UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

Planned Parenthood of Northern New England, Concord Feminist Health Center, Feminist Health Center of Portsmouth, and Wayne Goldner, M.D. Plaintiffs-Appellees, v. Kelly Ayotte, Attorney General of New Hampshire, in her official capacity, Defendant-Appellant.	Civil No. 03-491-JD

DEFENDANT'S PARTIAL MOTION FOR SUMMARY JUDGMENT

NOW COMES the Defendant, by and through counsel, the Office of the Attorney General, and hereby moves for partial summary judgment and submits a memorandum of law in support, filed concurrently herewith.

1. This case involves a challenge to the constitutionality of New Hampshire's Parental Notification Prior to Abortion Act ("the Act"). N.H. RSA 132:22-28.

2. The United States Supreme Court vacated the decision of the First Circuit Court of Appeals holding that the Act was facially unconstitutional, and remanded the case on the question of remedy with a blueprint for how to proceed – the Court of Appeals was directed first to determine whether the New Hampshire legislature would prefer an injunction prohibiting the Act's application in medical emergencies to no parental notification statute at all. Ayotte v. Planned Parenthood of Northern New England, 126 S.Ct. 961, 969 (2006). If the Act does survive in part on remand, the Supreme Court directed the Court of Appeals to

then turn to the issue involving the confidentiality of the judicial bypass procedures. Id. The Court of Appeals remanded the case to this court for proceedings consistent with the supreme court decision.

3. The Defendant moves for summary judgment on the issue of legislative intent.

4. Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c).

5. There are no genuine issues of material fact with regard to legislative intent. The legislative goals of promoting parental involvement and protecting minors would be better served by a notification statute enjoined in the case of medical emergencies than no notification statute at all, and there is nothing in the legislative history of the Act to support the Plaintiffs' claim that the New Hampshire legislature would prefer no statute at all to a statute enjoined in the way the Supreme Court described.

6. A memorandum of law is filed concurrently herewith.

7. Assent is not required as this is a dispositive motion.

WHEREFORE, for the reasons stated herein, the Defendant respectfully requests that the court:

A. Grant summary judgment to the Defendant on the issue of legislative intent;

B. Issue an injunction prohibiting the application of New Hampshire's Parental Notification Prior to Abortion Act, N.H. RSA 132:22-28, in any circumstance where a doctor, in good faith, believes that there is a medical health emergency that requires an immediate abortion.

C. Grant such other and further relief as is just and necessary.

Respectfully submitted,

KELLY A. AYOTTE
Attorney General, State of New Hampshire

By and through her counsel,

\s\ Laura E. B. Lombardi
Laura E. B. Lombardi (# 12821)
Assistant Attorney General
N.H. Department of Justice
Civil Bureau
33 Capitol Street
Concord, NH 03301
603-271-3650

Certificate of Service

July 12th, 2006

I hereby certify that a copy of the served this date, via the ECF system on Dara Klassel, Esq., counsel for Planned Parenthood Federation of America; Martin P. Honigberg, Esq., counsel for Planned Parenthood of Northern New England; Lawrence A. Vogelman, counsel for Concord Feminist Health Center, Feminist Health Center of Portsmouth, and Wayne Goldner, M.D.

\s\ Laura E. B. Lombardi
Laura E. B. Lombardi (# 12821)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

Planned Parenthood of Northern New England, Concord Feminist Health Center, Feminist Health Center of Portsmouth, and Wayne Goldner, M.D. Plaintiffs-Appellees, v. Kelly Ayotte, Attorney General of New Hampshire, in her official capacity, Defendant-Appellant.	Civil No. 03-491-JD

DEFENDANT'S MEMORANDUM OF LAW IN SUPPORT OF PARTIAL MOTION FOR SUMMARY JUDGMENT

I. Introduction

This case involves a challenge to the constitutionality of New Hampshire's Parental Notification Prior to Abortion Act ("the Act"). N.H. RSA 132:22-28. The Act provides that abortions may not be performed upon an unemancipated minor until at least 48 hours after written notice has been delivered to one of the minor's parents. RSA 132:25. The District Court held that the Act was unconstitutional on its face because it did not contain an exception when an abortion is necessary to protect the health of the minor, and because the "death exception" was too narrow. Planned Parenthood of Northern New England v. Heed, 269 F.Supp.2d 59, 65-66 (D.N.H. 2003), *aff'd* 390 F.3d 53, *vacated and remanded sub nom.* Ayotte v. Planned Parenthood of Northern New England, 126 S.Ct. 961 (2006). The Court did not rule on the confidentiality challenge regarding the judicial bypass procedure. *Id.* at

67. The First Circuit affirmed the District Court's decision holding that the Act was facially unconstitutional because it did not have a health exception, and because the "death exception" was drawn too narrowly and "fail[ed] to safeguard the physician's good-faith medical judgment that a minor's life is at risk against criminal and civil liability." 390 F.3d at 62, 64.

The Defendant appealed to the United States Supreme Court, which framed the issue on appeal as follows: "If enforcing a statute that regulates access to abortion would be unconstitutional in medical emergencies, what is the appropriate judicial response?" Ayotte, 126 S.Ct. at 964. The Supreme Court vacated the Court of Appeals' decision, and remanded the matter back to the Court of Appeals on the question of remedy. The Supreme Court noted in its decision that the statute was unconstitutional when applied in "some very small percentage of cases" where pregnant minors "need immediate abortions to avert serious and often irreversible damage to their health." Id. at 967. However, the United States Supreme Court "agree[d] with New Hampshire that the lower courts need not have invalidated the law wholesale," and held that "the lower courts can issue a declaratory judgment and an injunction prohibiting the statute's unconstitutional application" so long as "New Hampshire's legislature intended the statute to be susceptible to such a remedy." Id. at 969 Assuming the state legislature would prefer an injunction prohibiting the statute's application in medical emergencies to no statute at all, the Supreme Court directed the Court of Appeals to then turn to the issue involving the confidentiality of the judicial bypass procedures.

The Defendant moves for summary judgment on the issue of legislative intent on the ground that there is no genuine issue of material fact which would necessitate the need for a trial, and because the Defendant is entitled to judgment as a matter of law.

II. Standard of Review

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c).

In ruling on a motion for summary judgment, the court must construe the evidence in the light most favorable to the non-movant. *See* Navarro v. Pfizer Corp., 261 F.3d 90, 94 (1st Cir. 2001).

The party moving for summary judgment "bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of [the record] which it believes demonstrate the absence of a genuine issue of material fact." Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). Once the moving party has properly supported its motion, the burden shifts to the nonmoving party to "produce evidence on which a reasonable finder of fact, under the appropriate proof burden, could base a verdict for it; if that party cannot produce such evidence, the motion must be granted." Ayala-Gerena v. Bristol Myers-Squibb Co., 95 F.3d 86, 94 (1st Cir. 1996) (*citing* Celotex, 477 U.S. at 323; Anderson v. Liberty Lobby, 477 U.S. 242, 249 (1986)).

III. Argument

The question before the court is whether the New Hampshire legislature would prefer an injunction prohibiting the statute's application in medical emergencies to no parental notification statute at all. Ayotte, 126 S.Ct. at 968 ("After finding an application or portion of a statute unconstitutional, we must next ask: Would the legislature have preferred what is left of its statute to no statute at all?"). The answer is obviously yes. Severing the

unconstitutional applications of the Act would give effect to the legislature's intent that in as many circumstances as possible a pregnant minor's parent should be notified about the decision to have an abortion. The legislature would clearly prefer this remedy over invalidating the Act in its entirety.

Severability is a state law issue. Leavitt v. Jane L., 518 U.S. 137, 139 (1996) (per curiam). Under New Hampshire law, a statute with unconstitutional applications is "held valid by giving it a construction compatible with the constitution, making it applicable only to those cases to which it can be constitutionally applied." Aldrich v. Wright, 53 N.H. 398, 399 (1873); *see also* Associated Press v. State, 888 A.2d 1236, 1255 (N.H. 2005) ("In determining whether the valid provisions of a statute are severable from the invalid ones, [the court is] to presume that the legislature intended that the invalid part shall not produce entire invalidity if the valid part may be reasonably saved.") (quotation omitted). Here, the New Hampshire legislature has specifically expressed its desire that the Act not be declared unconstitutional in its entirety if it can be given effect without the invalid applications. The Act contains a severability provision[1] which provides:

> If any provision of the subdivision *or the application thereof to any person or circumstance* is held invalid, such invalidity shall not affect the provisions or applications of this subdivision which can be given effect without the invalid provisions or applications, and to this end, the provisions of this subdivision are severable.

[1] A severability clause in a state statute acts as a presumption that the legislature intended to sever the unconstitutional applications from the constitutional applications. *See* Brockett v. Spokane Arcades, Inc., 472 U.S. 491, 506-07 (1985) (recognizing that Washington moral nuisance statute "should have been invalidated only insofar as the word 'lust' is to be understood as reaching protected materials."); *see also* A.A. et al. v. New Jersey, 176 F. Supp.2d 274, 309 (D. N.J. 2001) ("The incorporation of a broad severability clause is evidence of the legislature's intent and creates a presumption that the invalid sections of the statute are severable.").

RSA 132:28 (emphasis added). By this plain and unambiguous language, the legislature has declared that all valid applications of the statute must be given effect. It is well settled that "[w]hen a statute's language is plain and unambiguous, [the court] need not look beyond it for further indication of legislative intent." Woodview Dev. Corp. v. Town of Pelham, 152 N.H. 114, 116 (2005) (citations omitted).

Nevertheless, the Plaintiffs argued to the Supreme Court that the Act permits only the severance of unconstitutional provisions from the statute. Resp. Br. at 37. Should this court find that the language of the severance provision is ambiguous, which the State disputes, only then may the court turn to legislative history to aid in its analysis. *See* State v. Whittey, 149 N.H. 463, 467 (2003). When considering legislative history, the New Hampshire Supreme Court looks at the official House and Senate Journals to determine the legislative intent behind a law. *See e.g.* Caparco v. Town of Danville, 152 N.H. 722, 727 (2005) (dialogue between senators as recorded in the Senate Journal demonstrated the legislature's expectation that a planning board would determine the amount of impact fee); AIMCO Properties LLC v. Dziewisz, 152 N.H. 587, 590-92 (2005) (New Hampshire Supreme Court looked to the Senate Journals when determining the meaning of "good cause" to terminate a landlord/tenant relationship); Associated Press, 888 A.2d at 1255-56 (New Hampshire Supreme Court looked to the House Committee Report as recorded in the House Journal in determining that valid provisions of statute restricting public access to financial affidavits filed in divorce actions were severable from unconstitutional provision).

There is nothing in either the House or Senate Journal to support the Plaintiffs' assertion that the New Hampshire legislature would prefer no statute at all to a statute enjoined in medical emergencies. To the contrary, the Legislative Purpose and Findings

state, in part, that "[t]he legislature . . . finds that parental consultation is usually desirable and in the best interest of the minor." 2003 N.H. Laws § 173:1, III.[2] Thus, the state legislature has declared that in as many circumstances as possible a pregnant minor's parent should be notified about the decision to have an abortion. This state interest would be better served by a parental notification act enjoined in medical emergencies than no parental notification act at all. Cf. Brockett, 472 U.S. 491, 506-07 ("It would be frivolous to suggest, and no one does, that the Washington Legislature, if it could not proscribe materials that appealed to normal as well as abnormal sexual appetites, would have refrained from passing the moral nuisance statute. And it is quite evident that the remainder of the statute retains its effectiveness as a regulation of obscenity."). If enjoined in the small percentage of cases where pregnant minors need immediate abortions to protect their health, the Act would retain its effectiveness as a parental notification statute.

