Ohio Legislative Service Commission

Bill Analysis

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S.B. 8

129th General Assembly
(As Introduced)

Sens. Grendell and Gillmor, Faber, Wagoner, Schaffer, Seitz, Jordan, Jones

BILL SUMMARY

- Requires the court, in a hearing to permit a pregnant minor to consent to an abortion or by which a court may give judicial consent to an abortion, to specifically inquire about the minor's understanding of the possible physical and emotional complications of abortion and how the minor would respond if the minor experienced those complications after the abortion.

- Requires the court, in a hearing of the type described in the previous dot point, to specifically inquire about the extent to which anyone has instructed the minor on how to answer questions and on what testimony to give at the hearing.

- Requires the court, in a hearing of the type described in the second preceding dot point, to make its findings regarding whether or not the minor is sufficiently mature and well enough informed to decide intelligently whether to have an abortion and whether or not the abortion is in the best interests of the minor by clear and convincing evidence.

CONTENT AND OPERATION

Petition and hearing to permit a pregnant minor to consent to an abortion or by which a court may give judicial consent

Petition

Under existing law, the right of a minor to consent to an abortion or judicial consent to obtain an abortion may be granted by a court pursuant to certain specified procedures. The procedures include the minor or next friend making an application to the juvenile court of the county in which the minor has a residence or legal settlement, the juvenile court of any county that borders the county in which she has a residence or

legal settlement, or the juvenile court of the county in which the facility in which the abortion would be performed or induced is located. The juvenile court must assist the minor or next friend in preparing the required petition and notices. The minor or next friend must then file a petition setting forth all of the following: (1) the initials of the minor, (2) her age, (3) the names and addresses of each parent, guardian, custodian, or, if the minor's parents are deceased and no guardian has been appointed, any other person standing *in loco parentis* of the minor, (4) that the minor has been fully informed of the risks and consequences of the abortion, (5) that the minor is of sound mind and has sufficient intellectual capacity to consent to the abortion, (6) that the minor has not previously filed a petition under the procedures concerning the same pregnancy that was denied on the merits, (7) that, if the court does not authorize the minor to consent to the abortion, the court should find that the abortion is in the best interests of the minor and give judicial consent to the abortion, (8) that the court should appoint a guardian *ad litem*, and (9) if the minor does not have private counsel, that the court should appoint counsel. The petition must be signed by the minor or the next friend.[1]

Hearing

Existing law requires that a hearing on the merits be held on the record as soon as possible within five days of the filing of the petition. If the minor has not retained counsel, the court must appoint counsel at least 24 hours prior to the hearing. The court must appoint a guardian *ad litem* to protect the interests of the minor at the hearing. If the guardian *ad litem* is an attorney admitted to the practice of law in Ohio, the court may appoint the guardian *ad litem* to serve as the minor's counsel. At the hearing the court must hear evidence relating to the emotional development, maturity, intellect, and understanding of the minor; the nature, possible consequences, and alternatives to the abortion; and any other evidence that the court may find useful in determining whether the minor should be granted the right to consent to the abortion or whether the abortion is in the best interests of the minor.

The bill expands the duties of the court at the hearing to also require that it: (1) specifically inquire about the minor's understanding of the possible physical and emotional complications of abortion and how the minor would respond if the minor experienced those complications after the abortion, and (2) specifically inquire about the extent to which anyone has instructed the minor on how to answer questions and on what testimony to give at the hearing.[2]

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[1] R.C. 2919.121(C)(1).

[2] R.C. 2919.121(C)(2).

The bill also provides that nothing in the procedures for the above hearing, including the requirements in (1) or (2) described above constitutes a waiver of any testimonial privilege provided under the Revised Code or at common law.[3]

Decision by court

Existing law provides that: (1) if the court finds that the minor is sufficiently mature and well enough informed to decide intelligently whether to have an abortion, the court must grant the petition and permit the minor to consent to the abortion, and (2) if the court finds that the abortion is in the best interests of the minor, the court must give judicial consent to the abortion, setting forth the grounds for its finding. If the court does not make either of the findings described in the preceding sentence, the court must deny the petition, setting forth the grounds on which the petition is denied. The court must issue its order not later than 24 hours after the end of the hearing. The bill requires that the court make the findings described in clauses (1) and (2) of the first sentence in this paragraph by clear and convincing evidence.[4]

Existing law, unchanged by the bill, provides that an appeal from an order issued by the court may be taken to the court of appeals by the minor and specifies that, because the abortion may need to be performed in a timely manner, the Supreme Court must, by rule, provide for expedited review of cases so appealed.[5]

The Supreme Court has adopted Appellate Rule 11.2 to govern expedited appeals under the provision described in the preceding paragraph.

Background information

Under existing law, unchanged by the bill, a person is prohibited from knowingly performing or inducing an abortion upon a pregnant minor unless one of the following is the case:[6]

(1) The attending physician has secured the informed written consent of the minor and one parent, guardian, or custodian;

(2) The minor is "emancipated" and the attending physician has received her informed written consent;

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[3] R.C. 2919.121(C)(9).

[4] R.C. 2919.121(C)(3).

[5] R.C. 2919.121(C)(6).

[6] R.C. 2919.121(B).

(3) The minor has been authorized to consent to the abortion by a court order issued pursuant to R.C. 2919.121(C) (discussed in "**Hearing to permit a pregnant minor to consent to an abortion or by which a court may give judicial consent**," below), and the attending physician has received her informed written consent;

(4) The court has given its consent in accordance with R.C. 2919.121(C) (discussed in "**Hearing to permit a pregnant minor to consent to an abortion or by which a court may give judicial consent**," below) and the minor is having the abortion willingly.

A violation of the prohibition is the offense of "unlawful abortion." The offense is a misdemeanor of the first degree or, if the offender previously has been convicted of a violation of the prohibition, a felony of the fourth degree.

A minor is considered emancipated if the minor has married, entered the armed services of the United States, become employed and self-subsisting, or has otherwise become independent from the care and control of her parent, guardian, or custodian.[7]

HISTORY

ACTION	DATE
Introduced	02-01-11

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[7] R.C. 2919.121(A).