

HCS HB 1845 -- CONSENT FOR ABORTION FOR A MINOR

SPONSOR: Anderson

COMMITTEE ACTION: Voted "Do Pass" by the Committee on Health Care Policy by a vote of 8 to 3.

This bill changes the laws regarding consent for abortion for a minor.

Except in the case of medical emergency and in addition to any other requirements under Chapter 188, RSMo, no physician must perform an abortion upon a minor unless the physician first obtains the notarized written consent of both the minor and one of her parents or her legal guardian. The physician must keep the consent of the parent or legal guardian in the medical file of the minor for five years past the age of majority of the minor, but in no event less than seven years.

The physician must obtain from the parent or legal guardian entitled to consent government-issued proof of identity of the parent or legal guardian and written documentation that establishes that the parent or legal guardian is the lawful parent or legal guardian of the minor. The physician must keep a copy of the proof of identification and the written documentation that establishes the relationship of the parent or legal guardian to the minor in the medical file of the minor for five years past the age of majority of the minor, but in no event less than seven years. Any physician receiving parental consent under these provisions must execute for inclusion in the medical record of the minor an affidavit as specified in the bill.

Consent must not be required if the attending physician certifies in the minor's medical record that a medical emergency, as defined in Section 188.039, exists and there is insufficient time to obtain the required consent; except that, the attending physician must, within 24 hours after completion of the abortion, notify one of the parents or the legal guardian of the minor in the manner provided in these provisions that a medical emergency abortion was performed on the minor and of the circumstances that warranted the emergency.

Unless the minor gives notice of her intent to seek a judicial waiver under these provisions, the attending physician must verbally inform the parent or legal guardian of the minor within 24 hours after the performance of a medical emergency abortion that an abortion was performed on the minor. The attending physician must also inform the parent or legal guardian of the basis for the certification of the physician required under these provisions and provide details regarding any additional risks to the minor or

incompetent woman. The attending physician must also send a written notice of the performed abortion by certified mail, restricted deliver, return receipt requested, to the last known address of the parent or legal guardian. If the minor gives notice to the attending physician of her intent to seek a judicial waiver, the physician must file a notice with any judge of a court of competent jurisdiction that the minor has given the notice and must provide the information the physician would have been required to provide the parent or legal guardian under these provisions if the minor had not given notice of her intent to seek a judicial waiver.

The court must expeditiously schedule a confidential conference with notice to the minor and the physician. If the minor is unable to participate in the proceedings, the court must advise the minor that she has the right to court-appointed counsel and must, upon her request, provide the minor with counsel. If the minor is unable to participate, the court must appoint counsel on behalf of the minor. After an appropriate hearing, the court, taking into account the medical condition of the minor, must set a deadline by which the minor must file a petition or motion under these provisions. The court may subsequently extend the deadline in light of the medical condition of the minor or other equitable considerations. If the minor does not file a petition or motion by the deadline in the court or another court of competent jurisdiction with a copy filed in that court, the court must direct that the clerk of the court provide the notice to a parent or legal guardian.

The minor must petition a court in the county in which the pregnant minor resides for a waiver of the consent requirement. If the court finds, by clear and convincing evidence, that the minor is:

(1) Both sufficiently mature and well-informed to decide whether to have an abortion, the court must issue an order authorizing the minor to consent to the performance or inducement of an abortion without the consent of a parent or guardian and the court must execute the required forms. If the court does not make the finding, the court must dismiss the petition; or

(2) The victim of physical or sexual abuse by one or both of her parents or legal guardian, or that obtaining the consent of a parent or legal guardian is not in the best interest of the minor, the court must issue an order authorizing the minor to consent to the performance or inducement of an abortion without the consent of a parent or legal guardian. If the court does not make the finding, the court must dismiss the petition.

Prior to any court proceedings addressing a petition for judicial waiver, the court in its discretion may require the minor to

participate in an evaluation and counseling session with a mental health professional from the Department of Mental Health. The evaluation must be confidential and scheduled expeditiously. The evaluation and counseling session must be for the purpose of developing trustworthy and reliable expert opinion concerning the minor's sufficiency of knowledge, insight, judgment, and maturity with regard to her abortion decision in order to aid the court in its decision and to make the state's resources available to the court for this purpose. Persons conducting the sessions may employ the information and printed materials in Section 188.027 in examining how well the minor is informed about pregnancy, fetal development, abortion risks and consequences, and abortion alternatives and must also endeavor to verify that the minor is seeking an abortion of her own free will and is not acting under coercion, intimidation, threats, abuse, undue pressure, or extortion by any other persons. The results of the evaluation and counseling must be reported to the court by the most expeditious means, commensurate with security and confidentiality, to assure receipt by the court prior to a hearing on the minor's petition.