The Plaintiffs argued to the Supreme Court that the New Hampshire legislature purposely crafted the Act without an emergency exception knowing that it would be declared unconstitutional. Resp. Br. at 39. The official legislative record directly contradicts the Plaintiffs' position and establishes that the New Hampshire legislature was conscious of its obligation to enact legislation that passed constitutional muster. *See* Report of the N.H. House Jud. Comm. on HB763-FN, *reprinted in* N.H. House Jour. 496-99 (Mar. 25, 2003) (hereinafter "House Jour.") (attached to this Memorandum as Defendant's Exhibit C); Senate Debate on HB763-FN, *reprinted in* N.H. S. Jour. 831-62 (2003) (hereinafter "S. Jour.") (attached to this Memorandum as Exhibit B). In fact, Rep. Phyllis L. Woods, one of the sponsors of the legislation speaking on behalf of the House Judiciary Committee, recognized

[2] For ease of reference, 2003 N.H. Laws 173 is attached to this memorandum as Defendant's Exhibit A.

that the United States Supreme Court upheld an identical parental notification statute. *See* House Jour. at 496. Rep. Woods also noted that the bill contained a judicial bypass provision, as required by this Court, for cases where the minor's parents are not notified. *Id.* at 497. Members of the Senate recognized that the Supreme Court has upheld the constitutionality of a parental notification statute with judicial bypass provision. *See* S. Jour. at 849-50. Thus, the legislative history supports the conclusion that the legislature wanted the statute to conform to constitutional mandates and to operate in as many applications as possible.

To the extent the Plaintiffs seek to rely on statements of individual legislators made outside of the official legislative record, that reliance is in error. *See* Baines v. New Hampshire Senate Pres., 152 N.H. 124, 133 (2005) (quoting Bezio v. Neville, 113 N.H. 278, 280 (1973) (The journals of the House and Senate are the "conclusive evidence of the proceedings . . . of the legislature."); *see also* E.D. Clough & Co. v. Boston & M. R. R., 77 N.H. 222, 242 (1914) (Walker J., concurring) (unauthenticated reports of hearings before legislative committees that indicate what individual legislators thought is of very little weight or importance upon the question of legislative intention); Bread Political Action Comm. v. Federal Elec. Comm., 455 U.S. 577, 582 n. 3 (1982) (refusing to give probative weight to after-the-fact affidavit of amendment sponsor regarding legislative intent); B.C Foreman v. Dallas County, TX, 193 F.3d 314, 322 (5th Cir. 1999) (holding district court's exclusive reliance on affidavits of three Texas legislators was clearly erroneous; court should have relied on the official legislative record to determine legislative intent); American Meat Institute v. Barnett, 64 F.Supp. 2d 906, 915-16 (D. S.D. 1999) (after-the-fact affidavits of individual legislators not admissible on the issue of legislative intent).

The official legislative record makes clear that the legislature intended that a pregnant minor's parent be notified about the decision to have an abortion in as many circumstances as possible, in part because "[p]arents ordinarily possess information essential to a physician's exercise of best medical judgment concerning the child." Legislative Purpose and Findings, 2003 N.H. Laws § 173:1, II (d). In the circumstance where a physician believes, in good faith, that an immediate abortion is necessary for the health of the pregnant minor, the purpose of the statute to protect the medical, emotional and psychological well-being of pregnant minors would not be achieved by delaying the abortion to notify a parent. The legislative history supports a finding that the legislature would prefer a parental notification statute enjoined in such medical emergencies over no parental notification statute at all.

Moreover, the policy considerations sought to be advanced by the Act support severance of the Act's unconstitutional applications. The goal of the judiciary "is to apply statutes in light of the legislature's intent in enacting them, and in light of the policy sought to be advanced by the entire statutory scheme." State v. Whittey, 149 N.H. at 467 (quotation and brackets omitted). Where the legislative history of a statute does not reveal the intent of the legislature on a specific issue, the New Hampshire Supreme Court considers the policy sought to be advanced by the statutory scheme. *See* Hinsdale v. Town of Chesterfield, 889 A.2d 32, 35 (2005) (where review of legislative history did not assist in determining the appropriate legal standard to apply, court considered the policy sought to be advanced by the statutory scheme). New Hampshire's Parental Notification Act sets forth the legislative purpose as follows:

> It is the intent of the legislature in enacting this parental notification provision to further the important and compelling state interests of protecting minors against their own immaturity, fostering the family structure and preserving it as a viable social unit, and protecting the rights of parents to rear children who are members of their household.

2003 N.H. Laws § 173:1, I. All three state interests listed would be better served by a notification act enjoined in the case of medical emergencies than no notification act at all. *Cf.* Memphis Planned Parenthood, Inc. v. Sundquist, 175 F.3d 456, 466-67 (6th Cir. 1999) (holding district court abused its discretion in failing to sever objectionable portions of consent act where the state interests would be better served by a consent act less the challenged provisions than no consent act at all). Despite severance of the unconstitutional applications, the Act would still further the legislative goal of promoting parental involvement in as many circumstances as possible. Furthermore, in preserving the New Hampshire legislature's intent to promote parental involvement, enjoining the Act in the manner described by the United States Supreme Court is consistent with the severability clause included in the Act.

There are no genuine issues of material fact with regard to legislative intent. In determining legislative intent, this court's review is limited to the official legislative history and apparent purpose of the Act in light of the policy sought to be advanced by the statutory scheme. It strains common sense to conclude that the state legislature would prefer no notification act at all to a statute enjoined in the way the Supreme Court described. Because an injunction prohibiting the application of the Act in medical emergencies would better serve the legislative goals of promoting parental involvement and protecting minors than would no notification act at all, the Defendant is entitled to summary judgment on the issue of legislative intent.

IV. Conclusion

For all of the foregoing reasons, the Defendant respectfully requests that the honorable court grant her motion for summary judgment on the issue of legislative intent and issue an injunction prohibiting the application of the Act in any circumstance where a doctor, in good faith, believes that there is a medical health emergency that requires an immediate abortion.

Respectfully submitted,

KELLY A. AYOTTE
Attorney General, State of New Hampshire

By and through her counsel,

\s\ Laura E. B. Lombardi
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Certificate of Service

July 12th, 2006

I hereby certify that a copy of the foregoing was served this date, via the ECF system on Dara Klassel, Esq., counsel for Planned Parenthood Federation of America; Martin P. Honigberg, Esq., counsel for Planned Parenthood of Northern New England; Lawrence A. Vogelman, counsel for Concord Feminist Health Center, Feminist Health Center of Portsmouth, and Wayne Goldner, M.D.

\s\ Laura E. B. Lombardi
Laura E. B. Lombardi (# 12821)

CHAPTER 173

HB 763-FN - FINAL VERSION

25mar03... 0703h

05/22/03 1769s

05/22/03 1715s

05/22/03 1780s

5jun03... 2015eba

2003 SESSION

03-0346

01/09

HOUSE BILL ***763-FN***

AN ACT requiring parental notification before abortions may be performed on unemancipated minors.

SPONSORS: Rep. Kerns, Hills 57; Rep. Woods, Straf 69; Rep. Souza, Hills 51; Rep. Sweeney, Hills 62

COMMITTEE: Judiciary

AMENDED ANALYSIS

This bill prohibits any abortion provider from performing an abortion on certain minors or incompetent females without giving 48 hours' written notice, in person or by certified mail, to a parent or guardian. The bill provides a procedure for alternate notice in certain circumstances.

This bill also establishes a procedure for waiver of the notice in certain circumstances.

Explanation: Matter added to current law appears in ***bold italics.***

Matter removed from current law appears [~~in brackets and struckthrough.~~]

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

25mar03... 0703h

05/22/03 1769s

05/22/03 1715s

05/22/03 1780s

5jun03... 2015eba

03-0346

01/09

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Three

AN ACT requiring parental notification before abortions may be performed on unemancipated minors.

Be it Enacted by the Senate and House of Representatives in General Court convened:

173:1 Legislative Purpose and Findings.

I. It is the intent of the legislature in enacting this parental notification provision to further the important and compelling state interests of protecting minors against their own immaturity, fostering the family structure and preserving it as a viable social unit, and protecting the rights of parents to rear children who are members of their household.

II. The legislature finds as fact that:

(a) Immature minors often lack the ability to make fully informed choices that take account of both immediate and long-range consequences.

(b) The medical, emotional, and psychological consequences of abortion are serious and can be lasting, particularly when the patient is immature.

(c) The capacity to become pregnant and the capacity for mature judgment concerning the wisdom of abortion are not necessarily related.

(d) Parents ordinarily possess information essential to a physician's exercise of best medical judgment concerning the child.

(e) Parents who are aware that their minor daughter has had an abortion may better ensure that she receives adequate medical attention after the abortion.

III. The legislature further finds that parental consultation is usually desirable and in the best interest of the minor.

173:2 New Subdivision; Parental Notification Prior to Abortion. Amend RSA 132 by inserting after section 23 the following new subdivision:

Parental Notification Prior to Abortion

132:24 Definitions. In this subdivision:

I. "Abortion" means the use or prescription of any instrument, medicine, drug, or any other substance or device intentionally to terminate the pregnancy of a female known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove an ectopic pregnancy or the products from a spontaneous miscarriage.

II. "Commissioner" means the commissioner of the department of health and human services.

III. "Department" means the department of health and human services.

IV. "Emancipated minor" means any minor female who is or has been married or has by court order otherwise been freed from the care, custody, and control of her parents.

V. "Guardian" means the guardian or conservator appointed under RSA 464-A, for pregnant females.

VI. "Minor" means any person under the age of 18 years.

VII. "Parent" means one parent of the pregnant girl if one is living or the guardian or conservator if the pregnant girl has one.

132:25 Notification Required.

I. No abortion shall be performed upon an unemancipated minor or upon a female for whom a guardian or conservator has been appointed pursuant to RSA 464-A because of a finding of incompetency, until at least 48 hours after written notice of the pending abortion has been delivered in the manner specified in paragraphs II and III.

II. The written notice shall be addressed to the parent at the usual place of abode of the parent and delivered personally to the parent by the physician or an agent.

III. In lieu of the delivery required by paragraph II, notice shall be made by certified mail addressed to the parent at the usual place of abode of the parent with return receipt requested and with restricted delivery to the addressee, which means the postal employee shall only deliver the mail to the authorized addressee. Time of delivery shall be deemed to occur at 12 o'clock noon on the next day on which regular mail delivery takes place, subsequent to mailing.

132:26 Waiver of Notice.

I. No notice shall be required under RSA 132:25 if:

(a) The attending abortion provider certifies in the pregnant minor's medical record that the abortion is necessary to prevent the minor's death and there is insufficient time to provide the required notice; or

(b) The person or persons who are entitled to notice certify in writing that they have been notified.

II. If such a pregnant minor elects not to allow the notification of her parent or guardian or conservator, any judge of a court of competent jurisdiction shall, upon petition, or motion, and after an appropriate hearing, authorize an abortion provider to perform the abortion if said judge determines that the pregnant minor is mature and capable of giving informed consent to the proposed abortion. If said judge determines that the pregnant minor is not mature, or if the pregnant minor does not claim to be mature, the judge shall determine whether the performance of an abortion upon her without notification of her parent, guardian, or conservator would be in her best interests and shall authorize an abortion provider to perform the abortion without such notification if said judge concludes that the pregnant minor's best interests would be served thereby.

(a) Such a pregnant minor may participate in proceedings in the court on her own behalf, and the court may appoint a guardian ad litem for her. The court shall, however, advise her that she has a right to court-appointed counsel, and shall, upon her request, provide her with such counsel.

(b) Proceedings in the court under this section shall be confidential and shall be given such precedence over other pending matters so that the court may reach a decision promptly and without delay so as to serve the best interest of the pregnant minor. In no case shall the court fail to rule within 7 calendar days from the time the petition is filed. A judge of the court who conducts proceedings under this section shall make in writing specific factual findings and legal conclusions supporting the decision and shall order a record of the evidence to be maintained including the judge's own findings and conclusions.

