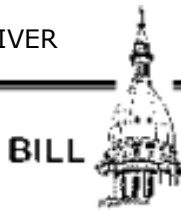




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## BILL ANALYSIS

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House Bill 4478 (Substitute S-1 as reported)  
Sponsor: Representative William J. O'Neil  
House Committee: Family and Children Services  
Senate Committee: Families and Human Services

Date Completed: 12-11-03

**RATIONALE**

The Parental Rights Restoration Act, enacted in 1990, governs the circumstances under which minors may obtain abortions. A person may not perform an abortion on a minor without the minor's consent and the written consent of one of her parents or her legal guardian. If a parent or legal guardian is not available or refuses to consent, or if the minor chooses not to seek parental consent, she may petition the family court for a waiver of the parental consent requirement (a process sometimes called "judicial by-pass"). Some people are concerned that the Act does not adequately protect the interests of parents, or pregnant minors, because it does not require judges to consider specific factors when deciding whether to grant a waiver, and it does not prohibit the practice of "judge shopping".

Under the Act, a judge must grant a parental consent waiver if he or she finds that the minor is sufficiently mature and well-enough informed to make an independent decision about abortion, or that the waiver is in the minor's best interest. If a minor petitions for a parental consent waiver and it is denied, she legally may file another petition. As a result, in a circuit with multiple family court judges, or where the judges are rotated to family court, a minor potentially could file repeated petitions until the case was assigned to a judge considered likely to grant a waiver.

In addition, there are reports that some abortion clinics coach pregnant teenagers about how to act and what to say before the family court judge. There are fears that coaching may make a minor appear to be more mature and better informed, and thus more capable of making an independent decision, than she actually is.

It has been suggested that these concerns would be addressed if the Act prevented judge-shopping, and required judges to evaluate specific factors in their decision-making.

**CONTENT****The bill would amend the Parental Rights Restoration Act to do the following:**

- **Prohibit a minor who had been denied a waiver of parental consent for an abortion by one family division of circuit court (family court) from obtaining a waiver from another family court.**
- **Prohibit one family court from granting a parental consent waiver if another family court had denied a waiver.**
- **Create rebuttable presumptions that a minor was not capable of giving informed consent, and that parental involvement would be in a minor's best interest.**
- **Require the family court, in determining whether to grant a waiver of parental consent, to consider certain evidence regarding the minor's maturity and best interest, as well as the rebuttable presumptions.**

**Denial of Parental Consent Waiver**

Under the Act, a minor may file a petition for waiver of parental consent in the family court in the county where she resides.

The bill would require the family court to notify a minor seeking a parental consent waiver that the minor could not seek a waiver in that court if she had been denied a waiver

concerning the same pregnancy by another family court. The bill also would prohibit a minor from filing a waiver petition in a family court if she had previously been denied a waiver from another family court regarding 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, it would have to dismiss the pending waiver petition. (The bill would replace various references to "probate court" and "juvenile court" with "family division of circuit court".)

The notification requirement would apply upon a court's first contact with a minor seeking a waiver and upon the denial of a waiver petition. If a petition were denied, the court also would have to inform the minor of her right to appeal the decision to the Court of Appeals; and that, if there were an unanticipated change in the circumstances of her pregnancy or family situation, the minor could return to the family court that had denied the petition to request a rehearing.

#### Evidence & Presumptions

The Act requires the family court to grant a parental consent waiver 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 is in the minor's best interest.

