

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard individual liberty -- This bill increases the notice requirements for a physician to provide a pregnant minor's parent or guardian before performing or inducing the termination of the minor's pregnancy.

Empower families -- This bill provides specific factors a court must consider in determining to permit a pregnant minor to avoid notifying her parent or guardian prior to the termination of a minor's pregnancy.

B. EFFECT OF PROPOSED CHANGES:

The Florida Constitution provides in part:

[T]he 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.¹

The legislature has codified the requirement for notification in the "Parental Notice of Abortion Act"² ("Act"), which requires that a physician that intends on performing or inducing the termination of the pregnancy of a minor give notice to one of the parents of the pregnant minor before performing or inducing the termination. A physician's violation of the notice requirements is grounds for disciplinary action.³ Alternatively, prior notice is not required in a medical emergency, or where the minor seeks and obtains a judicial waiver of the notice requirement under limited circumstances.

Actual Notice to a Parent

Section 390.01114(3), F.S., requires that the physician give at least 48 hours' actual notice to one parent or the legal guardian of the minor. Section 390.01114(2)(a), F.S., defines "actual notice" as notice "that is given directly, in person or by telephone, to a parent or legal guardian of a minor, by a physician, at least 48 hours before the inducement or performance of a termination of pregnancy, and documented in the minor's files."

This bill amends s. 390.01114(3)(a), F.S. to add that, if actual notice is given by telephone, the notice must be confirmed in writing, signed by the physician, and mailed to the last known address of the parent both by regular mail and by certified mail, return receipt requested, delivery restricted.

Constructive Notice to a Parent

If actual notice is not possible, the physician may give constructive notice by sending the notice certified mail return receipt requested.⁴ Section 390.01114(2)(c), F.S., defines "constructive notice" as "notice that is given in writing, 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 the 72 hours have passed, delivery is deemed to have occurred."

¹ Article X, s. 22, Fla.Const.

² Section 390.01114, F.S.

³ Section 390.01114(3)(c), F.S. The applicable disciplinary provisions are found at ss. 458.331 and 459.015, F.S.

⁴ Section 390.01114(3)(a), F.S.

This bill amends the definition of constructive notice in s. 390.01114(2)(c), F.S., to add a requirement that a copy of the written notice also be sent by regular mail.

Waiver of Notice - Medical Emergency

Notice is not required if a medical emergency exists and there is insufficient time to comply with the notice requirements. If a medical emergency exists, the physician may terminate the pregnancy but must document the reason for the medical necessity and provide notice after performing the procedure.

"Medical emergency" is defined as "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."⁵

This bill amends s. 390.01114(3)(b), F.S., to add that, in the event of a medical emergency, the physician must:

- Make reasonable attempts to contact the parent or legal guardian
- Provide notice directly, in person, or by telephone, to the parent or guardian of the minor, detailing the medical emergency and any additional risks to the minor.
- If the physician is unable to contact the parent or guardian within 24 hours after the termination, the physician must sign and mail a notice detailing the medical emergency to the parent or guardian by certified mail and by regular mail, return receipt requested, and delivery restricted to the parent or guardian.

Waiver of Notice - Prior Waiver by Parent

Section 390.01114(3)(b)2., F.S., provides that a person entitled to notice may waive the requirement of receiving notice from the physician provided the waiver is in writing.

This bill amends s. 390.01114(3)(b)2., F.S., to add a requirement that any such waiver must be specific, in writing, notarized, and dated not more than 30 days before the termination of the pregnancy.

Judicial Waiver - Jurisdiction

The Act allows a minor seeking a judicial waiver to file the petition in any circuit court within the jurisdiction of the District Court of Appeal in which she resides. There are five appellate divisions in the state. The district with the least number of counties contains 2 counties,⁶ and the district with the most number of counties contains 32.⁷

This bill amends s. 390.01114(4)(a), F.S., to allow the minor to petition any circuit court in the judicial circuit that she resides in. There are 20 judicial circuits in the state, ranging in size from 1 to 7 counties.

⁵ Section 390.01114(2)(d), F.S.

⁶ The Third District contains Dade and Monroe counties.

⁷ The First District is bounded by Escambia County in the West, Duval County in the East, and Levy County in the South.

