



**House
Legislative
Analysis
Section**

Manufacturer's Bank Building, 12th Floor
Lansing, Michigan 48909
Phone: 517/373-6466

THE APPARENT PROBLEM:

Through statutory mandate, common law or common practice, minors are required to obtain their parents' consent to their decisions to undergo surgery, participate in school athletics and field trips, be absent from school, and apply for marriage licenses, driver's licenses, and credit cards. Minors, however, currently do not need their parents' permission to have an abortion, although many feel that they should. Proponents of parental consent requirements cite the inherent danger of complications with any surgical procedure, the stress and trauma of an unplanned pregnancy and abortion, the emotional immaturity of minors and their inability to make rational, informed decisions concerning such complex issues as abortion, and the higher incidence of depression, anxiety and suicidal tendencies among teenagers as evidence of the need for parental guidance and support during what some consider to be a family crisis. Some contend that mandating parental consent for teenage abortions would ensure that minors received the advice and help they need in making a very difficult decision, and that parents, who are legally and financially responsible for their children, would be able to protect their children and counsel them according to their values.

THE CONTENT OF THE BILL:

The bill would create the "Parental Rights Restoration Act" to require parental consent for abortions performed on minors and to provide for a judicial waiver of parental consent under certain circumstances. Specifically, the bill would prohibit a person from performing an abortion on a minor without first obtaining the written consent of the minor and one parent, or the legal guardian, of the minor. However, the prohibition would not apply in case of an emergency ("a situation in which continuation of the pregnancy . . . would create an immediate threat and grave risk to the life of the minor, as certified in writing by a physician") or in a case in which a psychiatrist or psychologist certified in writing that there was reasonable cause to believe that the minor would commit suicide rather than approach her parent or the court for consent or a waiver. The provisions of the bill would apply regardless of whether the minor was a Michigan resident.

The term "abortion" would mean "the intentional use of an instrument, drug, or other substance or device to terminate a woman's pregnancy for a purpose other than to increase the probability of a live birth, to preserve the life and health of the child after live birth, or to remove a dead fetus" The definition of abortion would exclude the use or prescription of a contraceptive drug or device. A "minor" would be a person under 18 years of age who was not emancipated under Public Act 293 of 1968, which specifies the conditions for the emancipation of minors and establishes the rights and obligations of parents.

If a parent or the legal guardian were not available or refused to consent to the abortion or if the minor chose not

PARENTAL CONSENT FOR MINOR'S ABORTION

House Bill 5103 as passed by the House
Second Analysis (1-5-90)

RECEIVED

Sponsor: Rep. Michael Griffin
Committee: Public Health

MAR 05 1990

Mich. State Law Library

to seek consent of a parent or legal guardian, the minor could petition the probate court for a waiver of the parental consent requirement. Proceedings for obtaining a waiver of parental consent would have to be completed with anonymity and sufficient expedition to provide an effective opportunity for the minor to provide self-consent to an abortion, in accordance with all of the following:

- The court would have to provide a minor seeking a waiver with notice of her rights under the bill, including anonymity of the proceedings (and the right to use initials only in the petition), a court-appointed attorney or guardian ad litem, and assistance with preparing and filing the petition.
- A minor could file a petition for waiver of parental consent on her own behalf or through a next friend (a person who has not been appointed guardian for the minor). The next friend could not be a physician who performs abortions, an employee or someone who receives financial consideration from a physician or organization that performs abortions or abortion counseling and referral services, or a board member or volunteer for such an organization.
- A hearing on a petition for waiver of parental consent would have to be held within 72 hours after it was filed. The hearing on a waiver petition would be closed to the public and all records of proceedings related to the petition for waiver would be confidential.
- A ruling on a waiver petition would have to be made within 48 hours after the petition was filed, excluding weekends and legal holidays.
- The court that heard the petition would have to issue and make a part of the confidential record its specific written findings of fact and conclusions of law in support of its ruling.
- A minor would not be required to pay a fee for proceedings under the bill.

The court would be required to grant a waiver of parental consent if it found that either the waiver would be in the best interests of the minor or the minor was sufficiently mature and well-enough informed to make the decision regarding abortion independently of her parents or legal guardian. A minor who was denied a waiver could appeal the probate court's decision to the court of appeals. Appeal proceedings would have to be expedited and anonymous. An appeal would have to be filed within 24 hours of the probate court's order, and would have to be decided within 72 hours after filing, excluding Sundays and holidays.