A form created by the department must be used by physicians to obtain the consent required prior to performing an abortion on a minor who is not emancipated. The form is not valid, and therefore consent is not sufficient, unless:

- (1) A parent or legal guardian initials each page of the form, indicating that he or she has read and understands the information included on the page;
- (2) A parent or legal guardian signs the last page of the form in front of a notary public;
- (3) The minor initials each list of risks and hazards detailed in these provisions;
- (4) The minor signs a consent statement; and
- (5) The physician signs the declaration described in these provisions.

The form must include, but not be limited to, the following:

- (1) A description of the minor's rights, including her right to informed consent;
- (2) A description of the parent's or legal guardian's rights under state law;
- (3) A detailed description of the surgical or medical procedures

that are planned to be performed on the minor; and

(4) A detailed list of the risks and hazards related to the surgical and medical procedures planned for the minor, including but not limited to the following:

(a) Risks and hazards that may occur in connection with any surgical, medical, or diagnostic procedure, such as potential for infection, blood clots in veins and lungs, hemorrhage or heavy bleeding, allergic reactions, or death;

(b) Risks and hazards that may occur with a surgical abortion, such as hemorrhage or heavy bleeding, a hole in the uterus or other damage to the uterus, sterility, injury to the bowel or bladder, a possible hysterectomy as a result of complication or injury during the procedure, and failure to remove all products of conception that may result in an additional procedure;

(c) Risks and hazards that may occur with a medical nonsurgical abortion, such as hemorrhage or heavy bleeding, failure to remove all products of conception that may result in an additional procedure, sterility, and possible continuation of pregnancy;

(d) Risks and hazards of the particular procedure planned for the minor, such as cramping of the uterus or pelvic pain, infection of the female organs, cervical laceration, incompetent cervix, and emergency treatment for any of the named complications; and

(e) A description of any additional information that must be provided by the physician to the minor under Section 188.027.

A consent statement must be signed by the minor and must include, but not be limited to, the following which must be individually initialed by the minor:

(1) That the minor understands that the physician is going to perform an abortion on her which will end her pregnancy and will result in the death of her unborn child;

(2) That the minor is not being forced to have an abortion and that she has the choice not to have the abortion and may withdraw consent prior to the abortion;

(3) That the minor gives permission for the procedure;

(4) That the minor understands that there are risks and hazards that could affect the minor if she has the surgical or medical procedures planned for her;

(5) That the minor has been given the opportunity to ask questions about her condition, alternative forms of treatment, risk of nontreatment, the procedures to be used, and the risks and hazards involved;

(6) That the minor has been given information required under Section 188.027; and

(7) That the minor has sufficient information to give informed consent.

A physician declaration must be signed by the physician stating that the physician or the physician's assistant has explained the procedure and the contents of this form to the minor and her parent or legal guardian, as required, and has answered all questions. In addition, to the best of the physician's knowledge, the minor and her parent or legal guardian have been adequately informed and have consented to the procedure. A parental consent statement must be signed by the parent or legal guardian stating:

(1) The parent or legal guardian understands that the physician signing the physician's declaration is going to perform an abortion on the minor, which will end her pregnancy and result in the death of her unborn child;

(2) That the parent or legal guardian has had the opportunity to read this form or have it read to him or her and has initialed each page;

(3) That the parent or legal guardian had the opportunity to ask questions to the physician or the physician's assistant about the information in this form and the surgical and medical procedures to be performed on the minor;

(4) That the parent or legal guardian believes that he or she has sufficient information to give informed consent; and

(5) That by the parent's or legal guardian's signature, the parent or legal guardian affirms that he or she is the minor's father, mother, or legal guardian.

A page for the parent's or legal guardian's signature which must be notarized by a notary public must be required. Any additional information that must be provided to a woman under the laws of Missouri in order for a physician to obtain her informed consent prior to performing an abortion must apply to consent under these provisions.

PROPONENTS: Supporters say that the bill focuses on the wellbeing

and health of minors and protects minors who are seeking an abortion. The bill strengthens and expands Missouri's parental consent provisions and every provision of the bill is designed to better protect welfare of pregnant minors. The bill ensures minors are better informed prior to receiving an abortion. The bill also requires a minor who receives an out-of-state referral for an abortion to receive all of the information she would otherwise receive if she were receiving an abortion in Missouri.

Testifying for the bill were Representative Anderson; Americans United for Life; Missouri Right to Life; Missouri Catholic Conference; and Campaign Life Missouri.

OPPONENTS: Those who oppose the bill say that the legislature cannot legislate healthy communication in families and for those minors who do not have health communication with their parents, this bill is very detrimental. The requirement that the court proceedings occur in the jurisdiction where the minor resides could be very concerning due to a lack of uniform information throughout the court system. These issues are already addressed under current law and there is no need for additional regulations.

Testifying against the bill were NARAL Pro-Choice Missouri and Planned Parenthood Advocates in Missouri.