The bill would require the court, in determining whether a minor was sufficiently mature and well-enough informed, to consider the rebuttable presumption that "a minor is not capable of providing informed consent for medical treatment". Further, a waiver based on the minor's maturity could be granted only if the family court found that the minor demonstrated a level of maturity expected of an individual who had reached the age of majority, after taking into consideration the evidence presented on each of the following factors:

- Whether the minor was before the court voluntarily or 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 the daily affairs of the minor, 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 she may have had.
- Other life experiences demonstrating a pattern of responsible, mature behavior.
- The minor's knowledge of her personal medical history; her 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 the abortion decision independently of her parents or legal guardian, the court would have to grant a waiver if it found that the waiver would be in the minor's best interest. In making this determination, the court would have to consider the rebuttable presumption that "a minor's best interest is served by parental involvement in medical decision making". A waiver based on the minor's best interest could be granted only if the court found that both of the minor's parents, or the legal guardian, had defaulted in their, or his or her, duties to the minor and abdicated the right to parental involvement, 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 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

## **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

After initiative petitions signed by over 327,000 registered electors were filed, in 1990 both houses of the Legislature voted to enact the Parental Rights Restoration Act, rather than submit it to the voters. Advocates of the law believed that it would foster communication among family members and strengthen family relationships; ensure that minors would receive mature guidance and support from people who care about them; protect the rights of parents to safeguard their children and rear them according to the parents' own values and beliefs; and reduce the number of teen pregnancies. Efforts to achieve these goals are being undermined by a system in which pregnant teenagers may manipulate the legal process and judges may grant waivers without sufficient evidence.

The Act makes it clear that a family court judge, before granting a waiver, must find that the minor is sufficiently mature and well-enough informed to make an independent decision, or that the waiver is in her best interest. The Act does not, however, contain any factors for the judge to consider in making this determination. As a result, some judges apparently do not adequately evaluate an individual petitioner's maturity, the circumstances of her pregnancy, her family relationships, or other relevant evidence. In addition, if an abortion clinic is coaching the minor about what to say to the judge or how to act, the judge's decision-making may be hampered because there are no specific criteria to consider. A minor who is coached also cannot be considered truly capable of giving her consent.

The bill would remedy this situation by establishing specific factors that all family court judges would have to evaluate. Judges also would have to consider the rebuttable presumptions that a minor was not capable of giving informed consent to medical treatment, and that a minor's best interest would be served by parental involvement in medical decision-making. Thus, judges would have uniform statewide standards to guide them in their deliberations.

In addition, the bill would prevent judge-shopping by prohibiting a minor from filing another waiver petition after one was denied, unless her pregnancy or family situation unexpectedly changed. Also, a family court would be prohibited from granting a waiver if another family court had denied one. Thus, pregnant teens could not circumvent the legal process in search of a sympathetic judge.

These provisions once again would attempt to restore the rights of parents to be involved in serious decisions affecting their daughters' physical health and psychological well-being, and to provide guidance and support when they are needed the most.

### **Supporting Argument**

Minors need parental consent for a host of services and activities of far less import than an abortion, such having their ears pierced, getting a tattoo, receiving medication in school, and participating in sports. An abortion is a far more serious procedure and can have long-lasting physical, emotional, and psychological consequences. The decision to have an abortion can be difficult for a mature woman, let alone a teenager. The bill would help ensure parental involvement in that decision-making process.

**Response:** Unlike having one's ears pierced or playing sports, the decision to have an abortion is a constitutionally protected right. In a 1979 decision governing parental consent waivers, the United States Supreme Court said, "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 [emphasis added]" (*Bellotti v Baird*, 443 U.S. 622).

### **Supporting Argument**

Statistics show that courts grant over two-thirds of the petitions filed for a waiver of parental consent. According to the Michigan Supreme Court 2002 Annual Report, Circuit Court Statistical Supplement, there were 628 new filings for waivers in 2002. Of these, courts issued an order after a hearing in 494 cases. These figures suggest that waivers are being granted too readily.

**Response:** Reportedly, the number of abortions performed on minors has been cut in half since the Parental Rights Restoration Act was passed. This would indicate that the law is working. Without knowing the circumstances of the cases, it is difficult to make a meaningful interpretation of the rate at which waivers are granted.

