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BILL ANALYSIS

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NOV 16 1989

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Senate Bill 513 (Substitute S-3 as passed by the Senate)

Sponsor: Senator Jack Welborn

Committee: Human Resources and Senior Citizens

Date Completed: 10-31-89

**RATIONALE**

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 seem to feel that they should. Proponents of parental consent cite the inherent danger of complications with any surgical procedure, the apparent stress and trauma of an unplanned pregnancy and abortion, the alleged 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.

**CONTENT**

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, except in an emergency, without first obtaining the written consent of the minor and one parent, or the legal guardian, of the minor. ("Emergency" would mean "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".)

The term "abortion" would mean "the intentional use of an instrument, drug, or other substance or device to terminate the pregnancy of a person known to be pregnant 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". 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 to seek consent of a parent or legal guardian, the minor could petition the juvenile court (the juvenile division of the probate court) for a waiver of the parental consent requirement. Proceedings held pursuant to the proposed Act would have to be completed with anonymity and sufficient expedition to provide an effective opportunity

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for the minor to obtain an abortion, in accordance with all of the following:

- A physician or a minor could file a petition for waiver of parental consent in the juvenile court of any county regardless of whether the minor was a resident of that county.
- The juvenile court would be required to help the minor prepare and file the petition for waiver of parental consent.
- 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 minor would have to use initials or some other means of assuring anonymity in the petition.
- A ruling on a waiver petition would have to be made within 48 hours after the petition was filed, excluding weekends and legal holidays.
- A 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.
- The juvenile 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 physician or a minor would not be required to pay a fee for proceedings under the bill.

Unless the juvenile court determined that a physician or a minor was already represented by an attorney, it would have to appoint an attorney to represent the minor in proceedings under the bill.

The juvenile court would be required to grant a waiver of parental consent if it found that either the abortion would be in the best interests of the minor or the minor was sufficiently mature and well-enough informed to made the decision regarding abortion independently of her parents or legal guardian. A physician or a minor who was denied a waiver would have the right to an expedited, anonymous appeal.

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 of his or her failure to obtain informed consent or of his or her interference with family relations in appropriate civil actions. A juvenile 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 limit the common law rights of parents or create a right to an abortion, and that its requirements would apply regardless of whether the minor was a resident of this State. Further, the bill specifies that in spite of any other provision of the bill, a person would be prohibited from performing an illegal abortion.

### **BACKGROUND**

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. For the stage 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 IMPACT**

The bill would have an indeterminate fiscal impact on State and local government.

The State could experience additional costs given the passage of this bill. These costs would be primarily from increased Medicaid outlays, Aid to Families with Dependent Children (AFDC) grants, and increased probate court activities. However, any increase in costs would be predicated on actual changes in behavior on the part of affected persons and the magnitude and direction of those behavioral changes. As an example, if the parents of affected minors did not grant consent and judicial consent were sought, probate court costs would increase. If judicial consent were not granted and the affected minor could qualify for AFDC and Medicaid in her own right, then public assistance costs would increase. On the other hand, if parents gave consent or minors changed their sexual behavior as a result of passage of this bill, or an affected minor were not eligible for public assistance, then no additional costs would be incurred.

In summary, the multitude of assumptions that are required to be made precludes a meaningful fiscal impact statement.

### **ARGUMENTS**

#### **Supporting Argument**

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.

#### **Supporting Argument**

Requiring parental consent to abortions has helped decrease the number of pregnancies among teenagers. According to testimony, for example, 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% 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% 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% knew of a court bypass option and only 8.1% knew about both components of the law. If the adolescents do not know about the law (as remains the case with the mandatory seat belt use laws), 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 or increased pregnancies. 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.

#### **Supporting Argument**

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 ear 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.

### Supporting Argument

Minors are particularly vulnerable to the risks of abortion, emotional as well as physical. 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.

The sense of loss that minors feel after having an abortion, together with a failure to acknowledge the loss and complete the mourning process, can create a dramatic emotional stress on the young woman. Two very common results of this emotional strain are subsequent or replacement pregnancies and suicidal tendencies. According to testimony, in a study of adolescents who had difficulty adjusting emotionally to an abortion, 50%

became pregnant again within 10 months of the abortion. Many of them said that they got pregnant again to compensate for the pregnancy they had terminated.

The incidence of attempted suicides by young women who have aborted a pregnancy is also well documented. Isolation and loneliness are the prime causes of suicide among adolescents, and keeping an abortion secret from one's parents can increase the likelihood of feeling isolated and experiencing psychological or emotional dysfunctions.

### Supporting Argument

Minors do not always possess the ability to make mature and informed decisions. Adolescence has been characterized as a difficult period of transition from the dependency of childhood to the independence of adulthood. Studies have been cited indicating that proper guidance is essential for this transition to be made successfully. Giving unlimited freedom to adolescents adds to their feelings of insecurity. The U.S. Supreme Court has recognized the fragile psychological and emotional status of adolescents. In the case of Bellotti v Baird, the Court recognized that "minors often lack the experience, perspective, and judgment to avoid choices that may be detrimental to them". In the case of Planned Parenthood of Central Missouri v Danforth, Justice Stewart wrote in a concurring opinion,

There can be little doubt that the State furthers a constitutionally permissible end by encouraging an unmarried pregnant minor to seek the help and advice of her parents in making the very important decision whether or not to bear a child. That is a grave decision, and a girl of tender years, under emotional stress, may be ill-equipped to make it without mature advice and emotional support. It seems unlikely that she will obtain adequate counsel and support from the attending physician at an abortion clinic, where abortions for pregnant minors frequently take place.

