

SUBJECT: Judicial bypass for minors seeking an abortion

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 7 ayes — Cook, Craddick, Farney, Geren, Harless, Kuempel, Smithee

3 nays — Giddings, Farrar, Oliveira

2 absent — Huberty, Sylvester Turner

WITNESSES: For — Erin Groff and Joe Pojman, Texas Alliance for Life; Stephen Casey and Greg Terra, Texas Center for Defense of Life; Emily Horne, Emily Kebodeaux, and John Seago, Texas Right to Life; Jack M. Finger; (*Registered, but did not testify*: Glenna Hodge, Campaign for Texas Families; Gregory Young, Chosen Generation Radio Show Family Christian Center Bandera Texas; Michael Weaver, Churches; Angela Smith, Fredericksburg Tea Party; Myra Meyers, Operation Outcry; Jason Vaughn, Pro-Life Texas; Kyleen Wright, Texans for Life; Ruth Allwein and Terry Williams, Texas Alliance for Life; Jeffrey Brooks, Texas Conservative Coalition; Pat Carlson, Texas Eagle Forum; Jeremy Newman, Texas Home School Coalition; Allan Parker, The Justice Foundation; Jennifer Allmon, The Texas Catholic Conference of Bishops; Cody Haynes, TXAP; Rachel Bush; Read King; Sandra Vela; Lynn Williams)

Against — Tina Hester, Jane's Due Process; Jane McFarland, League of Women Voters-Texas; Will Francis, National Association of Social Workers-Texas Chapter; Veronica Higareda, National Latina Institute for Reproductive Health; Ana DeFrates, National Latina Institute for Reproductive Health on behalf of the Trust Respect Access Coalition, Truth Respect Access Coalition; Schell Carpenter, The Lilith Fund for Reproductive Equity; and eight individuals; (*Registered, but did not testify*: Victor Cornell, American Civil Liberties Union of Texas; Ann Hettinger, Concerned Women for America of Texas; Robert Nolen, Harris County District Clerk; Paul Coselli, Harris County District Clerk Office; Xavier Herrera, Harris County District Clerk's Office; Emily Rooke-Ley,

Jane's Due Process; Susy Hemphill, Lilith Fund; Heather Busby, NARAL Pro-Choice Texas on behalf of Trust Respect Access Coalition; Amelia Long, NARAL Pro-Choice Texas; Susan Pintchovski, National Council of Jewish Women-Austin; Lucy Felix, Dora Marroquin, Dinorah Martinez, Violeta Reyes, and Joceline Reyes, National Latina Institute for Reproductive Health; Phillip Martin and Lucy Stein, Progress Texas; Katherine Miller, Texas Freedom Network; Peggy Morton, Texas Unitarian Universalist Justice Ministry; Amanda Williams, The Lilith Fund; Jan Soifer, Travis County Democratic Party; Andrea Ferrigno, Trust Respect Access and Whole Woman's Health; Chuck Freeman, Texas Unitarian Universalist Justice Ministry; and 41 individuals)

On — Tena Callahan; (*Registered, but did not testify*: Tammy Sajak, Department of State Health Services; Jason Vaughn, Young Republicans)

BACKGROUND: Family Code, sec. 33.002 requires a physician to give 48 hours' notice to a parent, managing conservator, or guardian before performing an abortion on a pregnant, unemancipated minor. Under Family Code, sec. 33.003, a pregnant minor who wishes to have an abortion without notifying one of her parents, her managing conservator, or her guardian may file an application for a court order authorizing the minor to consent for an abortion to be performed and to exempt the minor from the notification requirement. The application may be filed in any county court at law, court having probate jurisdiction, or district court, including a family district court, in Texas.

DIGEST: CSHB 3994 would add new requirements to state laws governing judicial bypass, the process under which a judge may grant minors an exemption from parental consent laws.

Identification and consent. The bill would require a physician to presume that a pregnant woman was a minor unless the woman presented valid governmental record of identification showing that she had reached the age of maturity. A physician would not be permitted to perform an abortion in violation of Occupations Code, sec. 164.052(a)(19), which prohibits a physician from performing an abortion on an unemancipated

minor without the written consent of the child's parent, managing conservator, or legal guardian or without a court order.

