

Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE

Senate Bill 351 (Senator Jacobs, *et al.*)
Education, Health, and Environmental Affairs

Public Health - Abortion - Parental Notice

This bill expands the current parental notification requirement for a physician when a minor seeks an abortion. The bill includes conditions for a circuit court to grant waivers for parental notification and sets forth appeal procedures for denied waiver petitions. It also requires the Department of Health and Mental Hygiene (DHMH) to develop and provide a fact sheet on the notification procedures to physicians, agencies, and family planning service facilities for free distribution to unmarried pregnant minors who seek abortion services. Violators of any provision of the bill are guilty of a misdemeanor and subject to a maximum fine of \$1,000.

Fiscal Summary

State Effect: General fund expenditures could increase by \$8,700 in FY 2005 for DHMH to prepare and distribute a fact sheet. Future year expenditures reflect fewer fact sheets printed and distributed as well as inflation. General fund expenditures for the Judiciary could increase beginning in FY 2005. Minimal increase in general fund revenues due to the bill's penalty provision.

(in dollars)	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
GF Revenue	-	-	-	-	-
GF Expenditure	8,700	2,100	2,100	2,100	2,100
Net Effect	(\$8,700)	(\$2,100)	(\$2,100)	(\$2,100)	(\$2,100)

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: Minimal. Small business physicians would incur additional administrative costs from the notification requirements or be subject to fines if not in compliance with the bill's provisions.

Analysis

Bill Summary: A physician is prohibited from performing an abortion on an unmarried minor until actual notice has been given, or 48 hours have passed since the physician gave constructive notice of the pending procedure to the parent of the minor. Actual notice is defined as the parent has accompanied the minor to a physician consultation during which the abortion decision is considered and notice is given directly to the parent from the physician. Constructive notice is defined as notice that has been sent by certified mail to the last known address of a parent with return receipt requested and restricted delivery to the addressee. The 48-hour period begins at noon on the next regular mail delivery day after the day the notice is postmarked by the U.S. Postal Service.

The physician may perform the procedure without giving notice to a parent if: (1) the parent or guardian signs a notarized acknowledgment within the past 30 days that the parent was aware of the pending procedure; (2) if the physician certifies in the minor's medical record that a medical emergency exists and there is not enough time to provide the required notice; or (3) notice is waived by a circuit court judge. A minor may seek waiver of parental notification from a circuit court. Upon the minor's request, the court must appoint counsel or allow the minor to represent herself. The court is prohibited from charging the minor a filing fee or costs for the proceeding. Such a court proceeding is to be confidential and take precedence over other pending matters of the court.

The court must make written factual findings within 48 hours of the filing of the motion for waiver of parental notification. If the court fails to rule within 48 hours, the petition is granted and the notice requirement is waived. The court must authorize a waiver of parental notification if the court finds by clear and convincing evidence that: (1) there is evidence of a pattern of physical, sexual, or emotional abuse of the minor by the parent; (2) the minor is sufficiently mature to decide whether to have an abortion; or (3) the parental notification is not in the best interests of the minor. If such a finding is not made by the court, the petition for waiver must be dismissed and parental notification must be given.

The bill requires that an expedited confidential appeal be available to a minor denied a notification waiver.

DHMH must prepare a fact sheet for distribution to unmarried pregnant minors who seek abortion services. The fact sheet must contain an explanation of: (1) the option to seek waiver of parental notification; (2) the rights of the minor to participate in the proceedings; (3) the right to court-appointed counsel; (4) petitioning procedures; and (5) the court's decision must be reached within 48 hours of the petition's filing. DHMH is required to distribute the fact sheet, at no charge, to specified medical facilities, agencies, and physician's offices. The physician who is responsible for providing parental notification must provide a copy of this fact sheet to the minor when the minor initially requests abortion services.

A physician may not be held liable if the physician establishes by written evidence that the physician made every effort, with reasonable diligence, to deliver notice, but was unable to do so.

A person who violates any provision of this bill is guilty of a misdemeanor and subject to a fine of up to \$1,000.

The bill redefines parent to mean a natural or adoptive parent whose rights have not been terminated, or a legal guardian.

Current Law: A physician may not perform an abortion on an unmarried minor unless the physician first gives notice to a parent or guardian of the minor. The physician may perform the abortion without notice to a parent or guardian if the minor does not live with the parent or guardian and a reasonable effort to give notice to the parent or guardian is unsuccessful.

The physician may perform the abortion, without notifying the parent or guardian, if, in the physician's professional judgment: (1) notice may lead to physical or emotional abuse of the minor; (2) the minor is mature and capable of giving informed consent to an abortion; or (3) notification would not be in the minor's best interest. The physician is not liable for civil damages or subject to a criminal penalty for a decision not to give notice. A certified mail postal receipt showing the parent or guardian's last known address attached to a copy of the notice letter is conclusive evidence of notice or a reasonable effort to give notice.

A physician may not provide notice to the parent or guardian if the minor decides not to have an abortion.