(c) An expedited confidential appeal shall be available to any such pregnant minor for whom the court denies an order authorizing an abortion without notification. The court shall make a ruling within 7 calendar days from the time of the docketing of the appeal. An order authorizing an abortion without notification shall not be subject to appeal. No filing fees shall be required of any such pregnant minor at either the trial or the appellate level. Access to the trial court for the purposes of such a petition or motion, and access to the appellate courts for purposes of making an appeal from denial of the same, shall be afforded such a pregnant minor 24 hours a day, 7 days a week.

132:27 Penalty. Performance of an abortion in violation of this subdivision shall be a misdemeanor and shall be grounds

for a civil action by a person wrongfully denied notification. A person shall not be held liable under this section if the person establishes by written evidence that the person relied upon evidence sufficient to convince a careful and prudent person that the representations of the pregnant minor regarding information necessary to comply with this section are bone fide and true, or if the person has attempted with reasonable diligence to deliver notice, but has been unable to do so.

132:28 Severability. If any provision of this subdivision or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect the provisions or applications of this subdivision which can be given effect without the invalid provisions or applications, and to this end, the provisions of this subdivision are severable.

173:3 Effective Date. This act shall take effect December 31, 2003.

(Approved: June 19, 2003)

(Effective Date: December 31, 2003)

SENATE CONCURS WITH HOUSE AMENDMENT

SB 142-FN, relative to advertisements on utility poles and highway signs.

Senator Kenney moved to concur.

SENATOR BELOW: Senator Kenney, could you just briefly explain what they have done, how they have changed that?

SENATOR BELOW: Thank you Senator Below. This is SB 142. The changes that the House did was that "the owner of an object upon which an advertisement is placed in violation of this section shall be entitled to remove and destroy the advertisement and the advertisement owner shall not be entitled to damages or compensation." So basically it allows a person who puts something on, for instance, a telephone pole. The owner is allowed to go and take that advertisement off. If there is any expense in regard to that, then the advertiser of that piece of material would have to pay the owner. So that is basically what it is doing, so I concur with the amendment. It tightens it up a little bit.

Adopted.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House asks the concurrence of the Senate:

SB 206-FN, relative to the registration of OHRVs used as grooming equipment for cross country ski trails.

SENATE CONCURS WITH HOUSE AMENDMENT

SB 206-FN, relative to the registration of OHRVs used as grooming equipment for cross country ski trails.

Senator Gallus moved to concur.

Adopted.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House asks the concurrence of the Senate:

SCR 2, urging the United States Congress to act to rectify the science, research funding, and restrictions governing the Northeast multispecies fishing industry and its impact on New Hampshire fishermen.

SENATE CONCURS WITH HOUSE AMENDMENT

SCR 2, urging the United States Congress to act to rectify the science, research funding, and restrictions governing the Northeast multispecies fishing industry and its impact on New Hampshire fishermen.

Senator Gallus moved to concur.

Adopted.

COMMITTEE REPORTS

HB 763-FN, requiring parental notification before abortions may be performed on unemancipated minors. Judiciary Committee. Ought to pass with amendment, Vote 3-2. Senator Peterson for the committee.

Senate Judiciary

May 12, 2003
2003-1585s
01/09

Amendment to HB 763-FN

Amend the title of the bill by replacing it with the following:

AN ACT relative to information and counseling to minors seeking abortion.

Amend the bill by replacing all after the enacting clause with the following:

1 New Subdivision; Prior to Abortion. Amend RSA 132 by inserting after section 24 the following new subdivision:

Information and Counseling to Minors Seeking Abortion

132:25 Definitions. In this subdivision:

I. "Counselor" means a psychiatrist licensed under RSA 329:12, a psychologist licensed under RSA 330-A:16, a clinical social worker licensed under RSA 330-A:18, a marriage and family therapist licensed under RSA 330-A:21, a registered nurse or practical nurse licensed under RSA 326-B:6, or 326-B:7, or a guidance counselor certified under RSA 21-N:9, II(s).

II. "Minor" means any person under the age of 18 years.

III. "Provider" means a physician licensed under RSA 329:12, a physician's assistant licensed under RSA 328-D:3, or an advanced registered nurse practitioner licensed under RSA 326-B:10.

132:26 Information and Counseling Required.

I. Prior to the performance of an abortion upon a minor, a provider or counselor shall provide pregnancy information and counseling in accordance with this subdivision in a manner and language that will be understood by the minor. The provider or counselor shall:

(a) Explain that the information being given to the minor is being given objectively and is not intended to coerce, persuade, or induce the minor to choose to have an abortion or to carry the pregnancy to term.

(b) Explain that the minor may withdraw a decision to have an abortion at any time before the abortion is performed or may reconsider a decision not to have an abortion at any time within the time period during which an abortion may legally be performed.

(c) Explain to the minor the alternative choices available for managing the pregnancy, including:

(1) Carrying the pregnancy to term and keeping the child;

(2) Carrying the pregnancy to term and placing the child for adoption, placing the child with a relative, or obtaining voluntary foster care for the child; and

(3) Having an abortion, and explain that public and private agencies are available to assist the minor with whichever alternative she chooses and that a list of these agencies and the services available from each will be provided if the minor requests.

(d) Explain that public and private agencies are available to provide birth control information and that a list of these agencies and the services available from each will be provided if the minor requests.

(e) Discuss the possibility of involving the minor's parents, guardian, or other adult family members in the minor's decision making concerning the pregnancy and whether the minor believes that involvement would be in the minor's best interests.

(f) Provide adequate opportunity for the minor to ask any questions concerning the pregnancy, abortion, child care, and adoption, and provide information the minor seeks or, if the person cannot provide the information, indicate where the minor can access the information.

II. After the counselor or provider provides the information and counseling to a minor as required by this subdivision, such counselor or provider shall have the minor sign and date a form stating that:

(a) The minor has received information relative to alternatives to abortion, that there are agencies that will provide assistance, and a list of these agencies and the services available from each shall be provided if the minor requests.

(b) The minor has received an explanation that the minor may withdraw an abortion decision or reconsider a decision to carry a pregnancy to term.

(c) The alternatives available for managing the pregnancy have been explained to the minor.

(d) The minor has received an explanation about agencies available to provide birth control information and that a list of these agencies and the services available from each will be provided if the minor requests.

(e) The minor has discussed with the person providing the information and counseling the possibility of involving the minor's parents, guardian, or other adult family members in the minor's decision making about the pregnancy.

(f) If applicable, the minor has determined that not involving the minor's parents, guardian, or other adult family members is in the minor's best interests.

(g) The minor has been given an adequate opportunity to ask questions.

III. The counselor or provider shall also sign and date the form and shall include his or her business address and business telephone number. The counselor or provider shall keep a copy for the minor's medical record and shall give the form to the minor or, if the minor requests and if such person is not the attending provider, transmit the form to the minor's attending provider. Such medical record shall be maintained as otherwise provided by law.

IV. The provision of pregnancy information and counseling by a provider or counselor which is evidenced in writing containing the information and statements provided in this subdivision and which is signed by the minor shall be presumed to be evidence of compliance with the requirements of this subdivision.

V. The requirements of this subdivision shall not apply when, in the best medical judgment of the provider based on the facts of the case before the provider, a medical emergency exists which so complicates the pregnancy or the health, safety, or well-being of the minor as to require an immediate abortion. A provider who does not comply with the requirements of this subdivision because of this exception shall state in the minor's medical record the medical indications on which the provider's judgment was based.

132:27 Rulemaking. The commissioner of the department of health and human services shall adopt rules, under RSA 541-A, relative to the forms required under this subdivision.

2 Effective Date. This act shall take effect 60 days after its passage.

2003-1585s

AMENDED ANALYSIS

This bill requires a counselor or health care provider to provide a pregnant minor, under the age of 18 years, with counseling and information before such minor has an abortion.

SENATOR PETERSON: Thank you Mr. President. On behalf of the Senate Judiciary Committee, I move HB 763 ought to pass with amendment. Mr. President, a great political storm surrounds this legislation, which requires us to explore our core belief about such matters as when life begins and whether or not a woman has the right to choose in private, whether to terminate at an early stage, an unwanted pregnancy, unburdened by undue governmental interference. At first glance, the question seems obvious, for we all wish that loving parents would be involved, supportive and available to their minor children in major decisions or in times of crisis. So how can it be that since this bill was first introduced, over 20 years ago, it has been rejected each and every time it has been considered in our state by Republican dominated legislatures? Having previously served on the Judiciary Committee in the House on day long hearings in Representatives Hall and having listened to wrenching floor debate on similar legislation and other pro-life initiatives, I have joined with a personal battle of conscience on this issue, and have come to respect the views of all who honestly undertake, define in these difficult matters, a just and proper balance between the responsibility of government and individual rights. Following one elongated House session on this bill a few years ago, as the roll call was announced, I reentered the Chamber alongside of a veteran conservative colleague whom I asked somewhat wearily at that point, "how are you going to go on this one"? Mr. President, what happened next I will never forget. He stopped, turned and looked at me and said, "Andy, this is a vote you cast for the person who is least able to speak for themselves. This is the vote where you decide what it is you are here for, and the purpose of, for which the power of government was created. It is to be used." The members of the Senate Judiciary Committee did not forward this legislation nor seek out the role that we were given, but we accepted the responsibility to work on this bill, which this year, for the first time, narrowly passed the House. Our amendment places in law, a structure of required practice, to ensure that licensed professionals counsel young women to fully inform them of the alternatives in this difficult situation and encourage wherever possible, full parental involvement. The amendment however, stops short of requiring parental notification in all instances, as such action would lead to serious unintended consequences. Professionals who regularly counsel young women, have repeatedly informed legislators that the great majority already speak with a parent in such a time of crisis and that the decision to do otherwise is not made lightly. Indeed it is only these troubled and vulnerable young people, the ones with a reason not to tell a parent, that this legislation would affect. And sadly, even in gentle New Hampshire, not all families are the Brady Bunch. If we choose to pass the original legislation, experience demonstrates that one undeniable, unintended consequence will be to force a future minor victim of sexual abuse, either to agree to notify her very abuser or to appear in court to defend her right to seek out the support that she chooses in a time of indescribable anguish. I suggest that a young woman knows her circumstances better than anyone and decency demands that our laws grant her greater protection not greater heartache. In recent conversation with a valued colleague in this

Chamber, sums up the issue before us today. He said to me, to paraphrase, "these young people are in a terrible situation. We need to act on this bill in a way that makes the situation better not worse." Mr. President, this is exactly what the Judiciary has done in the amendment before you. It allows us to move forward, have progress on this issue, and place in our law, a measure which we can truly be glad for. I urge the members to vote for passage. Thank you Mr. President.

SENATOR CLEGG: Thank you Mr. President. As a member of the Judiciary Committee, I would like for the record to let the people know that it was a 3 to 2 vote. I was one of the 'no' votes. I believe that when you look at the facts, and we talk about a pregnant woman who may have gotten pregnant by a parent through abuse, that this is the very thing that we need to know, we need to reveal in order for that girl to get help. I would suggest that you vote no on the committee amendment.