According to testimony, actual studies regarding the abortion decision of minors show that they struggle with the decision. One

study reportedly revealed that nearly one-third of the minors changed their minds about the pregnancy at least once or twice, with 18% changing their minds even more frequently. Another study showed that 60% of the girls reported internal conflict and indecision about the pregnancy.

Minors' inability to handle these difficult decisions is further complicated by their misperceptions regarding their relationship with their parents. Studies apparently have indicated that adolescents typically rate their relationship with their parents as poor. Other studies indicate that children overestimate the extent to which their parents' reaction to news of an unplanned pregnancy will be negative or openly hostile. Still another group of studies evidently concluded, "In most situations, parents and teenagers can agree on what to do about an unplanned pregnancy."

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.

**Response:** In responding to the statement of Justice Stewart quoted above, the Court in Bellotti v Baird wrote, "But we are concerned here with a constitutional right to seek an abortion. The abortion decision differs in important ways from other decisions that may be made during minority. The need to preserve the constitutional right and the unique nature of the abortion decision, especially when made by a minor, require a State to act with particular sensitivity when it legislates to foster parental involvement in this matter."

### Opposing Argument

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 juvenile division of probate court is already short-staffed in handling its ever-increasing docket of delinquency and child

abuse and neglect cases. 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.

Even if the teen had the funds to hire an attorney to help her, there still could be a several-day delay before the attorney had the chance to meet with her, draft the petition and file it. If the minor had to resort to the local legal aid office, the wait for an attorney could be several weeks. Legal aid caseloads are so high that acceptance of new clients for certain types of cases occurs only several times each year. Even if an attorney is immediately available, the legal aid office can be an imposing bureaucracy. If an attorney is appointed by the court at public expense, there is usually a delay of days or weeks before the attorney can see the client. Further, even with legal representation, the minor would not necessarily be able to obtain a speedy ruling on her petition regardless of the 48-hour deadline for a ruling provided for in the bill. For example, although Michigan law requires that custody cases be heard within 56 days and that they be given trial priority over all other civil matters, custody cases continue to linger on court dockets well beyond the 56-day limit. Since the abortion waiver could likely be just as difficult and unpleasant for the courts as a custody decision, the 48-hour deadline frequently would not be met.

Although the bill attempts to assure anonymity for the minor, experience with a similar law in Minnesota revealed that, in the process of seeking a waiver order, a petitioning minor faced as many as 20 strangers, including court staff, other minors seeking waivers, and persons awaiting other types of court hearings. Courthouses are public places and probate courts are often housed in old, cramped, and deteriorating public buildings. Crowded hallways and the lack of private waiting areas make anonymity very unlikely.

The hearing before a judge could be especially difficult for teens from poor, fragmented, or abusive families. Many of the teens in need of the court's permission would be from minority groups. Judges, however, are overwhelmingly white males from relatively privileged

backgrounds. Statistics from the State Court Administrative Office (the administrative arm of the Michigan Supreme Court) reveal that of Michigan's 107 probate/juvenile judges, only 13 are women and only three are minorities. This extreme difference in sex, race, and economic class between the petitioning teen and the deciding judge could make the hearing process extremely uncomfortable for both. A teen who is reluctant to talk with her parents about so private a matter as abortion could be even more reluctant to appear before a judge with whom she has little or nothing in common.

The Minnesota experience bears this out. Nearly all of the teens using the judicial bypass provided for in the Minnesota parental notification law were white, well-dressed, well-educated, middle class, and mature. Teens from poor families, abusive families, and minority groups found the bypass procedure so burdensome that they were effectively excluded from the process. These are the very teens who, due to poverty, physical abuse, rape, incest, and lack of educational or employment opportunities, are least equipped to raise unwanted children.

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. In general, then, 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:** As passed by the Senate, the bill would authorize a physician, as well as a minor, to petition the court for a waiver of parental consent. Thus, if a pregnant teenager would be too intimidated by the judicial process and surroundings to seek a waiver, her physician 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, including custody matters, and judges presumably would bear this in mind when complying with the law.

### Opposing Argument

Michigan law sets different ages of responsibility for different activities. At 18 years of age, a person may vote or enter into binding contracts. At 14, a person may nominate his or her own guardian in probate court. At 21, a person may purchase and consume alcoholic beverages. At 16, a person may operate a motor vehicle. All of these things can be and are properly regulated by the State. Nature and biology, however, determine how quickly one matures physically, mentally and emotionally and at what age one is capable of human reproduction. Just as that age cannot be determined or regulated by the State, the decision not to reproduce should not be subject to age-related restriction by the State.

### Opposing Argument

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 females 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.

### Opposing Argument

Unplanned pregnancies create a great deal of stress in adolescents. It is clear that the most important support for an adolescent when she is pregnant 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 a matched population in Minnesota where a parental notification law was in effect, 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.

#### Opposing Argument

Because the bill defines "abortion" as "the intentional use of an instrument, drug, or other substance or device to terminate a woman's pregnancy...", it could well be interpreted as banning contraceptive devices such as the IUD or the "morning after" pill that interfere with the implantation of a fertilized egg in the woman's womb. Some might consider this to be termination of a pregnancy while a drug or device that simply prevents fertilization of the egg would not be considered to be terminating a pregnancy.

#### Opposing Argument

If parents had the statutory right to informed consent, they also should be required to bear the responsibility of supporting the minor's child if they denied 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.

#### Opposing Argument

The bill would increase the number of minors who would resort to self-induced abortions. It is well known on the streets that crack cocaine stimulates premature labor. The drug, however, is not 100% effective as an abortant and the baby may suffer drug addiction, life-long neurological damage and other birth defects, premature birth, and early death.

#### Opposing Argument

By using the morality of the majority as a governmental club, the bill represents a direct threat to the constitutional protections and civil liberties of all citizens in the State.

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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.