possible without endangering the minor, to contact the parent or legal guardian. Once the procedure is completed, the physician is required to provide notice directly, in person or by telephone, to the parent or legal guardian. This notification must include the details of the medical emergency and any additional risks to the minor. If this notification has not occurred within 24 hours after the termination of pregnancy, the physician must provide this expanded notice in writing, signed by the physician, and mailed to the last known address of the parent or legal guardian of the minor. This confirmation must be sent by first-class mail and by certified mail, return receipt requested, with delivery restricted to the parent or legal guardian.

In order for notice to be waived in writing by the parent or legal guardian, the document must be notarized, dated not more than 30 days before the termination of pregnancy, and contain a specific waiver of his or her right as the parent or legal guardian to notice of the minor's termination of pregnancy.

Modifications to the Parental Notification Judicial-ByPass Procedure

The number of courts in which a minor is able to file a petition for waiver of the parental notice requirement is reduced. The bill authorizes a minor to petition any circuit court in which she resides.

The court is required to rule within three business days after the petition is filed, instead of within 48-hours (as defined by rules of the Florida Supreme Court). Unless this timeframe is extended by the minor, if the circuit court has not ruled within three business days, the minor may petition for a hearing to the chief judge of the circuit. The chief judge must ensure that a hearing is held within 48 hours after receipt of the minor's petition and an order is entered within 24 hours after the hearing. If the circuit court does not grant judicial waiver of the notice, ostensibly by denying the petition or failing to rule on it, the minor may appeal. An appellate court is required to rule within seven days after receipt of the appeal, but may remand the petition with instruction for the circuit court to rule within three business days after the remand.

The bill restricts the grounds for overturning a ruling on appeal to abuse of discretion by the court. The bill specifically provides that overturning a ruling on appeal may not be based on the weight of the evidence presented to the circuit court.

Factors that the court must consider in determining whether the minor is sufficiently mature to decide whether to terminate her pregnancy are changed from the minor's emotional development, maturity, intellect, understanding of the minor, and all other relevant evidence to:

- The minor's:
 - Age,
 - Overall intelligence,
 - Emotional development and stability,
 - Credibility and demeanor as a witness,
 - Ability to accept responsibility,

- Ability to assess both the immediate and long-range consequences of the minor's choices, and
- Ability to understand and explain the medical risks of terminating her pregnancy and to apply that understanding to her decision; and
- Whether there may be any undue influence by another on the minor's decision to have an abortion.

The bill requires the court to include in its final written order the factual findings and legal conclusions relating to the maturity of the minor based on the factors enumerated above.

The bill raises the standard for the court to find that the notification of a parent or guardian is not in the best interest of the minor from a preponderance of the evidence to clear and convincing. When assessing the best-interest standard, the court is precluded from including consideration of financial best interest, financial considerations, or the potential financial impact on the minor or minor's family if she does not terminate her pregnancy.

Additional Provisions

The Office of the State Courts Administrator must include in its annual report the reason for the waiver for each petition resulting in a waiver of parental notice.

The bill expresses the Legislature's intent not to impinge upon the constitutional prerogatives of the judiciary. Accordingly, if a court determines that any part of this act improperly encroaches on the authority of the Florida Supreme Court to determine the rules of practice and procedure in Florida courts, the Legislature intends that such provision be construed as a request for a rule change and not as a mandatory legislative directive.

The bill also provides that if any provision of this act is held invalid, it does not affect the rest of the act, as the provisions of this act are severable.

The act is to take effect upon becoming a law.

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:

In conjunction with the enactment of the Act, the Legislature created an exemption from public access to judicial records related to parental notification bypass proceedings. Under this public-records exemption, any information in a court record, which could be used to identify a minor in a proceeding to bypass parental notification under the Act, is confidential and exempt from public disclosure.²³

²³ s. 390.01116, F.S. This section will be repealed on October 2, 2010, unless reviewed and reenacted by the Legislature under the Open Government Sunset Review Act. See Ch. 2005-104, L.O.F.

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.

D. Other Constitutional Issues:

Section 3, Article II of the Florida Constitution provides that the powers of the state government shall be divided into legislative, executive, and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.

Section 2, Article V of the Florida Constitution provides, among other things, that the supreme court shall adopt rules for the practice and procedure in all courts including the time for seeking appellate review, the administrative supervision of all courts, the transfer to the court having jurisdiction of any proceeding when the jurisdiction of another court has been improvidently involved, and a requirement that no cause shall be dismissed because an improper remedy has been sought.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Minors seeking to terminate a pregnancy will have fewer options of courts in which to seek judicial bypass of the parental notification requirement. This could affect the minor's confidentiality and anonymity when pursuing the judicial waiver.

Conceivably, if the circuit court fails to rule, the period from filing a petition for judicial waiver of the parental notification until the pregnancy is terminated could be delayed from 48 hours to 20 days.

C. Government Sector Impact:

Providing the circuit court with three business days to rule on a petition, as opposed to 48 hours, might provide some relief for overcrowded circuit court dockets.

VI. Technical Deficiencies:

Lines 119 – 121 need clarification since a minor does not reside in a circuit court. An amendment might delete lines 119 – 120 and insert: (a) A minor may petition any circuit court in the a judicial circuit within the jurisdiction of the District Court of Appeal

VII. Related Issues:

The bill does not include an automatic waiver of the parental notice requirement if the court fails to rule after the Appellate Court remands for a ruling.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

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