SENATOR BELOW: Thank you Mr. President. I rise in support of the committee amendment. I think that it is a good approach to the problem, to the question, to ensure that the best practice of a physician who may be considering providing an abortion or a counselor who is working with a young woman who is facing that question, that we be ensured that they provide them with all the information of the alternatives. In fact, review the option of involving the parent with this difficult question. When we make laws, I think that we have to think of not just how a law applies to the majority of circumstance to the situations that are most common and predictable, but we have to think about how the law applies to unusual, exceptional situations. The fact is that most of us would certainly want parental notification and consent and involvement in this question. In fact, that is the current state of affairs. The vast majority of minor, young women, do involve their parents in this difficult question. The minority who don't are the minority that we have to consider their situation. If this law, the underlying law, not as amended by the committee, were to come into effect, the young women, for various reasons, don't want to have their parents notified would have a few simple choices. They could go to a judge if they had the means to do that. What we know from other states' experiences, is that most judges, the vast majority, provide the approval of the permissions. A very short ten, maybe 15 minute interview. Their only job is to ascertain whether the young women have the sufficient maturity to make this decision on their own. Something that the physicians themselves have to do as well. In Massachusetts, maybe you heard the statistic of...since they enacted such a law, there has been over 17,000 judicial bypasses. Something like 15 of them were denied in the first instance and on an appeal all but two were granted. So out of 17,000 judicial bypasses requested, two were blocked by a judge. The statistics also show that there has been a significant or discernable increase in parental involvement in these decisions in states that have passed such laws. I do think that we have to think about the exceptional situations. Certainly where there is a case of incest, of such sexual abuse, or rape, we would like that revealed and like that intervention. But there are some young women who are so concerned about not having that revealed that they won't go see a judge, they won't go to see a physician for knowing that there will be parental notification. Instead they will try to go to perhaps another state if they have the means. They will put off the decision, which increases and endangers their health or they will try to take matters into their own hands by inducing a miscarriage by trying to procure an illegal abortion or

suicide. Those are the outcomes that we have to think of when we consider such legislation. The underlying bill has numerous flaws in it. One that I haven't heard much discussion about but I think bears attention to, is the definition of parent. It means one parent of the pregnant girl, if one is living or the guardian or conservator, if the pregnant girl has one. Guardian or conservator is defined relative to RSA 464-A which concerns a person who is incapacitated. Mentally incapacitated by functional limitations. It doesn't deal with the situation where there is a guardianship that has been appointed perhaps because the child has been removed from a home where there has been sexual abuse. So we would have the ironic situation where a young woman seeking an abortion might have one living parent, their father, who might be the father...the cause of the pregnancy, who might have sexually abused or molested the child, who would be the only one to be notified for parental notification, even though they have no legal custody or legal guardianship. That is certainly an inappropriate and awkward situation. I am speaking on why we should pass the amendment and not the bill. There also has been the point suggested that they can go to a judge for a bypass, but what if the young woman is the child of a judge? What if heaven forbid, the judge is the cause of the pregnancy or the brother of the judge? I mean these are uncomfortable thoughts but these things happen. Things that we wouldn't expect in our society, have occurred. Look at the clergy sex scandal. It is not limited to one denomination. It is not limited to sexual abuse of one gender. Look at Judge Fairbanks who was sexually assaulting people, minors who came before his court. In such a situation, neither parents of notification or the judicial bypass is a reasonable option. I would urge passage of the committee amendment and would oppose the underlying bill. Thank you Mr. President.

SENATOR D'ALLESANDRO: Thank you Mr. President. I rise in support of the bill as amended. There are times when members of the legislative body that we have to make some very, very significant decisions that have a personal implication and a personal affect for everyone here. My stake in this situation is a rather unique one. First of all, I am a parent of two adopted children. I have a good relationship with my children and I hope that everyone has a good relationship with their children. But let me tell you that the first thing that we can't do, we can't legislate perfect families. It is out of our control. But if indeed we aspire to be the best parent that we can be, we won't need this kind of legislation because the interaction between the parent and the child takes place, and it doesn't just take place in this particular situation. It takes place when you come home from a date. When your mother or father is waiting for you and asking you, how did things go? Was it a good situation? Did you do anything that you aren't proud of and let's talk about it? I had the unfortunate situation of losing my mother when I was seven years of age. But my father was there everyday for me. Seventy percent of the women who think about this procedure, have a conversation with their parents. That is happening today. That is important for us to realize that that rapport does exist between a child and their parent. Unfortunately, fifty percent of the marriages in this country end up in divorce. In that case, who suffers? Most often it is the child. The rate of incest. The rate of sexual predatory has reached high, high points in our society. Just take a look at what happened in Keene, when Internet Sex was discovered by a prominent detective over there. He has made his life's work finding these predators. Well, women sometimes have been the victims of this activity. This is a tough decision. It is a very tough decision, but it is

inconsistent with New Hampshire. In New Hampshire, we believe in individual liberties. We don't legislate medical practices. We keep decisions in the hands of the patients and their providers. We have passed a number of laws: RSA 318-B:12-a allows a minor to legally consent to medical treatment if they are of sufficient maturity to understand the nature and consequences of such treatment. RSA 141-C:18 allows a minor 14 years or older to voluntary consent to medical diagnosis and treatment for HIV, AIDS and other sexually transmitted diseases without parental notification or consent. RSA 318-B:12-a allows any minor 12 years or older to voluntarily undergo treatment for alcohol problems without parental notification or consent. That has been the spirit and tradition of New Hampshire. This amendment maintains that spirit. Certainly, we, as legislators, we, as individuals, we, as parents, we encourage that interaction between ourselves and our children. I have three grandchildren. Three women grandchildren. I have a concern for them. My oldest granddaughter is a sophomore in high school and certainly the concern is there. As I said at the beginning, you cannot legislate perfect parenting. We do our best. This bill as amended, sustains what has been the New Hampshire tradition. As my colleagues, I urge you to support the work done by the committee. I commend the committee. It wasn't easy. It is not easy. Life is not easy. Life is never supposed to be easy. We know that. But when we enter this lite, we say that we are going to do the best that we can. We offer ourselves in the public service to do the best that we can do. To deliver to our families, to our constituents, the best that we can do. I hope that you will uphold that tradition. Thank you Mr. President.

SENATOR COHEN: Thank you very much Mr. President. A lot of this discussion about this bill as we all know has been really intense. We have all had emails, phone calls and letters. Frankly, I am angry. A lot of it in my opinion has really crossed the line. Just this morning, at 6:35 a.m. my wife was woken up by a phone call from an anti-choice person here. This is too much here. This is something that crosses the line. I am just really angry about this. The people that sit here, my colleagues just said, and I am trying to influence some of you who may be on the line here, and a little bit undecided. People have said, my colleagues have said, this is not about abortion, it is about families, being pro-family. This is about abortion. Make no mistake about that. One of my constituents emailed me, "the original bill is not pro-parent, nor pro-family, but only anti-choice and anti-abortion." I would hope that my fellow Senators would support the committee amendment. After all the testimony that they heard, the committee amendment, I think, makes a lot of sense, if we really care about family communication. I will tell you, of all of the communications that I have gotten in favor of the original bill, without exception, every single one who supports the original bill, wants to end reproductive rights, without exception. There hasn't been one call or one letter or one email that favors this bill, the original bill, that does not want to end or has the intention of ending reproductive rights. That is what this bill is about. The fact that the definition of "fetus" is in there, that is not a mistake. The purpose there is an example of the real goal, which is to chip away our constitutionally based reproductive rights. Can we legislate communications? Of course we can't. But that is what this is about. This is meddling. This is meddling into personal family communications. This is a purposeful foot in the door that wants to end reproductive rights. As Senator Peterson said, "undue governmental interference is what the original bill is about" and that is why I hope and

plead with my colleagues to support the committee amendment. On NPR this week, there has been a discussion about teen pregnancy and teen sexual activity, something that we are all concerned about. What they reveal is that having a talk, having communication, taking responsibility, prevents teen pregnancy. Taking personal responsibility prevents teen pregnancy. Having the threat of a court over a teenage girl is only going to terrify her. So a reporter asked me a few weeks ago, "how would I feel if either of my daughters got pregnant as a teenager"? At two-and-a-half and six-and-a-half now, this is something that I think about. That was a very good question from a reporter. How would I feel if she had an abortion without telling me? I would feel terrible. Make no mistake, I would feel awful. It would be a reflection of a sincere personal failure. My own personal failure if my teenage daughter, and I am going to be in my mid-sixties when I have two teenage girls, so have mercy on me. If my teenage daughters had an abortion, it would be my personal failure. It is our responsibility. There is a lot of talk about taking personal responsibility these days and I believe it. This bill, without the amendment, shifts the responsibility. It shifts what is our responsibility as parents, onto the government and that is wrong. I would urge my colleagues to support the committee amendment. It makes a lot of sense and it encourages good family communications which we have to take responsibility. Thank you.

SENATOR MARTEL: Thank you Mr. President. I stand in opposition to HB 763 as amended by the Senate Judiciary Committee. Mr. President, I strongly support this bill because it allows families with daughters to work together as a family unit. The entity which has eroded over time. In reality, this bill has neither a pro-life or a pro-choice issue. It is an issue of children's safety and pride of family union. Union not only of the living parties, but of those who would be exterminated by the wrong decision, abortion. I have a great deal of respect for my fellow Senators who argue on both sides, on the other side of my beliefs and position. They have every right to do so and to present their cases before this body and their constituents. On the other side are those that rally to make this a pro-abortion issue and they do so as a scare tactic, not only for us, the representatives of the citizens of our great state, but apparently for those young children who need to speak and be guided by their parents to do the proper thing. I ask that you vote against this amendment which strikes at the very meaning of the original bill. I would like to clarify one fact if I could, that Senator Below brought forward. About 17,000 judicial bypasses, my information is that it was over 22 and a half years. So I just wanted to bring that up. I urge you all to vote down the committee amendment. Thank you Mr. President.

SENATOR ROBERGE: Thank you Mr. President. While there are many benefits to parental involvement laws, I will limit my remarks to the two most important. Improved medical care for the young women seeking abortions and increased protection against sexual exploitation by adult men. Medical care for minors seeking abortions will be improved in three ways. First: Parental notification will allow parents to assist their daughters in the selection of an abortion provider. This is particularly important in New Hampshire where people other than licensed physicians are permitted to perform abortions. As with all medical procedures, here is one of the most important guarantees of patient safety, is the professional confidence of those who perform the medical procedure. The United States Supreme Court acknowledged the superior ability of a parent to evaluate and select appropriate healthcare providers. In this case, however,