The anonymity requirements of the bill would not prevent the court from reporting suspected child abuse according to the requirements of the Child Protection Law. If a minor seeking a waiver of parental consent revealed to the court that she was the victim of sexual abuse and that her pregnancy was the result of sexual abuse, the court would be required to report the suspected sexual abuse to the Department of Social Services or a law enforcement

H.B. 5103 (1-5-90)

OVER

agency. The court would inform the minor that there are laws designed to protect her, including provisions of the Probate Code allowing a law enforcement officer to take her into protective custody and the commencement of proceedings to place the minor under court jurisdiction.

A person who intentionally performed an abortion in violation of the bill would be guilty of a misdemeanor. A person's failure to obtain parental consent or a copy of a waiver before performing an abortion would be prima facie evidence in civil actions of his or her failure to obtain informed consent or of his or her interference with family relations. A court could not construe the law of this state to preclude exemplary damages in a civil action related to violations of the bill.

The bill specifies that it would not create a right to an abortion. Further, the bill specifies that in spite of any other provision of the bill, a person would be prohibited from performing an illegal abortion.

Finally, the bill would require school districts to ensure that students in grades 6-12 were given written information about the existence of the law, the address and telephone number of the local probate court, and an explanation of how to contact the probate court for assistance. The Department of Education would be required to distribute to school districts a standard form for the information.

BACKGROUND INFORMATION:

The following is a brief discussion of several significant abortion decisions of the United States Supreme Court. Cases pending before the court also are mentioned below.

Roe v. Wade (410 U.S. 113). In this 1973 decision, the court held that a state law that criminalized abortions except those necessary to save the mother's life, without regard to pregnancy stage and without recognition of the other interests involved, violated the due process clause of the fourteenth amendment. The court found that the constitutional right of privacy "is broad enough to encompass a woman's decision whether or not to terminate her pregnancy . . . but that this right is not unqualified and must be considered against important state interests in regulation"; and, "a state may properly assert important interests in safeguarding health, in maintaining medical standards, and in protecting potential life. At some point in pregnancy, these respective interests become sufficiently compelling to sustain regulation of the factors that govern the abortion decision."

The court then concluded that, for the stage before the end approximate of the first trimester, the abortion decision and its effectuation must be left to the medical judgment of the pregnant woman's attending physician. After the approximate end of the first trimester, the state, in promoting its interest in the health of the mother, may regulate the abortion procedure in ways that are reasonably related to maternal health. For the stage subsequent to viability, the state, in promoting its interest in the potentiality of human life, may regulate and even proscribe abortion except when it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother.

Planned Parenthood of Central Missouri v. Danforth (428 U.S. 52). The Supreme Court in 1976 invalidated statutory provisions requiring the consent to an abortion by the husband of a married woman and by one parent of an unmarried pregnant minor, unless the abortion was medically necessary to preserve the life of the mother. The

court held that, "the state does not have the constitutional authority to give a third party an absolute, and possibly arbitrary, veto over the decision of the physician and his patient to terminate the patient's pregnancy, regardless of the reason for withholding consent".

The court went on to say that, "We emphasize that our holding that [the Missouri consent statute] is invalid does not suggest that every minor, regardless of age or maturity, may give effective consent for termination of her pregnancy. The fault with [the statute] is that it imposes a special-consent provision, exercisable by a person other than the woman and her physician, as a prerequisite to a minor's termination of her pregnancy and does so without a sufficient justification for the restriction."

Bellotti v. Baird (443 U.S. 622). In this 1979 decision, the court held unconstitutional a Massachusetts statute that required parental consent before an abortion could be performed on an unmarried woman under the age of 18; and that allowed an abortion to be obtained by court order for good cause shown if one or both parents refused consent. The court stated:

We therefore conclude that if the state decides to require a pregnant minor to obtain one or both parents' consent to an abortion, it also must provide an alternative procedure whereby authorization for the abortion can be obtained.

A pregnant minor is entitled in such a proceeding to show either: (1) that she is mature enough and well enough informed to make her abortion decision, in consultation with her physician, independently of her parents' wishes; or (2) that even if she is not able to make this decision independently, the desired abortion would be in her best interests. The proceeding in which this showing is made must assure that a resolution of the issue, and any appeals that may follow, will be completed with anonymity and sufficient expedition to provide an effective opportunity for an abortion to be obtained. In sum, the procedure must ensure that the provision requiring parental consent does not amount to the "absolute, and possibly arbitrary, veto" that was found impermissible in Danforth.

Webster v. Reproductive Health Services (109 S.Ct. 3040). In this case, decided July 3, 1989, the court abandoned its trimester framework of Roe v. Wade, stating that, "we do not see why the state's interest in protecting potential human life should come into existence only at the point of viability, and that there should therefore be a rigid line allowing state regulation after viability but prohibiting it before viability." The court upheld a Missouri statute that requires a physician, before performing an abortion on a woman whom the doctor has reason to believe is 20 or more weeks pregnant, to ascertain whether the fetus is viable by performing certain medical examinations and tests; prohibits public employees from performing an abortion not necessary to save the mother's life; and prohibits the use of public facilities for performing an abortion not necessary to save the mother's life.

