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BILL



ANALYSIS

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Senate Bill 254 (as reported without amendment)
Sponsor: Senator Dave Robertson
Committee: Judiciary

Date Completed: 7-25-13

RATIONALE

The Parental Rights Restoration Act, enacted in 1990, governs the circumstances under which a minor (an unemancipated person under 18 years old) may obtain an abortion. 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 prohibit the practice of "judge shopping" or require judges to consider specific factors when deciding whether to grant a waiver.

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 waiver and it is denied, the Act does not prevent her from filing 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, or a minor could file another petition in a different county.

In addition, some abortion clinics reportedly coach pregnant teenagers about how to act and what to say before a 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 prohibited actions that amount to judge-shopping, emphasized the right to appeal the denial of a petition, 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 was denied a waiver of parental consent for an abortion by a family court judge from seeking a waiver for the same pregnancy in the 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 a family court, but could request a rehearing by the same family court if circumstances changed.**
- **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 "a minor is 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, or that a waiver was in the minor's best interest.**
- **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 involvement of the minor's parents in medical decision making".**
- **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 bill specifies that a minor could not file a petition for a waiver of parental consent in a family division of circuit court (family court) if she had previously been denied a waiver of parental consent by a family court judge concerning the same pregnancy. If a family court found that a minor had previously been denied a waiver by a family court judge 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 a family court judge.

If a petition for a waiver were denied, the bill would require the family court 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 a family court.
- That she could return to the family court judge who 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.

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". The court would have to grant a waiver if it 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

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, however, by a system in which pregnant teenagers may manipulate the legal process and judges may grant waivers without sufficient evidence.

In nearly all areas of the law, if a party files a petition and it is denied, he or she may file a petition for a review or rehearing before the same judge, or file an appeal with a higher court. Filing a petition with a different court in the same matter is not an option. The Parental Rights Restoration Act, however, does not prohibit this practice. In addition, rules of venue govern the county in which a party may file an action, typically requiring a party to file in the county where the cause of action arose or the county where the party resides or has a place of business. This prevents parties from "forum shopping", or filing in a county where they might expect a favorable result. Although the Parental Rights Restoration Act requires a petition to be filed in "the county in which the minor resides", it defines that term as the county where her residence is located or "in which the minor is found". As a result, a minor may file a waiver petition in any county in the State. Along with the Act's confidentiality requirements, this means that a pregnant minor can file multiple waiver petitions until a sympathetic judge is found.

The bill would prevent this practice by prohibiting a minor from filing another waiver petition after one was denied, in either the same or a different county, absent

an unanticipated change in circumstances. The bill also would require a family court to dismiss a waiver petition if it found that another family court judge had denied one concerning the same pregnancy. Thus, pregnant teens could not circumvent the legal process in search of a judge who will grant a waiver.

Supporting Argument

If a minor's waiver petition is denied, the Act gives the minor the right to appeal to the Court of Appeals, and requires appellate proceedings to be expedited. The Michigan Court Rules also govern waiver proceedings and appeals. Under MCR 3.615(K), if a waiver petition is denied, the family court must give the minor a form that she can use as a notice and claim of appeal, inform the minor that she must file it with the court within 24 hours if she wishes to appeal, and appoint an attorney for the minor if the court receives a notice of appeal. The attorney then has 72 hours to file a claim of appeal in the Court of Appeals.

When the claim of appeal is filed, the Court of Appeals puts it on a fast track. Attorneys file in person; clerks are trained to spot these appeals, ensure their confidentiality, and move them through the process; and attorneys are notified by telephone of the Court's decision.

By requiring the family court, if it denied a waiver petition, to inform the minor of her right to appeal, the bill would help ensure that minors were aware of this option. Prohibiting multiple waiver petitions but emphasizing the right to appeal would bring consistency to the law, and could encourage pregnant minors to seek relief in the manner that other parties must follow.

Supporting Argument

The Act requires a family court judge, before granting a waiver, to 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. Reportedly, some waiver records are so incomplete that appellate judges cannot

determine whether an error was made, and practices differ from one county to the next. In addition, if a minor has been coached about what to say to the judge or how to act, the judge's decision-making ability may be hampered because there are no specific criteria to consider. Also, a minor who is coached 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 in determining whether to contravene common law standards concerning minors' ability to give informed consent to medical decisions, and parental involvement in such decisions. Thus, judges would have adequate information on which to base their approval or denial of a petition, as well as uniform statewide standards to guide them in their deliberations.

Supporting Argument

Minors need parental consent for a host of services and activities of much 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's provisions would help 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.

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" (*Bellotti v Baird*, 443 U.S. 622).

Supporting Argument

Statistics show that courts grant the majority of the petitions filed for a waiver of parental consent. According to the Michigan Supreme Court 2010, 2011, and 2012 Annual Reports, Circuit Court Statistical Supplements, 257 waiver petitions were filed and 208 waivers were granted in 2010; 198 petitions were filed and 145 waivers were granted in 2011; and 175 petitions were filed and 132 waivers were granted in 2012. These figures suggest that waivers are being granted too readily.

Response: These statistics also show that the number of waiver petitions filed is falling. In fact, the number of waiver petitions filed in 2012 was approximately one-third of the 628 filed in 2002. Furthermore, the number of abortions performed on minors has fallen dramatically since the Parental Rights Restoration Act was passed. According to the Michigan Department of Community Health, the number of abortions performed on females under the age of 18 dropped from 3,820 in 1990 to 1,410 in 2010, 1,179 in 2011, and 1,035 in 2012. These figures 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

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. 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. Other pregnant teens have parents who are absent, engage in criminal activity, or abuse drugs.

As it is, 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. Having to fill out court forms and go before a judge is likely to be intimidating for a pregnant teen. Requiring

her then to answer a litany of questions that could be embarrassing or invasive simply would make the judicial by-pass process less accessible.

The bill could discourage pregnant girls from seeking safe and legal health care, or delay their decision for weeks, making an abortion more risky than it would have been earlier in the pregnancy or leading girls to pursue illegal or self-induced abortions. In some cases, an onerous parental consent law could serve to increase family violence or even protect child predators from being discovered.

According to the Family Law Section of the State Bar of Michigan, regarding a virtually identical proposal in the 2011-2012 legislation session, "The new factors defining each new standard make it much more difficult for a minor to qualify for a waiver of parental consent. The Family Law Section believes that the current standards work properly and that there is no need or justification for the proposed changes."

Opposing Argument

The proposed factors for judges to consider are unnecessary. Family court judges are well qualified to hear parental consent waiver petitions because of the kinds of cases they adjudicate on a daily basis. They are in the best position to hear and observe a 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 two decades because judges have the experience and integrity to make reasoned and independent decisions.

Furthermore, 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 exactly the determination that Michigan's existing law requires a judge to make. The bill, however, would go well beyond this inquiry by requiring judges to consider

evidence on an array of factors, as well as whether they should contravene certain "common law standards".

Opposing Argument

The bill would require judges to ask specific questions but it would not assign any weight or significance to the answers. For example, a judge would have to consider a minor's actions to maintain her personal health, her age, and whether her parents knew of her sexual activity. It is not clear, however, whether a judge should grant a waiver to a minor who did or did not maintain her personal health, who was in her early teen years or an older teen, or whose parents did or did not know about her sexual activity.

Response: Some of the factors are specific to a minor's level of maturity, while others pertain to whether an abortion would be in her best interests. The bill would retain judges' ability to exercise their discretion, simply ensuring that they had all the relevant information to do so.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

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

Fiscal Analyst: Dan O'Connor

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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.