Judicial Waiver - Time Limits

Section 309.01114(4)(b), F.S., provides that a court must rule on a petition for judicial waiver within 48 hours unless the minor requests an extension of time.⁸ If the court does not rule on the petition within the 48 hour period, the petition is granted and the notice requirement is waived.⁹

This bill amends s. 390.01114(4)(b), F.S., to provide that a court must rule on the petition within 5 days unless the minor requests an extension of time. If the court fails to rule in that 5 days and no extension has been granted, the petition is not granted and the notice requirement is not waived.

Additionally, this bill provides, if the court has failed to rule within the 5 days, the minor may immediately petition the chief judge of the circuit for a hearing within 48 hours of the expiration of the 5 day period. The chief judge must ensure that a hearing is held within 48 hours after the receipt of the minor's petition to the chief judge, and that an order granting or denying the waiver is issued with 24 hours after such hearing.

This bill also adds that a court's ruling need not be a final order if the court deems that it needs more information. In such case, the court must enter a final order within 14 days after the petition by the minor has been filed. If the petition is not granted, the minor has a right to an appeal. The appellate court must rule within 7 days after receipt of the appeal, but the appellate court may remand the case with further instructions to the trial court for a ruling within 7 days after the remand.¹⁰ This bill specifies that the standard of review by the appellate court is "abuse of discretion," accordingly the appellate court may not base its opinion on the weight of the evidence.¹¹

Judicial Waiver - Maturity

Section 309.01114(4)(c), F.S., provides that the court must issue a judicial waiver (allowing termination of the pregnancy without notice to a parent or guardian) if the court finds, by clear and convincing evidence,¹² that the minor is sufficiently mature to make the decision to terminate her pregnancy. At the hearing, the court must hear evidence relating to the emotional development, maturity, intellect, and

⁸ Section 390.01114(4)(b), F.S.

⁹ Section 390.01114(4)(b), F.S.

¹⁰ In the case of *In re: Doe*, 30 Fla. L. Weekly D2575 (Fla. 2nd DCA 2005), the Second District Court of Appeal concluded that the trial court had not properly prepared a final order detailing the evidence and the court's reasoning. Due to the time constraints within the Act the court ordered the immediate issuance of a judicial waiver rather than remand for a new hearing.

¹¹ In the case of *In re: Doe*, 31 Fla. L. Weekly D560 (Fla. 1st DCA 2006), Judge Hawkes noted in dissent:

The majority acknowledges a trial court's findings of fact that are supported by competent, substantial evidence are due great deference. However, most of the majority opinion outweighs the facts found by the trial court to reach a different conclusion. Because appellate courts are not permitted to reweigh the trial court's factual findings, I would affirm.

¹² "Clear and convincing evidence" is described as:

This intermediate level of proof entails both a qualitative and quantitative standard. The evidence must be credible; the memories of the witnesses must be clear and without confusion; and the sum total of the evidence must be of sufficient weight to convince the trier of fact without hesitancy. [C]lear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.

understanding of the minor, must provide for a written transcript, and must issue written and specific factual findings and legal conclusions.¹³

This bill amends s. 309.01114(4)(c), F.S., to specify the factors that a court must consider when making a determination regarding maturity. The factors include: age; overall intelligence; emotional stability; credibility and demeanor as a witness; ability to accept responsibility; ability to assess the future impact of her present choices; and her ability to understand and explain the medical consequences of the abortion and apply that understanding to her decision. The court must also consider whether there has been any undue influence by another on the minor's decision to abort her pregnancy.

Judicial Waiver - Best Interest Standard

Section 309.01114(4)(d), F.S., provide that the court must issue a judicial waiver (allowing termination of the pregnancy without notice to a parent or guardian) if the court finds, by a preponderance of the evidence, that there is evidence of child abuse or sexual abuse of the minor by one or more parents or by a guardian. The court must also issue a judicial waiver if the court finds that "notification of a parent or guardian is not in the best interest" of the minor.

This bill amends s. 309.01114(4)(d), F.S., regarding the best interest standard, to require that evidence of the best interest of the minor must be "clear and convincing." The bill also limits the best interest provision to provide that it "must not include financial best interest or considerations, or the potential financial impact on the minor or her family if she does not terminate her pregnancy."¹⁴

State Reporting

Section 309.01114(6), F.S., requires the Supreme Court, through the office of the State Courts Administrator, to report each year by February 1st to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the number of petitions filed for judicial waiver for the prior year, and the timing and manner of disposal of those petitions by each circuit court.

This bill amends the reporting requirement to require that the reason for each waiver granted be included in the report.