we are concerned only with minors who according to the records, range in age from children of 12 years to 17-year-old teenagers. Even the later are less likely than adults to know or be able to recognize ethical, qualified physicians or to have the means to engage such professionals. Many minors who bypass their parents probably will resort to an abortion clinic without being able to distinguish the confident and ethical from the incompetent or unethical. Historically, the national abortion federation has recommended that patients seeking an abortion confirm that the abortion will be performed by a licensed physician in good standing with the State Board of Medicine and Medical Examiners and that doctor has admitting privilege at a local hospital not more than 20 minutes away from the location where the abortion is to occur in case complications arise, to have adequate protections available. These recommendations have been deleted. This occurred after they were introduced into evidence into malpractice cases in abortion providers. Second: Parental notification will make sure that the parents have the opportunity to provide adequate medical history and inform to the abortion provider, prior to the performance of the abortion. The medical, emotional and psychological consequences of the abortion are serious and can be lasting. This is particularly so when a patient is immature. Adequate medical and psychological case history is important to the physician. Parents can provide medical and psychological data to the physician and other sources of medical history such as family physicians and authorizes family physicians to give out prevalent data. Abortion providers in return, will have the opportunity to disclose the medical risks of the procedure to an adult who can advise the girl in giving her informed consent to the surgical procedure. Parental notification ensures that abortion providers inform a mature adult of the risks and benefits of the proposed treatment, and after having received a more complete and thus more accurate medical history of the patient. The third way in which parental notification will improve medical treatment to pregnant minors is that ensuring that the parents have adequate knowledge to recognize and respond to any post abortion complication that may have developed. While it is often a claim that abortion is one of the safest medical procedures performed today, the actual rate of many complications is simply unknown because there is no coordinated effort to collect and maintain this information. Notwithstanding this failure by public health authorities, abortion providers have identified infection as one of the most important post-abortion complications. The warning signs of this infection begin early within the first 48 to 96 hours. Caught early, most infections can be treated successfully with oral antibiotics. Left untreated, can result in death. Similarly, most pro-operative procedures done, bleeding is very, very common and can easily be controlled, however, if not properly handled, it can result in many complications. Experts also often characterize a perforated uterus as a normal risk associated with abortion. This complication can also be easily dealt with if detected early, but leads to serious consequences if medical help is not sought promptly. Some of the more serious complications are delayed and may only be detected during follow-up visits, yet only one-third of all abortion patients actually keep their follow-up appointments for post operative checkups. Many minors ignore or deny the seriousness of post operative symptoms and they lack the financial resources to respond to these symptoms. Parental notification, hemorrhaging, may be mistaken for a heavy period, and severe depression is also a serious problem with the teenage girl. Without knowledge of their daughters abortion, parents cannot ensure that their children obtain necessary post-operative care or provide adequate medical history to physicians, how to treat any complications that may arise. The first omission may allow complications such as infection, preparation or depression to continue untreated. The second omission may be lethal. When parents do not know that their daughter has had an abortion, ignorance may prevent swift, appropriate intervention by emergency room professionals responding to a life threatening condition. In addition to improving medical care received by young girls dealing with unplanned pregnancy, parental notification will provide increased protection against sexual exploitation of minors by adult men. National studies reveal that almost two-thirds of adolescent mothers have partners older than 20 years of age. In studies, over 46,000 pregnancy by school age girls in California, research found that 71 percent or over 31,000 were fathered by an adult, post high school men, whose age was 22 years old or older, an average of five years older than the mothers. Even among junior high school mothers, age 15 or younger, most births are fathered by adult men 6 or 7 years their senior. Men age 25 or older fathered much more births among California's school age girls than do boys under 18. Other studies have shown that most teenage pregnancies are the result of predatory practices by men who are substantially older. A survey of 15,000 unmarried minors having an abortion revealed that among minors who reported, that neither parent knew of the abortion. Eighty-nine percent said a boyfriend was involved in deciding or arranging for the abortion. Ninety-three percent of those 15 or under said a boyfriend was involved. Further, seventy-six indicated that a boyfriend help pay for the expenses of the abortion. Clearly in a number of young girls who obtained abortions without their parents knowledge, were encouraged to do so by a boyfriend who could have been charged with statutory rape. Secret abortions do nothing to expose these men's wrongful conduct. In fact, by aborting the pregnancy, abusive partners often avoid public evidence of their misconduct and a license to continue the abuse. Parental notification laws would ensure that the parents have the opportunity to protect their daughters from those who would victimize their daughters. Abortion providers are reluctant to report information indicating a minor is a victim of statutory rape. Failure to report may result in a minor returning to an abusive situation. In California an abortion was performed on a 12-year-old girl who had been impregnated by her 23 year old foster brother. The girl was returned to the foster home where she was raped again, and again was pregnated. Not only may fail to report the result in further abuse of the girl, it may prevent punishment of the abuse, if the abuse is ultimately discovered. If a parent is notified he and she can often provide additional information regarding who the minor has been seeing and is more likely to seek legal protection if the minor has been the subject of abuse by an adult. Advisories of parental involvement often spoke of girls being beaten or thrown out of their home if they tell their parents of their pregnancies or life threatening injuries as they attempt to abort the pregnancy themselves. Parental involvement are on the books over two-thirds of the states. Some are over 20 years old. There is no case where it has been established that these laws have actually lead to parental abuse. We all know about Becky Bell and I will not go into that. I agree with the amendment as the bill, as it came out of the House and I ask you to defeat the amendment that came down out of Senate Judiciary. I was one with Senator Clegg who voted against this amendment. Thank you.

SENATOR ESTABROOK: Thank you Mr. President. I really hadn't planned to speak today but as the debate has gone on and as a woman who is old enough to remember the days before *Roe vs Wade,* I feel that I have to speak, especially given something that one of my colleagues, my honorable colleague from Lebanon mentioned. He reminded us of what we really should be thinking about in terms of the outcomes of this bill, or about the affects on young women and who may choose to delay, denial, suicide, self inducement and illegal abortions. When he made that comment, I decided that I needed to speak because thirty years ago I had an experience that created a picture in my mind that I cannot forget. I accompanied a good, good friend to get an abortion. It was just after *Roe vs Wade* was passed. So the options that existed were really very similar to the options that existed prior to *Roe vs Wade,* but would have been considered an illegal abortion, was legal, but nonetheless, occurred in such a setting that I cannot get that picture out of my mind. A simple apartment in a simple residential apartment building. In the living room of which sat ten to fifteen young women. In the bedrooms of which abortions were being performed. An hour or two afterwards, the young women were leaving to go home. I don't want to see us returning to that. I don't want to see us return to worse than that. For me, that is the core issue here. We are all in favor of family communication. Again, as we all talk about our daughters, I have two daughters 19 and 21. The very people that we are talking about. Of course I would want them to talk with me. We have been through things that assure me that they would talk to me, but I also know that they have friends in situations where the outcome would be more similar to what I just described. I think that is a frightening outcome and it is the one that we need to think about when we cast our vote.

SENATOR BARNES: Thank you Mr. President. I rise in strong opposition to the committee amendment and in favor of HB 763 as it came over from the House. I am going to read something to you. As you all know, I am not very good with words. So I am going to use somebody else's words. What it is, is the testimony that was given in front of the Judiciary Committee by the Governor of our state, who thank God, if we pass 763, not amended, will sign it into law. From Governor Benson, "Good morning. It is nice to be here Mr. Chairman and members of the committee. I will be very brief. I am here to testify in favor of HB 763 for a very simple reason. I am here representing the parents of the state of New Hampshire. I would like to give them their right to be a parent back. House Bill 763 tries to deal with that particular issue. I am the parent of two teenage daughters and I know how trying and tribulating it can be to try and raise two young daughters and all the different things that they go through. One of the things that I think is just totally wrong is the state insert itself in one of the most important decisions that my daughters may ever have to make without any advice from their father or mother. We ask our parents to be responsible every single day, yet when it comes to a very, very important decision in their own children's lives, we take that decision away from them. I think that it is time that we restored back the respect and dignity and decisionmaking authority to where it should rightfully be and that is with the parents. I have to tell you that one of the things that I heard as part of the campaign for HB 763 was this very simple saying: The state of New Hampshire does not love any of our children. Our parents love our children. So let's give our parents, who love these children, the right to weigh in on a very, very important decision and let's do it soon. That is all that I would like to say in favor of this bill. Thank you very much for your time." Governor Benson. Those were his comments and I couldn't have said it any better. I thank the Governor for saying what I think is right on target. Thank you Mr. President.

SENATOR O'HEARN: Thank you Mr. President. This is a very difficult morning for a lot of us. Of course we want our children to come to us. And as many of us have questioned our children on whether they believe in notification, parental notification, that is the wrong question that we should be asking our children. The question that we should ask is would you come to us if you were in trouble? That is the question that I asked my children. I think that we need to take a look at what we have before us. Parental involvement is so important in our children's life, that communication is so important in our children's life. What we have before us are issues that deal with sex and children. Sex and violence. Sex and abandonment. Sex and abuse. Sex and guilt. None of those things go together. Not one of them. Yet, for all of us that have daughters, granddaughters, nieces, sisters, aunts, mothers, friends, there has been abuse. There has been violence. There has been abandonment, and there has been guilt. I don't think that the 18 men in this Senate understand what it is like to be pregnant. There are only four of us here that understand pregnancy. That understand the hormonal differences that we all go through. Let me explain to you what happens when you add sex and violence, abandonment, guilt and abuse. You have a child with anxiety attacks, depression, anorexia, bulimia, post traumatic stress disorder, migraines, suicide tendencies, dangerous behavior, self destruction, drug and alcohol abuse and guilt. You know what? They blame themselves. It is their fault. If they have to go to court for cases of rape, they get blamed all over again. So here we are trying to prevent that. We are not even talking about sexually transmitted diseases that these young women are subject to. This is something about females, that I think females understand better. The one thing that females need in this is counseling. That is the first thing that they should get. Without that counseling, these young women are destroyed. Maybe to help you understand what women go through, take a look at the tragedy in the Catholic church. I think that I was most moved by the father from Newton whose young son was taken away in a straitjacket. That father thought that his son was mentally deranged and had to be put away. What happened was that he was abused and he had no one to talk to. No one to be counseled. Counseling is the most important thing that we can give to our daughters. If they can't come to us, I think that we had better start soul searching and find out why. If they can't come to us, then at least give them the opportunity for counseling. I am supporting this amendment. I think that it is the right thing to do. I think that you need to understand what our young women go through and all the mental anguish that goes along with it. I also want to remind you that we have a difficult time getting mental healthcare in this state. I also want to remind you that we are talking about doing away with the drug and alcohol task force. I want to remind you that we have no insurance for drug and alcohol abuse, all of which is needed when we have cases and you involve sex and violence. Sex and children. Sex and abandonment. Sex and abuse and sex and guilt. Please be careful in what you think you are doing to our daughters.

SENATOR LARSEN: I rise as one of just four in this Senate who have the ability to say that we have been both mothers and teenage girls with mothers and fathers, hopefully. I think that it is a unique knowledge that

while some of you can imagine, perhaps you should open your ears to what it is that these young people face. I, too, during my teenage years in college, counseled friends who were in desperate, desperate situations. I have seen the desperation. I have seen the options that were available. I have encouraged those friends. I had encouraged those friends to talk to their families. I have seen the desperation of trying to figure out how do you live a life with an unwanted child or how do you get the money to go someplace that may not be the best, but it is your only option. Those are desperate choices. The amendment that you have before you, gives people counseling. The amendment before you encourages a full discussion of option. This amendment, supported by the committee, encourages the minor discussing with their parents, their guardian or other adult family members, their options. The fact is that no law can create good family communication when none exists. No law can correct an abusive home situation. When faced with parental notification against her wishes, a pregnant teenager may either flee the state for an abortion, seek consent from a judge who is a fearful creature in black robes in a place that they have never been, seek an illegal procedure, seek a self-induced dangerous procedure or do nothing. And in each case, that young persons health is at risk. In the states that have enacted this law as it was originally proposed, there has been no increase in the number of young women who involve their parents. Parental notification laws drive people from their neighborhood, from their neighborhood health centers to other states to seek the services that they require. It sweeps the problem of teen pregnancy out of sight, but it does not create a solution. You only have to look as far as Massachusetts to see that this is true. This law will only serve to make New Hampshire another offending state or send the teens that we care for to seek help elsewhere. I encourage you to support this committee amendment. I encourage you to think...to put yourself in others shoes, and create the compassion that comes from understanding others situations through our laws. This is a state that does not believe in government in entering into the very most private decisions of its people. This bill needs to pass as proposed by the committee amendment. Thank you.

Question is on the adoption of the committee amendment.

A roll call was requested by Senator Estabrook.

Seconded by Senator Cohen.

The following Senators voted Yes: Gallus, Below, Odell, Peterson, O'Hearn, Foster, Larsen, D'Allesandro, Estabrook, Cohen.

The following Senators voted No: Johnson, Kenney, Boyce, Green, Flanders, Roberge, Clegg, Gatsas, Barnes, Martel, Sapareto, Morse, Prescott.

Yeas: 10 - Nays: 13

Amendment failed.

Senator Prescott offered a floor amendment.

Sen. Prescott, Dist.23

May 21, 2003
2003-1769s
01/09

Floor Amendment to HB 763-FN

Amend RSA 132:25, I as inserted by section 2 of the bill by replacing it with the following:

I. "Abortion" means the use or prescription of any instrument, medicine, drug, or any other substance or device intentionally to terminate the pregnancy of a female known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove an ectopic pregnancy or the products from a spontaneous miscarriage.