### **Opposing Argument**

The bill is constitutionally defective because it would impose an undue burden on a minor's free exercise of her constitutional right to decide whether to terminate a pregnancy. In *Bellotti v Baird*, the United States Supreme Court held that if a state decides to require a pregnant teen to obtain one or both parents' consent to an abortion, it must provide an effective opportunity for an abortion to be obtained, and the minor is entitled to show that she is mature enough and well-enough informed to make the abortion decision on her own, or that the abortion would be in her best interests. This is the extent of a judge's permissible inquiry, and exactly the determination that Michigan's existing law requires a judge to make. The bill, however, would go well beyond the permissible inquiry by requiring judges to consider evidence on an array of factors, as well as rebuttable presumptions that the minor was incapable of making an independent decision and that parental involvement was in her best interest. In addition, requiring a minor to demonstrate the level of maturity expected of an adult goes well beyond requiring a judge to find her sufficiently mature to make an abortion decision independently of her parents.

Furthermore, the U.S. Supreme Court in 1992 adopted an "undue burden" standard for evaluating a state's abortion restrictions, and held that an undue burden exists when a provision of law places a "substantial obstacle" in the path of a woman seeking an abortion before the fetus is viable (*Planned Parenthood of Southeastern Pennsylvania v Casey*, 505

U.S. 833). Clearly, the bill would place a substantial obstacle in the path of a minor seeking a parental consent waiver, by requiring her to demonstrate the maturity of an adult and overcome a legal presumption that she is incapable of making the abortion decision, or to prove that parental involvement in the decision-making is not in her best interest.

### **Opposing Argument**

A minor who goes to court for a parental consent waiver may be frightened by the judicial process, upset about her pregnancy, and anxious about the abortion procedure. Presumably, a minor who resorts to seeking a waiver does not have a parent whom she feels comfortable or safe turning to for support or guidance. In fact, the minor may justifiably fear that she will be rejected by the parent, turned out of the house, or physically harmed, especially if the pregnancy resulted from incest. A pregnant teen should not have the additional burden of proving she is mature enough to make a medical treatment decision, or that parental involvement in the decision is not in her best interest. It is enough to require judges to determine a petitioner's maturity or best interest.

**Response:** The onus should be on a minor to show that she meets the statute's criteria. If she truly came from an abusive situation, it is likely that a judge would find that granting a waiver would be in her best interest. Furthermore, a uniform list of criteria for judges to consider could benefit minors who may encounter conservative, antiabortion judges.

### **Opposing Argument**

The proposed factors for judges to consider are unnecessary. Family court judges are well qualified to hear parental waiver petitions because of the kinds of cases they adjudicate on a daily basis. They are in the best position to hear and observe the minor and make a thoughtful decision as to whether she has exhibited sufficient maturity to choose abortion or if it might be in her best interest. Experienced judges already know what questions to ask and how to evaluate a minor's responses, statements, and demeanor. The law has worked for over a decade because judges are people of integrity. Judges are elected to make reasoned decisions without regard to their own personal beliefs and views, and they do so. Despite

allegations of judges' "rubber stamping" waiver petitions, no abuse of judicial discretion has been identified.

### **Opposing Argument**

Few would deny that a teenager would benefit from adult guidance when faced with an unwanted pregnancy, and that such guidance ideally would come from the teen's parents. This is not an ideal world, however, which is why an effective means to bypass the parental consent requirement is necessary. Minors who have supportive, accessible parents will and do turn to them for help. Other pregnant teens have parents who are abusive or absent, engage in criminal activity, or abuse drugs, or who have threatened to evict a child who becomes pregnant. Some minors do, in fact, have legitimate reasons to fear involving their parents in the abortion decision. These minors' access to the waiver process should not be impeded.

By making it harder for minors to obtain abortions, the bill could lead to illegal or self-induced abortions, increased family violence, and suicide.

Legislative Analyst: Suzanne Lowe

### **FISCAL IMPACT**

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

Fiscal Analyst: Bethany Wicksall

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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.