Application for court order. Under the bill, a pregnant minor who wished to have an abortion without notification to and consent of a parent, managing conservator, or guardian could file an application for a court order authorizing the minor to consent to the performance of an abortion. The application with the court could only be filed in the minor's county of residence, in a neighboring county if the minor's county of residence had a population of less than 10,000 people, or in the county in which the facility at which the minor intended to obtain an abortion was located.

The bill would require the application to include, in addition to existing requirements, a statement that the minor wished to have an abortion without the notification to or consent of a parent, managing conservator, or guardian.

Guardian and attorney ad litem. The court would appoint a guardian ad litem for the minor who would be required to represent the best interest of the minor. The guardian ad litem could not also serve as the minor's attorney. The bill would require the pregnant minor to appear before the court in person, not using videoconferencing, telephone conferencing, or other remote electronic means.

Time requirements. Under current law, the court or court of appeals is required to rule on an application or appeal and issue written findings of fact and conclusions of law within two business days after the application is filed. The bill would extend this period to five business days. The bill would remove a requirement for a court to enter judgment on the application immediately after the hearing on the application was concluded. Proceedings regarding the minor's application or an appeal would be given precedence over other pending matters to the extent necessary to assure that the court reached a decision promptly, regardless of whether the minor was granted an extension.

If the court or a court of appeals failed to rule on an application or an

appeal within five days, the bill would require the court clerk to issue to the physician a certificate showing that the court failed to rule on the application. Upon receipt of the certificate, the physician could perform the abortion as if the court had issued an order authorizing the minor to consent to the abortion without the notification and consent of her parent, managing conservator, or legal guardian, or without a court order.

Grounds for court determinations. The bill would require the court to make a determination based on clear and convincing evidence, rather than a preponderance of evidence, on whether the minor had overcome the presumption that notifying and requesting consent from a parent, managing conservator, or guardian was in the minor's best interest. The bill would change the grounds for a court to consider in making a determination to include the following:

- whether the minor was mature and sufficiently well-informed to make the decision to have an abortion performed without notification to or consent of a parent, managing conservator, or guardian;
- whether the abortion would be in the best interest of the minor; and
- whether notification or the attempt to obtain consent could lead to physical, sexual, or emotional abuse of the minor, as described by Family Code, sec. 261.001 related to investigation of reports of child abuse and neglect.

The bill also would require the court to consider new grounds for consent related to the experience, perspective, and judgment of the minor. The court could consider all relevant factors, including:

- the minor's age;
- the minor's life experiences, such as working, traveling independently, or managing her own financial affairs;
- steps taken by the minor to explore her options and the consequences of those options; and
- the minor's decision not to notify and obtain consent from a parent, managing conservator, or guardian.

In determining whether the abortion would be in the best interest of the minor, the court could:

- inquire as to the minor's reasons for seeking an abortion;
- consider the degree to which the minor was informed about the state-published informational materials described by Health and Safety Code, ch. 171, the Woman's Right to Know Act; and
- require the minor to be evaluated by a licensed mental health counselor, who would be required to return the evaluation to the court for review within three business days.

The bill would specify that if the court found that the minor was mature and sufficiently well-informed, that the abortion would be in the minor's best interest, or that notification or the attempt to obtain consent could lead to physical, sexual, or emotional abuse of the minor, the court would enter an order authorizing the minor to consent to the performance of the abortion without notification to and consent of a parent, managing conservator, or guardian and would execute the required forms. Otherwise, the court would not authorize the minor to consent to an abortion.

Records and reports. The bill would require the clerk of the court to retain records for each case before the court in accordance with rules for civil cases and to grant access to the records to the minor who was the subject of the proceeding. The bill would allow the court of appeals handling a minor's appeal to publish an opinion related to a ruling if the opinion were written in a way to preserve the confidentiality of the identity of the pregnant minor.

The bill also would allow confidential records pertaining to a minor, including court documents, court proceedings, and the application to be disclosed to the minor. The bill would require the clerk of the court, at intervals prescribed by the Office of Court Administration to submit a report to the office that would include, for each case filed, information about the case specified in the bill, such as the date of filing, the

applicant's county of residence, and the court in which the proceeding occurred. The office would aggregate this case data and publish a report annually. The bill would require the report to protect the anonymity of all minors who were subjects of the report. The Office of Court Administration would not be required to publish an initial report until January 1, 2017.