SENATOR PRESCOTT: Thank you Mr. President. I rise to offer a floor amendment. This deals with the definition of "abortion" on page one. Page two of the bill. I am sorry...page one. It "means the use or prescription of any instrument, medicine, drug, or any other substance or device intentionally to terminate the pregnancy of a female known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove an ectopic pregnancy or the products from a spontaneous miscarriage." I believe that this amendment protects the Hippocratic oath of physicians when there is an emergency situation. For the bill, the first part of the bill, if I may speak to it, Mr. President. Thank you. The notice to require the notification of a parent. I believe it is a parents right to know. I do believe that it would stop the implication of that right by others and take away the knowledge of a parent or guardian, that an abortion would take place on their minor child. I also believe in the rights, not only in the rights of the parents to know, but they do also believe in the constitutional rights of the minor. This bill has that protection in Part II. The constitutionality of the bill has been upheld in the U.S. Supreme Court twice with Part II of this bill so that a minor, if they elect not to notify their parents, can go to a judge. If the judge has determined that the pregnant minor is mature and capable of giving informed consent to the proposed abortion, would let that happen. The judge shall determine whether performance of an abortion upon her without notification of her parent, guardian or conservator would be in her best interest. There is protection of our precious young people. If the judge concluded that the minors best interest would be served, he would rule that way. Also in the bill on Part II, there is a right to a court appointed counsel. This is very important for counseling of our young, precious child that is in a situation. Therefore, I believe that this bill fits the counseling for a person in such a dire condition as that. And, there is also an appeal process. They can reach a decision promptly and without delay as to serve the best interest of the pregnant minor. If the decision was not, after counseling, after getting denied, that it should be notifying their parents, there is a quick appeal process to happen. I believe this is protecting both the right to know parents and also the right of the child. I also believe that there should be penalties. That is another section of this bill. Civil action. Wrongfully denied notification is a very important part of this bill. I thank you very much Mr. President, for letting me speak to the bill and proposing and amendment. I hope that the full Senate votes ought to pass on this amendment. Thank you.

SENATOR COHEN: I am not sure if this would be a question, but it seems to me in comparing this language to the language in the bill as sent over from the House, this seems like a significant expansion of the definition of abortion. So it appears to me...should the bill pass, and should a young teenage girl use a morning after pill, RU486, which is not currently covered, that that would be currently covered and that this is a substantial expansion and would be an even more erosion of the reproductive rights as the constitution guarantees now? I suppose that is a question. Thank you.

SENATOR PRESCOTT: Thank you Senator Cohen. Reading the amendment, it is "terminating the pregnancy of a female known to be pregnant with an intention other than to increase the probability of a life birth." "If the female is known to be pregnant". Those are the words that are here.

SENATOR COHEN: The addition of the instrument, medicine drug, which is not in the initial bill, is a great concern to me.

SENATOR LARSEN: It is pretty clear to me that this amendment does in fact, further expand the bill so that any morning after pill even perhaps the use of higher level estrogen the morning after, could in fact be deemed to be an abortion procedure under this definition. While I understand Senator Prescotts' interest in accomplishing this, I think that it is a very dangerous step in terms of limiting medical options to people. I don't know at what point a female is known to be pregnant? Who decides when that female was known to be pregnant? There are too many questions in this amendment. It is the first that we have seen of it. It is a floor amendment. I think that I would urge the Senate to act cautiously in terms of expanding this further. It is a very dangerous next step.

SENATOR O'HEARN: Senator Prescott, as I am trying to decipher the definition, and the way that I am reading right now is that abortion can be used with a prescription, if there were any instrument, medicine or drug, but only in response to preserve the life or the health of the child, meaning the pregnant child, to remove an ectopic pregnancy or the products of this spontaneous miscarriage. Is that correct?

SENATOR PRESCOTT: No, it is not. It is "with the intention", it is "other than having the intention of protecting, increasing the probability of a live birth". That is what an abortion is described as. Other than the intention of protecting the probability...increasing the probability of a live birth. "To preserve the life or health of the child after the birth, or to remove an ectopic pregnancy or the products of this spontaneous miscarriage".

SENATOR O'HEARN: I have a follow up. I am not sure if I understand your answer so I will be more direct. Is an abortion then allowed for other reasons than ectopic pregnancy, products after a spontaneous abortion or to preserve the life of a child?

SENATOR PRESCOTT: Repeat it please?

SENATOR O'HEARN: Is an abortion allowed for other purposes than to preserve the life or health of the pregnant child, remove an ectopic pregnancy or remove the product of a spontaneous miscarriage?

SENATOR PRESCOTT: No, because that would be intentionally to terminate the pregnancy as written in the amendment.

SENATOR O'HEARN: Then no...just for clarification, then no, the abortion would not be allowed?

SENATOR PRESCOTT: Correct. You would need to have parental notification to protect the right of the parent to know.

SENATOR O'HEARN: Thank you Mr. President.

SENATOR BOYCE: Thank you Mr. President. Senator Prescott, I just want to clarify...I think that I have heard a couple of people...I would hate to say intentionally misrepresent what this says, but doesn't this, by saying that the "pregnancy of a female known to be pregnant", doesn't that mean that if someone is raped or has serious concerns the day after, that they could take the so-called morning after drugs, because they would not know that they were impregnated. They could suspect, but would not know. You can't "know" that you are pregnant until sometime after that fact. So the morning after product would not be prevented? The notification would not be necessary for the morning after drug?

SENATOR PRESCOTT: That is correct Senator Boyce.

SENATOR ESTABROOK: Thank you Mr. President. Senator Prescott, I am trying to understand what the amendment does. Are you saying...this is in the context of parental notification, I gather you are saying?

SENATOR PRESCOTT: Yes.

SENATOR ESTABROOK: So that if the procedure that the young woman was undergoing was intended to "increase the probability of a life birth, preserve the life and health of a child, remove an ectopic pregnancy or the product of a spontaneous miscarriage, the parent would not need to be notified", is the way that I am reading this. Is that correct?

SENATOR PRESCOTT: For emergency situations, there is protection of a surgeon to be able to do his job and his democratic oath to do no harm, protect the life and not wait 48 hours for notification of a guardian or parent.

SENATOR ESTABROOK: Thank you. Follow up question. Thank you Mr. President. So if that is your intention, why isn't there also in this list of things that may constitute an emergency, the life of the mother?

SENATOR PRESCOTT: I believe in the first part of the bill, you will also find.

SENATOR ESTABROOK: You may be correct if that is already in the bill. I just would like to know where?

SENATOR PRESCOTT: Thank you very much. To protect the minors **TAPE INAUDIBLE**

SENATOR ESTABROOK: Thank you. Follow up. I see that wording, what about the minors health?

SENATOR PRESCOTT: That is not in there, Senator.

SENATOR ESTABROOK: Thank you.

SENATOR LARSEN: I rise to speak. I think that Senator Estabrook has found yet another problem with this amendment, which is in fact, that the language does not allow for the protection of a minors health. What happens to the women's health? Let's say that it is a very young nine-year-old, whose very life is threatened by carrying a pregnancy to term? There is no language that in fact protects the life and health of the minor in this amendment.

SENATOR BARNES: Senator Prescott, I am having a real hard time as you understand on this situation. I am so much in favor of the bill that came over from the House. If we pass that bill today and send it to the Governor, it would be signed into law maybe sometime next week. Do you honestly think that if we pass your amendment, and it gets sent over to the House, that that 400 member elephant across the way, is going to agree...remembering that the bill only passed by six votes? Can you honestly answer that question for me? What are your real thoughts on that? I have to know before I can vote for your amendment.

SENATOR PRESCOTT: Thank you Senator Barnes. I believe that the amendment strengthens the bill in terms of protecting the minor from problems and complications in a pregnancy. I believe that it is a stronger bill because of that. I believe that the House, if they deemed to pass

it then, and having it come from the Senate as a stronger bill, back to the House, I would hope that they would see it as that, as a stronger bill. To say that I have full confidence that the House would be able to pass this bill as amended by the Senate, I cannot tell you that that would happen, but I can tell you that the bill is a much better bill with this amendment.

SENATOR CLEGG: Thank you Mr. President. I am in favor of the amendment. Originally people accused us of trying to change when an abortion could happen because it said in the original bill from fertilization until birth. So what we have done now is come up with a new description, but intentionally explaining that it is not an abortion, it doesn't need parental consent for those other issues where it is a health issue. The bill already has something in it that says that a physician finds the health of a mother to be in danger, there is a waiver of notification. So what's really the story? I heard today that because I am a man, I can't possibly understand what a woman goes through in pregnancy. I will agree, but I am a father and I do understand what it is like to have to raise children and be responsible for their actions. I do know that if it's easier for them to come to me because they don't want me to know, and if the government gives them the avenue to go, they won't come. Nobody wants to stand in front of their parents and say, I did something wrong and I am sorry. So if you give them an avenue and they don't have to, and they can keep it hidden, they will. This bill says, with the amendment, that I, as a parent, have a right to stay in my children's lives until they are old enough to go on their own and make their own decisions, and be responsible for their own decisions. I heard how it would be so difficult, so scary, for a woman to go in front of a person with a black robe. But it is not scary for that same woman to go lay on a table an be operated on by a guy with a mask that she can't even see? That's not scary? But our justice system is scary? The parents are scary? Sorry, I don't buy any of it. I have kids. I have a daughter. I have done the best that I possibly could and I don't expect the government to take away my right to remain involved. Thank you Mr. President.

SENATOR BELOW: Senator Clegg. I just wanted a clarification of something that you said earlier in your statement. The bill already has a provision that would waive the principal notification requirement if the physician determined that the minors health was in danger by that delay and I wonder if you could point that out in the bill because I think that has some concerns to some of us and that we haven't found that?

SENATOR CLEGG: I can and I mentioned it because Senator Larsen had mentioned the nine year old whose very life would probably be in danger. It is on page two, line 22 it says, "The attending abortion provider certifies in the pregnant minor's medical record that the abortion is necessary to prevent the minor's death and there is insufficient time to provide the required notice."

SENATOR BELOW: Is there not a distinction between the minors death and the minors health?

SENATOR CLEGG: Not in this situation. I am sure that you wouldn't want to waive notice because the minor had a cold and the baby might make it worse.

SENATOR BELOW: Thank you.

Recess.

Out of recess.

Question is on the adoption of the floor amendment.

A roll call was requested by Senator Sapareto.

Seconded by Senator Prescott.

The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Green, Flanders, Odell, Roberge, Peterson, O'Hearn, Clegg, Gatsas, Martel, Morse, Prescott.

The following Senators voted No: Below, Foster, Larsen, Barnes, Sapareto, D'Allesandro, Estabrook, Cohen.

Yeas: 15 - Nays: 8

Floor amendment adopted.

Senator Sapareto offered a floor amendment.

Sen. Sapareto, Dist. 19

May 20, 2003
2003-1715s
01/09

Floor Amendment to HB 763-FN

Amend the title of the bill by replacing it with the following:

AN ACT requiring parental notification before abortions may be performed on unemancipated minors under the age of 16 years.

Amend RSA 132:25 as inserted by section 2 of the bill by replacing it with the following:

132:25 Definitions. In this subdivision:

I. "Abortion" means the use of any means to terminate the pregnancy of a female known to be pregnant with knowledge that the termination with those means will, with reasonable likelihood, cause the death of the fetus.

II. "Abuse" means any type of harm a minor may have been subjected to or may incur as a result of notification.

III. "Commissioner" means the commissioner of the department of health and human services.

IV. "Department" means the department of health and human services.

V. "Emancipated minor" means any minor female who is or has been married or has by court order otherwise been freed from the care, custody, and control of her parents.

VI. "Guardian" means the guardian or conservator appointed under RSA 464-A, for pregnant females.

VII. "Minor" means any person under the age of 16 years.

VIII. "Parent" means one parent of the pregnant girl if one is living or the guardian or conservator if the pregnant girl has one.

Amend RSA 132:27, I(a) as inserted by section 2 of the bill by replacing it with the following:

(a) The attending abortion provider certifies in the pregnant minor's medical record that the abortion is necessary to prevent the minor's death and there is insufficient time to provide the required notice, or the attending abortion provider certifies in the minor's medical record that the minor is a victim of alleged incest, rape, or abuse; or

2003-1715s

AMENDED ANALYSIS

This bill prohibits any abortion provider from performing an abortion on certain minors under the age of 16 years or incompetent females without giving 48 hours' written notice, in person or by certified mail, to a parent or guardian. The bill provides a procedure for alternate notice in certain circumstances.

This bill also establishes a procedure for waiver of the notice in certain circumstances.