Background: After remaining fairly steady for most of the 1980s, the number of abortions in the U.S. declined from a high of 1.61 million in 1990 to 1.31 million in 2000. For women ages 15-44, the abortion rate declined from its highest rate (29.3 per 1,000

women) in 1981 to 21.3 per 1,000 women in 2000. Six states that account for 40% of women ages 15-44 (California, Florida, Illinois, New Jersey, New York, and Texas) accounted for 55% of all abortions in 2000. In Maryland, however, the abortion rate has increased, from 26.2 abortions per 1,000 women in 1996 to 29.0 abortions per 1,000 women in 2000. There were 34,560 abortions performed in Maryland in 2000. Approximately one-fifth of all abortions performed in the U.S. are provided to women younger than 20.

Nineteen states have laws in effect that require a minor to obtain a parent's consent before having an abortion: Alabama, Arizona, Idaho, Indiana, Kentucky, Louisiana, Massachusetts, Michigan, Mississippi, Missouri, North Carolina, North Dakota, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, Wisconsin, and Wyoming. Most of the states' laws allow a minor to petition the court to receive an abortion without parental consent and include an exception to the law for medical emergencies. Six states waive the consent requirement in cases of abuse, assault, incest, or neglect: Alabama, Arizona, South Carolina, Tennessee, Virginia, and Wisconsin. Four states – Louisiana, Massachusetts, Missouri, and Rhode Island – don't include an exception to the law in cases of emergencies. Mississippi and North Dakota require both parents' consent before a minor can have an abortion. Four states – North Carolina, South Carolina, Virginia, and Wisconsin – allow certain adult relatives of the minor, such as grandparents or siblings, to consent to the procedure instead of the parent. Wisconsin allows certain health professionals to waive parental involvement under certain circumstances.

Four states – Alaska, California, New Mexico, and Ohio – have laws requiring parental consent to a minor's abortion, but those laws are not in effect. New Mexico's attorney general found that state's law unenforceable. Courts in the other states have enjoined the laws.

Fifteen states require parental notification before a minor may obtain an abortion: Arkansas, Colorado, Delaware, Georgia, Iowa, Kansas, Maryland, Minnesota, Nebraska, New Hampshire, Ohio, South Dakota, Texas, Utah, and West Virginia. Most of the states' laws allow a minor to petition the court to receive an abortion without parental notification and include an exception to the law for medical emergencies. Seven states waive the consent requirement in cases of abuse, assault, incest, or neglect: Arkansas, Iowa, Kansas, Minnesota, Nebraska, Ohio, and South Dakota. Arkansas and Minnesota require both parents to be notified. Colorado's law states that if a physician doesn't notify a parent, the physician is liable for damages caused by the abortion. Delaware and Iowa allow certain adult relatives of the minor, such as grandparents or siblings, to be notified instead of a parent. Three states – Delaware, Maryland, and West Virginia – allow certain health professionals to waive parental notification under certain

circumstances. Maryland's law does not include an exception to parental notification for emergencies. Utah does not have a judicial bypass procedure in the law.

Courts in six states have enjoined parental notification laws – Florida, Illinois, Montana, Nevada, New Jersey, and Oklahoma.

Eight states – Connecticut, Hawaii, Maine, New Hampshire, New York, Oregon, Vermont, and Washington – plus the District of Columbia do not require parental involvement before a minor may receive an abortion. Connecticut requires minors to receive counseling that includes a discussion about involving their parents. The District of Columbia law affirmatively gives minors the right to consent to an abortion. Minors in Maine may receive counseling instead of obtaining parental consent or court authorization.

State Fiscal Effect:

DHMH: General fund expenditures could increase by \$8,700 in fiscal 2005 to prepare a fact booklet for distribution to unmarried pregnant minors who seek abortion services. This estimate reflects the bill's October 1, 2004 effective date and includes a one-time cost for translating materials from English into Spanish and two other languages, printing costs, and postage. Fiscal 2006 expenditures reflect \$650 in printing costs and \$1,400 for mailing costs. Future year expenditures reflect inflation.

Judiciary (Administrative Office of the Courts): Expenditures for the Administrative Office of the Courts (AOC) could increase beginning in fiscal 2005. There are insufficient data at this time to reliably estimate the number of minors who would seek a waiver of the parental notification requirement in the circuit court. AOC advises that it would forego \$100 filing fees in each case and possibly incur an additional \$1,500 per case in attorneys fees for providing counsel to the minor.

Additional Information

Prior Introductions: A similar bill, SB 457, was introduced in 2003 but was withdrawn after a hearing was held in the Senate Education, Health, and Environmental Affairs Committee. Its cross file, HB 772, had a hearing in the House Health and Government Operations Committee and then was withdrawn. Another similar bill, SB 643, was introduced in 2001 but was not reported by the Senate Judicial Proceedings Committee. A similar bill, SB 758, was introduced in 2000. The bill was not reported by the Senate Judicial Proceedings Committee.

Cross File: None. HB 621 is not listed as a cross file, but it is similar.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of Health and Mental Hygiene, Department of Legislative Services

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ncs/jr

Analysis by: Lisa A. Daigle

Direct Inquiries to:
(410) 946-5510
(301) 970-5510