Suspected abuse. The bill would require a physician who had reason to believe that a minor had been or could be physically or sexually abused to immediately report the suspected abuse to the Department of Family and Protective Services and to refer the minor to department services that could be in their best interest. The bill would specify that a minor's claim that she was being physically or sexually abused would constitute a reason to believe that the abuse had occurred. A report made to the department would be investigated as provided by Family Code, ch. 261.

Severability. Every provision in the bill and every application of the provisions in the bill would be severable from each other. If any provision were found by a court to be invalid, the remainder of the bill would stand.

The bill would take effect January 1, 2016, and would apply only to an offense committed or a petition filed on or after this date.

**SUPPORTERS
SAY:**

CSHB 3994 would improve the protection of a minor girl who wished to have an abortion, while ensuring the protection of parental rights. By requiring a judge to ask more substantial, relevant, and considerate questions of the minor, the bill would allow a court to have the tools it needs to find the relevant facts before reaching an important decision about authorization for abortion. The language in the bill was developed through consultation with stakeholders and represents a balance between the best interest of a minor girl and parental rights.

Extending the time a court would have to make a determination would allow the court enough time to make a considered decision about whether an abortion was in a minor girl's best interest. Such a determination is important and should not be rushed, but the time limit in the bill would

not be so long as to compromise the minor's rights.

The bill also would ensure that a minor girl was well informed and mature enough to undergo an abortion by requiring the minor to provide clear and convincing evidence rather than a preponderance of evidence that an abortion was in her best interest. The use of clear and convincing evidence is a common standard in family law.

The bill also would separate the roles of the attorney ad litem and the guardian ad litem to reduce conflict of interest and to ensure that the guardian ad litem could properly provide an unbiased view of what was in the best interest of the minor.

The identification requirement in the bill is an important, common-sense requirement that would ensure that a physician did not perform an abortion on a minor girl without the appropriate consent from her parent, managing conservator, guardian, or from a court order. The large majority of Texans have some form of government-issued identification; it is not unreasonable to require it.

The language in the bill would provide protection for minor girls who might be in danger by requiring a judge to consider whether parental notification or the attempt to obtain consent could lead to physical, sexual, or emotional abuse. The bill would provide additional protections for the minor by allowing the court to ask considerate and relevant questions about why the minor girl was seeking an abortion and whether she was fully informed about her other options before authorizing her to consent to her own abortion.

Limiting the venue for judicial bypasses to the minor's county of residence, a nearby county, or the county where the abortion would be performed would improve the accountability of judges and ensure the judge would give appropriate consideration to the minor's application. The bill would protect the minor's confidentiality by allowing her a choice of venues.

OPPONENTS
SAY:

CSHB 3994 could put women and minors at risk by increasing the time it would take to petition a court for permission to have an abortion and by requiring government-issued identification for all women seeking an abortion.

Many minors seek judicial bypass because they might be at risk or endangered if they had to have parental consent. Making the infrequent procedure of judicial bypass harder for minor girls to access could cause a minor's pregnancy to become more noticeable following a long wait, which could increase the chance of domestic abuse against the minor. The language in the current law was worked out through compromise with many stakeholders and balances protection for a minor with parental rights; it does not need to be changed.

The increased evidence requirement in the bill would place an unreasonable and unnecessary burden on minors to meet the new standard within the time constraints of accessing a safe, legal abortion. The requirement for minors to file bypass petitions only in their own county, a neighboring county, or the county in which they would have the abortion also could compromise the confidentiality of the proceedings.

Requiring all women to provide identification to a physician to prove they were not a minor before accessing an abortion also would be an unreasonable restriction, as some women do not have a government-issued identification because they cannot afford it or because they are undocumented.

Limiting the venue for judicial bypasses to certain counties could compromise confidentiality. People working at the court or attending to other matters might know the minor and attempts to secure an attorney could compromise her confidentiality.

OTHER
OPPONENTS
SAY:

CSHB 3994 would increase the two-day limit for a judge to make a decision on a case to five days, but this provision would still allow authorization about an abortion to be automatically granted if a judge did not rule within that time period. A provision for automatic granting of

permission after any time period should be completely removed from law to bring abortion petitions into line with other types of petitions. Normally a petition is assumed to have been denied, not automatically granted, if a judge does not respond within a certain number of days.