SENATOR SAPARETO: Mr. President, I rise to offer a floor amendment. I would like to speak to that motion. Let's face it, most of today's debate is for the benefit of the public as we have all decided our position. I voted for the original committee amendment because at that point, my options were that or nothing. But I have some serious problems with this amendment, with the bill as it was passed over from the House. This amendment that I am proposing is no less constitutional than the amendment that was before us or the House version, that per the tenth circuit court of appeals. I have specific problems with this bill. Whichever way that we vote on HB 763, could possible result in an unborn child or the death of a young woman. I can't support a House version of this bill because it does nothing for parental notification. I will not vote for a bill just to gain votes as my previous vote just indicated. The House version of HB 763, as well as the one that we just voted on, has a judicial bypass that effectively negates the bill. Of the 17,000 applicants for a waiver in Massachusetts, under the same statute as we are looking at right now, all of these applications were granted except for two. With testimony in the committee, we were told that this was the exception to the rule, and the fact shows that this is the rule, not the exception. If we are in support of a true parental notification bill, judicial bypass must only be allowed for incest, rape or abuse. We are selling the public a bill of goods here, with a misleading title and uninformed editorials from local newspapers continue to mislead the public by not reading the bill. The second problem that I have with this bill is that we have an age of consent on statute right now in this state at 16. So that women who choose to consent to sex, are not...now have to provide notification at age 18. We are now asking to pass a parental notification bill for 18. How can we have those two discrepancies in ages? Make it 16. Make it 18. If a young woman is old enough to make a decision to have sex at a particular age, and she is at an age where she is old enough to accept the consequences, make this age again, 16 or 18, but they have to be consistent and this bill, with the amendment, does not do that. The very last thing wrong with this bill, is their definition of conception. That is in the original bill. I am glad that at least that issue was taken care of in my colleague, Senator Prescotts amendment. Again, this bill is a feel good legislation. I believe that this is designed improper to some of those who don't want to give real notification or for someone to ignore the details to do their homework on these bills. I can only support this version of...this version that I am presenting as an amendment, to HB 763. This amendment is true parental notification. If we want parental notification then here it is. This is it. I would ask my colleagues and urge them to support this amendment.

SENATOR FOSTER: Senator Sapareto, I want to make sure that I understand your amendment. Because trying to read it into the bill the way that I see it, it increases the exceptions whereby a provider may perform an abortion without a notice to the minors death and in addition to situations of rape and incest. Is that the intention of the amendment? That is how I read it and maybe I am misreading it?

SENATOR SAPARETO: No. The amendment only allows parental notification under the circumstances of abuse, rape or incest. It is not for any reason other than that, such as the statutes in Massachusetts.

SENATOR FOSTER: That is what the intention of the amendment is?

SENATOR SAPARETO: That is what the intention of the amendment is as drafted.

SENATOR FOSTER: Thank you.

SENATOR BOYCE: Thank you Mr. President. Senator Sapareto. I am reading the very last two lines of this. Is it your understanding that if that provider of abortion services came to know that the pregnancy was the result of an alleged rape, incest or abuse, is it your understanding that the provider would then be required under state law to report that abuse, rape or incest to the proper authority? That they would actually have to provide that information to the authorities so that child's welfare could be taken care of through the proper agencies?

SENATOR SAPARETO: Yes, Senator thank you for the question. Actually, yes. That is under the current statute that it is required by the abortion provider.

SENATOR O'HEARN: Thank you Mr. President. Senator Sapareto, I am having a concern with line 11 on the cause, the death of the fetus. That means that an abortion can't...the medical dictionary, fetus is seven to eight weeks after fertilization. So prior to that, there cannot be any abortion?

SENATOR SAPARETO: That is correct. Actually this is the same language as taken right out of the original bill with the striking of the last part with the definition of last conception.

SENATOR O'HEARN: Thank you.

Recess.

Out of recess.

SENATOR CLEGG: Thank you Mr. President. I would like to point out that during the committee hearings, information that we have gotten since then, the question has always been asked, "What happens when you take out, or if you take out, judicial bypass"? Professor Collette, who is a law professor from a university in Texas, made the trip up here to try and help us understand why we need judicial bypass and what would happen if we didn't have it. She brought up a stack of cases from courts all over the country, that said doing so would make the bill unconstitutional. So if we vote for this amendment, we vote with the full knowledge that some courts have found it unconstitutional and therefore, you are not voting for parental notification, but in fact, voting to do away with it. Thank you Mr. President.

SENATOR SAPARETO: Thank you Mr. President. Senator Clegg, since the tenth circuit court of appeal testimony declared the version that we have just voted on before unconstitutional, are you suggesting that we send both of these versions over to the Supreme Court for an opinion?

SENATOR CLEGG: I do not. I believe that the professor who is an expert in these matters, testified clearly and succinctly, that with judicial bypass, our bill as it sits, is constitutional.

SENATOR BOYCE: If...just a hypothetical here. If someone decided that it would enhance their reelection possibilities to have on their resume, that they had voted in favor of parental notification, but they did not truly want parental notification to actually pass and become the law of the land, would it be possible for them to propose or support an amendment that they knew to be unconstitutional in order to be able to say "look, I tried...I voted to pass parental notification, look at me, I am a good vote, you want to vote for me", knowing that that bill will never pass muster in the other House, let alone through the courts. Would that be something that somebody might do if they were an unscrupulous politician?

SENATOR CLEGG: Knowing that we have no unscrupulous politicians in this chamber, I would say that it makes it a lot easier to vote for a bill that you know the court would find unconstitutional and blame the courts, because the courts are the ones that we love to blame for everything. Thank you.

SENATOR EATON (In the Chair): Let's stick to the bill and the amendments.

SENATOR O'HEARN: Thank you Mr. President. I am supporting this amendment and I a disagree with Senator Clegg, that there is no judicial bypass in here. I really take offense to anyone who thinks that we are voting today to save our political career on this particular amendment or any amendment that we may have, we may vote on. I think that most of us, with whatever we have done, and whatever we will do, this one takes our hearts and our mind together, and make the right decision, and it has nothing to do with our political career, and I resent anyone bringing that forward. Thank you.

SENATOR BARNES: Thank you Mr. President. I am not going to go through the same speech that I went through upstairs at our caucus, but I am going to say to you all, every one of us got elected by the folks out there in our state of New Hampshire. Every one of us. All 24 of us have a right to our opinions. Damn it all, we shouldn't be up here taking shots at each other. This is a tough issue. I don't think that we should be making offhand comments. I think that it is out of place and it is not senatorial. This Chamber has been here a long time and it is going to be here a long time after we leave it. So let's leave it in good hands and not dirty it and sully it with lousy comments against our colleagues. I disagree with Senator Peterson's amendment, but I didn't get up and blast it. I just voted against it. I disagree with Senator Sapareto's amendment, I am not going to get up and say that he is a bum because he's got it in here, I am going to disagree with yours too, Senator O'Hearn, and that doesn't mean that you are a bum. I am going to tell you that I am going to vote for Senator Clegg's when he brings in the original bill. I am going to vote for it because I think it is the right way to go. But I think that dirtiness and nasty little comments are out of place. It is a long day that we have got ahead of us. We have a lot of business to do. We represent the state of New Hampshire, everyone of us, so let's act like ladies and gentlemen and cut the baloney and let's do it right. Let's be ladies and gentlemen. Thank you.

SENATOR KENNEY: Senator Sapareto, I have a technical question. In your amendment, it mentions that the minor is the age of 16 years or under. I understand in some discussion, Maine, whatever parental notification that they have, whatever version, that 18 years of age and under is considered a minor. Do you know of any other parental notification bills throughout the country that a minor is considered 16 and under?

SENATOR SAPARETO: No I don't; however, of course there may be different ages for age of consent as well. However, this state happens to be 16 for age of consent, and I feel that it is very important that both of these be consistent.

SENATOR KENNEY: Thank you.

Question is on the adoption of the floor amendment.

A roll call was requested by Senator Sapareto.

Seconded by Senator Larsen.

The following Senators voted Yes: Gallus, Below, Odell, Peterson, O'Hearn, Foster, Larsen, Gatsas, Sapareto, D'Allesandro, Estabrook, Cohen.

The following Senators voted No: Johnson, Kenney, Boyce, Green, Flanders, Roberge, Clegg, Barnes, Martel, Morse, Prescott.

Yeas: 12 - Nays: 11

Floor amendment adopted.

PARLIAMENTARY INQUIRY

SENATOR BARNES: Mr. President, parliamentary inquiry?

SENATOR EATON (In the Chair): Go ahead.

SENATOR BARNES: Does this vote that we just made, override the one that we made previously? Is that amendment that we voted 15 to 8 for, that this body did, is no longer in existence?

SENATOR EATON (In the Chair): That is correct. This amendment supercedes the previous one.

SENATOR BARNES: This amendment has defeated whose amendment, Senator Prescott's amendment? That is gone. It is history. We are now working off of...this is what is going to go over to the House?

SENATOR EATON (In the Chair): That is what will be going over to the House.

SENATOR BARNES: Which 12 members in this body adopted.

SENATOR EATON (In the Chair): Unless we adopt a further amendment.

SENATOR BARNES: Thank you very much.

Senator O'Hearn offered a floor amendment.

Sen. O'Hearn, Dist. 12

May 21, 2003
2003-1767s
01/09

Floor Amendment to HB 763-FN

Amend the title of the bill by replacing it with the following:

AN ACT relative to consent before abortions may be performed on minors.

Amend the bill by replacing all after the enacting clause with the following:

1 New Subdivision; Consent Prior to Abortion. Amend RSA 132 by inserting after section 24 the following new subdivision:

Consent Prior to Abortion

132:25 Definitions. In this subdivision:

I. "Abortion" means the intentional interruption of a pregnancy by the application of external agents, whether chemical or physical, or the ingestion of chemical agents.

II. "Counselor" means a person who is:

(a) A psychiatrist.

(b) A psychologist licensed under RSA 330-A:16.

(c) A clinical social worker licensed under RSA 330-A:18.

(d) An ordained member of the clergy.

(e) A physician's assistant licensed under RSA 328-D.

(f) A nurse practitioner licensed under RSA 326-B.

(g) A guidance counselor certified under RSA 21-N:9, II(s).

(h) A registered or practical nurse licensed under RSA 326-B:6 or 326-B:7.

III. "Minor" means a person under the age of 18 years.

132:26 Prohibitions; Exceptions. No person shall knowingly perform an abortion upon a pregnant minor unless:

I. The attending physician has received and will make part of the medical record the informed written consent of the minor and one parent, guardian, or adult family member;

II. The attending physician has secured the informed written consent of the minor in accordance with RSA 132:27 and the minor, under all the surrounding circumstances, is mentally and physically competent to give consent;

III. The minor has received the information and counseling required under RSA 132:28, has secured written verification of receiving the information and counseling, and the attending physician has received and will make part of the medical record the informed written consent of the minor and the written verification of receiving the information and counseling required under RSA 132:28; or

IV. Any court of competent jurisdiction issues an order under RSA 132:30 on petition of the minor or the next friend of the minor for purposes of filing a petition for the minor, granting:

(a) To the minor majority rights for the sole purpose of consenting to the abortion and the attending physician has received the informed written consent of the minor; or

(b) To the minor consent to the abortion, when the court has given its informed written consent and the minor is having the abortion willingly, in compliance with RSA 132:31.

132:27 Informed Consent; Disallowance of Recovery.

I. No physician may perform an abortion upon a minor unless, prior to performing the abortion, the attending physician received the informed written consent of the minor.

II. To ensure that the consent for an abortion is informed consent, the attending physician shall:

(a) Inform the minor in a manner which, in the physician's professional judgment, is not misleading and which will be understood by the minor, of at least the following:

(1) According to the physician's best judgment the minor is pregnant;

(2) The number of weeks of duration of the pregnancy; and

(3) The particular risks associated with the minor's pregnancy, the abortion technique that may be performed and the risks involved for both;

(b) Provide the information and counseling described in RSA 132:28 or refer the minor to a counselor who will provide the information and counseling described in RSA 132:28; and

(c) Determine whether the minor is, under all the surrounding circumstances, mentally and physically competent to give consent.

