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House Bill 4478 (as passed by the House)
Sponsor: Representative William J. O'Neil
House Committee: Family and Children Services
Senate Committee: Families and Human Services

Date Completed: 10-9-03

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.**
- Require the family court to appoint an attorney or guardian ad litem to represent the interest of a parent or legal guardian if an attorney or guardian ad litem were appointed to represent a minor seeking a parental consent waiver.**
- 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 certain rebuttable presumptions.**

Denial of Parental Consent Waiver

Under the Act, a person may not perform an abortion on a minor without the written consent of the minor and one of the parents or the legal guardian of the minor. A minor may petition the family court for a waiver of the parental consent requirement if a parent or legal guardian is not available or refuses to give consent, or if the minor chooses not to seek parental consent. (The bill would replace various references to "probate court" and "juvenile court" with "family division of circuit court".)

The bill would require the family court to notify a minor seeking a waiver of the parental consent requirement 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 petition for a waiver 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 notification requirement and the prohibition against another filing would apply upon a court's first contact with a minor seeking a waiver, and if a waiver petition were denied. Also, if a petition were denied, the family court would have to inform the minor of her right to appeal the decision to the Court of Appeals.

Determination of the Minor's Maturity and Best Interest

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 making a determination as to whether a minor was mature and well-informed, to consider the rebuttable presumption that "a minor is not capable of providing informed consent for medical treatment". Further, a waiver based on 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:

- 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 sexual activity, 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, and her assessment of the psychological and emotional consequences of abortion, parenting, or placing a child for adoption.
- The extent to which the minor had consulted with medical and mental health professionals about alternatives to abortion.

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 could be granted only if the court found that both of the minor's parents or the legal guardian had defaulted in his or her duties to the minor and abdicated his or her 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

Legislative Analyst: Julie Koval

FISCAL IMPACT

The bill would have no fiscal impact on the State and an indeterminate fiscal impact on local government. Local units of government would potentially face increased costs due to the provision that would require the family court to appoint an attorney or guardian ad litem to represent the interest of a parent or legal guardian if an attorney or guardian ad litem were appointed to represent the minor.

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.