Mandatory Child Abuse Reporting

Section 39.201, F.S., requires that any person who knows, or has reasonable cause to suspect, that a child is abused, abandoned, or neglected by a parent, legal custodian, caregiver, or other person responsible for the child's welfare, must report such knowledge or suspicion to the Department of Children and Families. Certain professionals must give their name when making the report; that is, they cannot make an anonymous report. Judges are included in the list of such professionals. The Parental Notice of Abortion Act does not currently contain any specific requirement regarding the mandatory reporting of child abuse. The fact that a minor is pregnant will, in some instances, lead to a finding that such pregnancy is a result of abuse that warrants prosecution.

This bill creates subsection (7) in s. 309.01114, F.S., to reaffirm the requirement in current law that any person who knows or has reasonable cause to suspect that a child has been abused must report that information to the Department of Children and Families pursuant to the mandatory reporting requirements of s. 39.201, F.S.

¹³ Section 390.01114(4)(e), F.S.

¹⁴ In the case of *In re: Doe*, 30 Fla. L. Weekly D2575 (2nd DCA 2005), the Second District Court of Appeal reversed a trial court and ordered that a minor be granted a judicial waiver. In part, the minor alleged that it was in her best interest to not notify her parents of the pregnancy because she believed that they would ostracize her from the home, thereby causing her financial harm.

C. SECTION DIRECTORY:

Section 1 amends s. 390.01114, F.S., relating to parental notice of the termination of a minor's pregnancy.

Section 2 provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

In general, parental notification laws do not violate the United States Constitution.¹⁵

Florida previously enacted a statutory parental notification law. The Florida Supreme Court ruled that the law violated the right to privacy in the Florida Constitution.¹⁶ In response to the ruling, the 2004 Legislature passed HJR 1, proposing an amendment to the Florida constitution that specifically

¹⁵ *Ayotte v. Planned Parenthood of Northern New England*, 126 S.Ct. 961 (2006)

¹⁶ *North Florida Women's Health and Counseling Services v. State*, 866 So. 2d 612 (Fla. 2003).

allows the legislature to enact a statute regarding parental notification. The joint resolution, adopted by the electorate in the November 2004 general election,¹⁷ provides:

ARTICLE X 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.

Timeframe for Review

The bill provides that a minor seeking judicial waiver of the notice requirement may petition any circuit court in the judicial circuit in which she resides. Further, the bill provides that a court must rule on the petition within 5 days unless the minor requests an extension of time.

The bill further provides that a court's ruling need not be a final order if the court deems it needs more information, but the court must enter a final order within 14 days after the petition by the minor has been filed. If the petition is not granted, the minor has a right to an appeal. The appellate court must rule within 7 days after receipt of the appeal, but the appellate court may remand the case with further instructions to the trial court for a ruling within 7 days after the remand. The standard of review of the trial court on appeal is an abuse of discretion standard, and the trial court may not be reversed based on the weight of the evidence presented to the circuit court.

The Supreme Court in *Ohio v. Akron Center for Reproductive Health*, 497 U.S. 502 (1990) addressed a situation in which 5 days were permitted by the trial court in ruling on a petition for a judicial waiver, and overall the process could have taken 22 days from filing of petition to ruling by an appellate court to resolve. The Court concluded that 22 days was "plainly insufficient to invalidate the statute on its face."¹⁸

It may be possible under this bill for there to be 28 days from the filing of petition to final ruling by an appellate court.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

In several places in the bill regarding mailing of notice, the requirement is changed to "certified mail and by regular mail, return receipt requested, and delivery restricted to the parent or legal guardian." Return receipt service and restricted delivery services are not available for regular mail, only for certified mail. It is suggested that these provisions be amendment for clarity.

Line 135 is in the section of the bill that provides that it is the chief judge's duty to ensure a hearing is held within 48 hours of the expiration of the 5 day period (for ruling on a waiver petition). A hearing will then be held within 48 hours after the receipt of the minor's petition and an order "granted" within 24 hours after the hearing. It is unclear if this order is an order granting the petition for waiver of the notice requirement, or if this means that an order will be entered within that 24 hour timeframe. This is also true for the language in line 138.

¹⁷ The vote was 64.7% in favor of the amendment. See <http://election.dos.state.fl.us/elections/resultsarchive/Index.asp?ElectionDate=11/2/2004&DATAMODE=>

¹⁸ *Ohio v. Akron Center for Reproductive Health*, 497 U.S. 502, 514 (1990).

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

N/A