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Senate Bill 135 (as introduced 2-10-11)
Sponsor: Senator Dave Robertson
Committee: Judiciary

Date Completed: 9-26-11

CONTENT

The bill would amend the Parental Rights Restoration Act to do all of the following:

- Prohibit a minor who was denied a waiver of parental consent for an abortion by one family court from seeking a waiver for the same pregnancy in another family court.**
- Require the court, if it denied a waiver, to inform the minor that she could appeal the denial, could not initiate proceedings in another family court, but could request a rehearing by the same family court if there were a change of circumstances.**
- Require the court, in determining whether a minor was sufficiently mature and informed to make an abortion decision, to consider whether it should contravene a common law standard that minors are not capable of providing informed consent for medical treatment.**
- Require the court to grant a waiver if it found, based on specific factors, that the minor demonstrated a decision-making capacity similar to that of an adult.**
- Require the court, in deciding whether a waiver would be in a minor's best interest, to consider whether it should contravene a common law standard that a minor's best interest is served by parental involvement in medical decisions.**
- Require the court to grant a waiver if it found that both parents, or the minor's legal guardian, had demonstrated through neglect or abuse a lack of concern or competence in serving the minor's best interests, based on specific factors.**

Seeking a Waiver

The Act requires parental consent for an abortion performed on a minor (an unemancipated person under 18 years of age), but provides for a judicial waiver of that requirement by the family division of circuit court (family court) under certain circumstances. A minor may appeal the denial of a waiver to the Court of Appeals.

The bill specifies that a minor could not file a petition for a waiver of parental consent in a family court if she had previously been denied a waiver of parental consent by another family court concerning the same pregnancy. If a family court found that a minor had previously been denied a waiver by another family court concerning the same pregnancy, the court would have to dismiss the pending petition.

Notice to Minor

The Act requires the court, upon its first contact with a minor seeking a waiver of parental consent, to notify the minor of her right to confidentiality of the proceedings; court

appointment of an attorney or guardian ad litem; and assistance with preparing and filing the petition. Under the bill, the court also would have to inform the minor that she could not seek a waiver of parental consent in that court if she had been denied a waiver concerning the same pregnancy by another family court.

The bill specifies that, if a petition for a waiver of parental consent were denied, the family court would have to inform the minor of all of the following:

- Her right to appeal the family court's decision to the Court of Appeals.
- That she could not initiate proceedings concerning the same pregnancy in another family court.
- That she could return to the family court that denied the waiver to request a rehearing of her petition, if there were an unanticipated change in the circumstances of her pregnancy or family situation.

Granting a Waiver

The Act requires the court to grant a waiver of parental consent if it finds either that the minor is sufficiently mature and well-enough informed to make the decision regarding abortion independently of her parents or legal guardian, or that the waiver would be in the minor's best interests. The bill would retain this requirement subject to the provisions described below.

Under the bill, in determining the sufficiency of the minor's maturity and whether she was well-enough informed to make an abortion decision on her own, the family court would have to consider "whether the common law standard that a minor is not capable of providing informed consent for medical treatment should be contravened". A waiver would have to be granted if the court found that the minor demonstrated a capacity similar to that of a person who has reached the age of majority to make a reasoned and responsible decision in light of all of the following factors:

- Whether the minor was before the court voluntarily or whether she had been subjected to duress or coercion by a third party.
- The minor's age, ability to comprehend information, and ability to express herself.
- The degree of the minor's dependence on her parent or legal guardian, and the degree of parental supervision in her daily affairs including housing arrangements, financial support, independent work experience, and means of transportation.
- The minor's school attendance, academic performance, future education, or career goals.
- The circumstances of the minor's pregnancy, including actions taken to maintain her personal health and prevent pregnancy and any previous pregnancies.
- Other life experiences that demonstrated a pattern of responsible, mature behavior.

The court also would have to consider the minor's knowledge of her personal medical history; awareness of the physical risks of abortion and of carrying her pregnancy to term, including whether she had consulted with medical or mental health professionals about alternatives to abortion; and her assessment of the psychological and emotional consequences of abortion, parenting, or placing a child for adoption.

If the family court did not find that a minor was sufficiently mature and well-enough informed to make a decision regarding abortion independently of her parents or legal guardian, the court would have to grant a waiver of parental consent if it found that the waiver would be in her best interests. In making this determination, the court would have to consider "whether the common law standard that a minor's best interest is served by involvement of the minor's parents in medical decision making should be contravened". A waiver of parental consent would have to be granted if the family court found that both of the minor's parents, or her legal guardian, had demonstrated through neglect or abuse a

lack of concern or competence in serving the minor's best interests, after considering the evidence presented on each of the following factors:

- The nature of the minor's relationship with her parents or legal guardian, including patterns of care, support, and involvement or of neglect, hostility, or physical, sexual, or emotional abuse.
- The minor's reasons for seeking an abortion, including her personal desires, the age and involvement of the biological father, and the potential influence of other parties.
- The minor's specific reasons for excluding a parent or legal guardian from the abortion decision.
- Whether the parents or legal guardian had previous knowledge of the minor's sexual activity or involvement in decisions regarding her sexual activity.
- The degree to which the parent or legal guardian was involved in the minor's school and community activities.

MCL 722.903 & 722.904

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Matthew Grabowski

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.