

HOUSE BILL NO. 321
INTRODUCED BY T. MCGILLVRAY

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE JUDICIAL BYPASS PROVISIONS UNDER THE PARENTAL NOTICE OF ABORTION ACT; AND AMENDING SECTION 50-20-212, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 50-20-212, MCA, is amended to read:

"50-20-212. Procedure for judicial waiver of notice -- finding. (1) The requirements and procedures under this section are available to minors and incompetent persons whether or not they are residents of this state. If a minor or incompetent person does not have a parent or legal guardian to whom notice would be provided under 50-20-204, an abortion may not be performed on the minor or incompetent person unless a waiver is first obtained under this section.

(2) (a) The minor or incompetent person may petition the youth court for a waiver of the notice requirement and may participate in the proceedings on the person's own behalf. The petition must include a statement that the petitioner is pregnant and is not emancipated. The court may appoint a guardian ad litem for the petitioner. A guardian ad litem is required to maintain the confidentiality of the proceedings. The youth court shall advise the petitioner of the right to assigned counsel and shall order the office of state public defender, provided for in 47-1-201, to assign counsel upon request.

(b) If the petition filed under subsection (2)(a) alleges abuse as a basis for waiver of notice, the youth court shall treat the petition as a report under 41-3-202. The provisions of Title 41, chapter 3, part 2, apply to an investigation conducted pursuant to this subsection.

(3) Proceedings under this section are confidential and must ensure the anonymity of the petitioner. All proceedings under this section must be held in camera, and records must be sealed. The petitioner may file the petition using a pseudonym or using the petitioner's initials. All documents related to the petition are confidential and are not available to the public. The proceedings on the petition must be given preference over other pending matters to the extent necessary to ensure that the court reaches a prompt decision. The court shall issue written findings of fact and conclusions of law and rule within ~~48 hours~~ 5 days of the time that the petition is filed unless the time is extended at the request of the petitioner. If the court fails to rule within ~~48 hours~~ 5 days and the time is not extended, the petition is granted and the notice requirement is waived.

(4) If the court finds ~~by clear and convincing evidence~~ that the petitioner is ~~sufficiently mature~~ competent to decide whether to have an abortion or finds that an abortion is in the best interests of the petitioner, the court shall issue an order authorizing the minor to consent to the performance or inducement of an abortion without the notification of a parent or guardian.

(5) The court shall issue an order authorizing the petitioner to consent to an abortion without the notification of a parent or guardian if the court finds, ~~by clear and convincing evidence~~, that:

~~——(a) there is evidence of a pattern of physical, sexual, or emotional abuse of the petitioner by one or both parents, a guardian, or a custodian; or~~

~~——(b) the notification of a parent or guardian is not in the best interests of the petitioner.~~

(6) If the court does not make a finding specified in subsection (4) or (5), the court shall dismiss the petition.

(7) A court that conducts proceedings under this section shall issue written and specific findings of fact and conclusions of law supporting its decision and shall order that a confidential record of the evidence, findings, and conclusions be maintained.

(8) The supreme court may adopt rules providing an expedited confidential appeal by a petitioner if the youth court denies a petition. An order authorizing an abortion without notice is not subject to appeal.

(9) Filing fees may not be required of a pregnant minor who petitions a court for a waiver of parental notification or appeals a denial of a petition.

(10) The legislature finds that the notification of a parent or legal guardian before an abortion may be performed upon a minor and, particularly, the procedure in this section for a judicial waiver of notification enhance the protection of minors and incompetent persons."

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