Pending Cases. The United States Supreme Court has agreed to hear three abortion cases in its current session. Turnock v. Ragsdale involves an Illinois law that requires abortions clinics to meet standards similar to those in hospital operating rooms. Hodgson v. Minnesota presents a challenge to a Minnesota law that requires both parents to be notified before a teenage girl can have an abortion, and provides a method for the minor to bypass the

notification requirement by going before a state judge. In Ohio v. Akron Center for Reproductive Health, the state is appealing a federal appeals court decision invalidating a law that requires one parent to be notified before a teenager has an abortion, and contains a judicial bypass provision.

FISCAL IMPLICATIONS:

The House Fiscal Agency reports that the bill would have minimal fiscal implications for the state. (1-3-90)

ARGUMENTS:

For:

The bill would foster communications between family members; promote strong, caring family relationships; and ensure that minors received mature guidance and support from persons who care deeply for them. Further, it would protect the rights of parents to safeguard their children and rear them according to their values and beliefs. Although those adolescents who involve their parents in decisions concerning the pregnancy may risk embarrassment, loss of privileges, parental disapproval, and possible initial rejection by the parents, their relationships with their parents may mature and become closer, more intimate and more supportive. Those who do not involve their parents may experience many negative emotional consequences including excessive guilt, psychological conflict, alienation, self-rejection, fear, depression, and the loss of identity. An unplanned pregnancy is a sufficiently significant concern to parents to justify limitations on a child's constitutional freedoms. Since children are particularly vulnerable and unable to make critical decisions in an informed, mature manner, there is a compelling need for parental involvement laws.

For:

Requiring parental consent to abortions has helped decrease the number of pregnancies among teenagers. According to testimony, in Minnesota, where a parental notification law was in effect for six years before a lawsuit by an abortion clinic caused it to be enjoined, there was a 27 percent reduction in pregnancies among minors during the period the law was in effect. Further, after the Massachusetts parental consent law went into effect in April 1981, abortions performed on Massachusetts minors declined from 5,113 in 1980 to 3,943 in 1982 — a 23 percent reduction in total abortions, while the number of births rose only by seven between 1980 and 1982.

Response: The bill would not help decrease the number of adolescent pregnancies. Reportedly, in a 1987 study done in Minnesota, less than one-quarter of the adolescents having abortions were aware that parental notification was mandated. Only 16 percent knew of a court bypass option and only 8.1 percent knew about both components of the law. If the adolescents do not know about the law, it can have no effect on their decision-making. In other words, even if the bill were to become law, those who elected to have abortions would most likely find out about the law when they contacted a physician for their abortion, not before they became pregnant. The overall effect of the bill would be to add the stress of court proceedings to an already stressed adolescent and delay the procedure, possibly resulting in more complicated and dangerous abortions. Any statistics that appear to indicate that mandatory parental consent or notification for

abortions is directly responsible for a decrease in teenage pregnancy should be carefully analyzed and interpreted. It may be, for example, that the AIDS epidemic has been more responsible for any decrease in teenage pregnancy than a parental consent or notification requirement.

For:

Abortion is the only surgical procedure that may be performed on a minor without the knowledge or consent of her parents. A minor cannot even receive an aspirin from a school nurse without the parent's consent. Even ear piercing is viewed as a surgical procedure by the jewelry stores that provide the service; they will not pierce a minor's ears without a parent's consent.

There is good reason for parents to be aware of any medical procedures that are performed on their children. After all, they know the child's medical history and, since abortion procedures involve the use of medications and some form of anesthetic, complete information about the medical history of the child and the family is necessary. Moreover, if a minor suffers any complications from an abortion, the parents should be informed so that they are prepared to seek treatment for the complications.

Response: Abortion is a safe medical procedure. Delays in abortions, however, do place adolescents at increased risk of medical complications as second trimester abortions have higher rates of serious complications. A law that forced an adolescent to use the court bypass system in order to obtain permission to have an abortion would delay the procedure and place those adolescents at higher risk of serious medical complications, such as infection, hemorrhage, and uterine injury.

Against:

The state does not require any minor to seek parental consent for mental health counseling, prenatal care, or treatment for substance abuse or sexually transmitted diseases. Should the state then put a special burden of parental consent for abortion on young women who become pregnant, particularly those who are pregnant because of sexual violence or incest? Girls and young women are even less likely than adult women to disclose that they have been victims of sexual assault or incest because of embarrassment, ignorance, and the very real fear of being blamed for the assault. The burden of a pregnancy resulting from the sexual assault or incest will make a minor even less likely to disclose her victimization and more likely to seek an abortion outside the state, attempt self-induced abortion or suicide, or require treatment for depression, anxiety and the other mental and emotional consequences of an unwanted pregnancy. Further, it is incomprehensible that the state would require a young victim of incest to ask permission to have an abortion from the very person who violated her.

Response: The bill's judicial bypass provisions are designed to accommodate these concerns. Further, as amended on the House floor, the bill contains an exemption for those cases in which a psychologist or psychiatrist certified that a pregnant minor could reasonably be expected to commit suicide rather than try to obtain her parent's consent for an abortion or a court waiver.

Against:

The judicial bypass is an unworkable alternative to parental consent. First, since the bill would require that the minor file a written petition for judicial waiver of the parental consent requirement, the court would be unable to respond

to a verbal request from a worried and anxious teen, who would be as likely to search for an alternative method of obtaining an abortion as complete a written petition. Second, the probate courts are already short-staffed in handling their increasing docket. It would be very difficult for the staff to help draft and file the petition as required by the bill. In busy urban courts, the delay in obtaining meaningful assistance by the court staff could be days or weeks, despite the bill's requirement that a hearing be held within 72 hours.

Physicians currently make a determination as to the "mature minor" status of the adolescent. If in the opinion of the physician, the adolescent is mature enough to understand the risks and benefits of her medical care, further medical care can commence. Removing that decision from physicians and placing it in the hands of the court would not help adolescents or their families. The bill ignores the very real difficulties inherent in any effort to force expedited results from a court system designed to resolve conflict through measured deliberation.

Response: The bill would allow a minor to ask another adult to petition the court on her behalf for a waiver of parental consent. Thus, if a pregnant teenager was too intimidated by the judicial process and surroundings to seek a waiver, her "next friend" could do so instead. In regard to the 48-hour deadline, time obviously is of the essence in an abortion case more than it is in most other proceedings, and judges presumably would bear this in mind when complying with the law.

Against:

It is clear that the most important support for a pregnant adolescent is her family. Physicians strongly encourage communication between adolescents and their families in all important areas of decision-making. Most adolescents go to their parents when they need help. Two-thirds of the adolescents in a sample population who had abortions in Wisconsin had notified at least one of their parents. In Minnesota, the same proportion of adolescents had contacted their parents. In short, the Minnesota law had no effect on notification of parents or on communication within the family. Adolescents who feel they cannot talk to their parents often have some other close adult in whom they can confide. There may be an important reason why an adolescent cannot confide in her parents. Unfortunately, there are too many dysfunctional families and many cases of teens being physically abused when a parent found out that they were pregnant. Communication in families that are dysfunctional cannot be legislated. Moreover, even in the best families, parents are not necessarily good counselors. They may create an environment that encourages good communication, mutual respect, and acceptance. But in a crisis they understandably project their own feelings of disappointment and hurt. They may be too close to the situation to make rational, well-informed choices themselves and the guilt and anger may haunt both minor and parents for a long time.

Against:

The bill would increase the number of minors who would resort to self-induced or illegal abortions. Testimony before the House Public Health Committee revealed the plight of an Indiana family whose daughter died from complications resulting from an illegal abortion. The family believes that their state's parental consent statute was directly responsible for their daughter's death, because she was unable or unwilling to come to them for support, or to take

advantage of the judicial bypass provision that was available. That this tragedy would touch a functional, middle class family is a powerful argument against compelling all minors to seek their parents' guidance or go through the court system. If this young woman was unable to negotiate the legal system or go to her parents, what are the chances for the many who come from less functional families?

Against:

If parents are to have the statutory right to informed consent, they also should be required to bear the responsibility of supporting the minor's child if they deny consent. If one assumes that a minor is not sufficiently mature to make the abortion decision on her own, one also must assume that she lacks the emotional maturity and financial resources to support and raise the child by herself. Thus, the responsibility for rearing that child should be placed with those who exercised the power to assure that the child was brought into this world.

POSITIONS:

Right to Life of Michigan supports the bill, but has concerns about an amendment added on the House floor allowing an exemption for cases in which a pregnant minor may commit suicide. (1-3-90)

The Michigan Catholic Conference supports the bill. (1-3-90)

The Michigan Abortion Rights Action League opposes the bill. (1-3-90)

Planned Parenthood Affiliates of Michigan opposes the bill. (1-3-90)

The League of Women Voters of Michigan opposes the bill (1-5-90)

The Department of Public Health opposes the bill (1-5-90)

The Religious Coalition for Abortion Rights, Michigan opposes the bill. (1-4-90)

The American Association of University Women, Michigan Division opposes the bill. (1-4-90)

The Michigan Women's Commission opposes the bill (1-5-90)