III. No recovery may be allowed against any physician upon the grounds that the abortion was rendered without the informed consent of the minor when:

(a) The physician, in obtaining the minor's consent, acted in accordance with the standards of practice among members of the same health care profession with similar training and experience situated in the same or similar communities; or

(b) The physician has received and acted in good faith on the informed written consent to the abortion given by the minor to a counselor.

132:28 Information and Counseling for Minors.

I. The provision of information and counseling by any physician or counselor for any pregnant minor for decision making regarding pregnancy shall be in accordance with this section.

(a) Any physician or counselor providing pregnancy information and counseling under this section shall, in a manner that will be understood by the minor:

(1) Explain that the information being given to the minor is being given objectively and is not intended to coerce, persuade, or induce the minor to choose either to have an abortion or to carry the pregnancy to term;

(2) Explain that the minor may withdraw a decision to have an abortion at any time before the abortion is performed or may reconsider a decision not to have an abortion at any time within the time period during which an abortion may legally be performed;

(3) Clearly and fully explore with the minor the alternative choices available for managing the pregnancy, including:

(A) Carrying the pregnancy to term and keeping the child;

(B) Carrying the pregnancy to term and placing the child with a relative or with another family through foster care or adoption;

(C) The elements of prenatal and postnatal care; and

(D) Having an abortion;

(4) Explain that public and private agencies are available to provide birth control information and that a list of these agencies and the services available from each will be provided if the minor requests;

(5) Discuss the possibility of involving the minor's parents, guardian, or other adult family members in the minor's decision making concerning the pregnancy and explore whether the minor believes that involvement would be in the minor's best interests; and

(6) Provide adequate opportunity for the minor to ask any questions concerning the pregnancy, abortion, child care and adoption, and provide the information the minor seeks or, if the person cannot provide the information, indicate where the minor can receive the information.

(b) After the person provides the information and counseling to a minor as required by this section, such person shall have the minor sign and date a form stating that:

(1) The minor has received information on prenatal care and alternatives to abortion and that there are agencies that will provide assistance;

(2) The minor has received an explanation that the minor may withdraw an abortion decision or reconsider a decision to carry a pregnancy to term;

(3) The alternatives available for managing the pregnancy have been clearly and fully explored with the minor;

(4) The minor has received an explanation about agencies available to provide birth control information;

(5) The minor has discussed with the person providing the information and counseling the possibility of involving the minor's parents, guardian, or other adult family members in the minor's decision making about the pregnancy;

(6) The reasons for not involving the minor's parents, guardian or other adult family members are put in writing on the form by the minor or the person providing the information and counseling; and

(7) The minor has been given an adequate opportunity to ask questions.

II. The person providing the information and counseling shall also sign and date the form, and include his or her address and telephone number. The person shall keep a copy for his or her files and shall give the form to the minor or, if the minor requests and if the person providing the information is not the attending physician, transmit the form to the minor's attending physician.

132:29 Presumption of Validity of Informed Written Consent; Rebuttal. An informed consent which is evidenced in writing containing information and statements provided in RSA 132:28 and which is signed by the minor shall be presumed to be a valid informed consent. This presumption may be subject to rebuttal only upon proof that the informed consent was obtained through fraud, deception, or misrepresentation of material fact.

132:30 Court Order Concerning Consent to Abortion. The court may issue an order for the purpose of consenting to the abortion by the minor under the following circumstances and procedures:

I.(a) The minor or next friend of the minor for the purposes of filing a petition may make an application to a court of competent jurisdiction which shall assist the minor or next friend in preparing the petition. The minor or the next friend of the minor shall file a petition setting forth:

(1) The initials of the minor;

(2) The age of the minor;

(3) That the minor has been fully informed of the risks and consequences of the abortion;

(4) That the minor is of sound mind and has sufficient intellectual capacity to consent to the abortion;

(5) That, if the court does not grant the minor majority rights for the purpose of consent to the abortion, the court should find that the abortion is in the best interest of the minor and give judicial consent to the abortion;

(6) That, if the minor does not have private counsel, that the court may appoint counsel.

(b) The minor or the next friend shall sign the petition.

II. The petition is a confidential record and the court files on the petition shall be impounded.

III.(a) A hearing on the merits of the petition shall be held as soon as possible within 5 days of the filing of the petition. If any party is unable to afford counsel, the court shall appoint counsel at least 24 hours before the time of the hearing. At the hearing, the court shall hear evidence relating to:

(1) The emotional development, maturity, intellect and understanding of the minor.

(2) The nature, possible consequences and alternatives to the abortion.

(3) Any other evidence that the court may find useful in determining whether the minor should be granted majority rights for the purpose of consenting to the abortion or whether the abortion is in the best interest of the minor.

(b) The hearing on the petition shall be held as soon as possible within 5 days of the filing of the petition. The court shall conduct the hearing in private with only the minor, interested parties as determined by the court, and necessary court officers or personnel present. The record of the hearing is not a public record.

IV. In the decree, the court shall for good cause:

(a) Grant the petition for majority rights for the sole purpose of consenting to the abortion;

(b) Find the abortion to be in the best interest of the minor and give judicial consent to the abortion, setting forth the grounds for the finding; or

(c) Deny the petition only if the court finds that the minor is not mature enough to make her own decision and that the abortion is not in her best interest.

V. If the petition is allowed, the informed consent of the minor, pursuant to a court grant of majority rights or the judicial consent, shall bar an action by the parent or guardian of the minor on the grounds of battery of the minor by those performing the abortion. The immunity granted shall only extend to the performance of the abortion and any necessary accompanying services which are performed in a competent manner.

VI. The minor may appeal an order issued in accordance with this section to the superior court. The notice of appeal shall be filed within 24 hours from the date of issuance of the order. Any record on appeal shall be completed and the appeal shall be perfected within 5 days from the filing of notice to appeal. The supreme judicial court shall, by court rule, provide for expedited appellate review of cases appealed under this section.

132:31 Abortion Performed Against the Minor's Will. No abortion may be performed on any minor against her will, except that an abortion may be performed against the will of a minor pursuant to a court order described in RSA 132:30 that the abortion is necessary to preserve the life of the minor.

132:32 Violation; Penalties. Any person who knowingly performs or aids in the performance of an abortion in violation of this subdivision shall be guilty of a misdemeanor. Any attending physician or counselor who knowingly fails to perform any action required by this subdivision commits a civil violation for which a forfeiture of not more than $1,000 may be assessed for each violation.

132:33 Severability. If any provision of this subdivision or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect the provisions or applications of this subdivision which can be given effect without the invalid provisions or applications, and to this end, the provisions of this subdivision are severable.

2 Effective Date. This act shall take effect January 1, 2004.

2003-1767s

AMENDED ANALYSIS

This bill requires the informed consent of the pregnant minor before an abortion may be performed on such minor under certain circumstances. This bill encompasses a court procedure for the purpose of consenting to the abortion under certain circumstances.

SENATOR O'HEARN: Thank you Mr. President. I have already spoken on how important I feel counseling is when our young daughters are in a predicament like this. I also believe that young men need counseling when they are in predicaments. I also value the privacy between a physician and their patient. Therefore, I offer before you, an amendment to HB 763 with a definition of abortion. With prohibitions. I will just quickly go through it, because I think that most people have seen this. I know that I reviewed this with members of my side and have talked with members on the other side. I feel that this is a far better way to address parental notification. It first requires that the attending physician make medical record and informed consent of the minor and one parent, guardian or adult family member, or that the attending physician has secured the informed written consent of the minor under all following circumstances, and is mentally and physically competent to give consent, and that the minor has received information and counseling. I preserve that right between a physician and their patient. It offers any court of competent jurisdiction on petition for granting that the minor be given majority rights and that the minor be able to consent to abortion, and that no physician, prior to performing the abortion, shall give consent until they have secured the best information possible that the minor is pregnant, the number of weeks of the pregnancy, the particular risks involved, provide information and counseling and determine physical competency. Information for counseling is spelled out. It has to be done objectively and not to coerce the child. The minor may withdraw from the decision to have an abortion at any time. Information has to be given to the child on carrying the pregnancy to term. Putting the child up to adoption or to foster care. And the elements of prenatal and post natal care, and what the concerns are about having an abortion. They also discuss the possibility of involving a minor, the minors parents. And the minor must sign and date the form that these things have been done. Also required is that there are reasons for not involving the minors parents. That must be written and signed onto. A court order concerning consent to an abortion petition may be brought forward and the court then, decides the competency of the child. The minor is...the court has to prove that the minor is of sound mind and has sufficient intellectual capacity to consent to abortion. The court should find that the abortion is in the best interest of the child. The hearing on the merits of the petition shall be held as soon as possible within five days, and evidence shall relate to the emotional development, maturity intellect and understanding of the minor. The nature, possible consequences and alternatives to abortion, and any other evidence that the court may find useful in determining that the abortion should take place. In the decree, the court shall, for good cause, grant the petition for majority rights, find that the abortion shall be in the best interest of the child, or deny petition if the minor is not mature enough. I sincerely and truly think that we need to pay attention to what our young women are going through. What our parenting skills are or lack thereof, and whether our parenting skills are strong or weak, our children still need counseling. Heck, we get into something like this, we are going to need counseling to get through this. I am asking you to consider this. This is something that we have to take a look at seriously. This is something that we shouldn't take lightly. But the child needs more than having to navigate whatever they have to navigate to get there. They need the counseling before they get there. I ask you to support amendment 1767.

SENATOR PETERSON: Thank you Mr. President. I would like to support my colleague Senator O'Hearn in bringing forward this amendment. Although the original committee amendment, frankly, is my preference, as it mirrors in some respect, the Connecticut law, this amendment, which mirrors the Maine law, is a way to do parental notification that will strengthen the notification requirements, although I am not 100 percent excited about the specter of having young people have to go to court, which is of course what is involved with this. I do think that it is a reasonable compromise, and hope that despite the emotion of the moment, the Senators here present, will consider it on its merits. Thank you.

SENATOR LARSEN: I, too, rise to speak in support of this alternative. It is a law which has worked in Maine and it is preferable in some respects to the original bill as we have it before us. So I suggest that people look carefully at this process as it has worked in Maine and it has resulted in safe procedures for young women in Maine.

SENATOR BARNES: Senator Larsen, isn't the state of Maine the one that stole our shipyard in Portsmouth? Is that the same state we are talking about?

SENATOR LARSEN: That is the same state of Maine.

SENATOR BARNES: Thank you.

Question is on the adoption of the floor amendment.

A roll call was requested by Senator Barnes.

Seconded by Senator Clegg.

The following Senators voted Yes: Gallus, Below, Odell, Peterson, O'Hearn, Foster, Larsen, D'Allesandro, Estabrook, Cohen.

The following Senators voted No: Johnson, Kenney, Boyce, Green, Flanders, Roberge, Clegg, Gatsas, Barnes, Martel, Sapareto, Morse, Prescott.

Yeas: 10 - Nays: 13

Floor amendment failed.

Recess.

Out of recess.

Senator Prescott offered a floor amendment.

Sen. Prescott, Dist. 23

May 22, 2003
2003-1780s
01/09

Floor Amendment to HB 763-FN

Amend the title of the bill by replacing it with the following:

AN ACT requiring parental notification before abortions may be performed on unemancipated minors.

Amend the bill by replacing all after the enacting clause with the following:

1 Legislative Purpose and Findings.

I. It is the intent of the legislature in enacting this parental notification provision to further the important and compelling state interests of protecting minors against their own immaturity, fostering the family structure and preserving it as a viable social unit, and protecting the rights of parents to rear children who are members of their household:

II. The legislature finds as fact that:

(a) Immature minors often lack the ability to make fully informed choices that take account of both immediate and long-range consequences.

(b) The medical, emotional, and psychological consequences of abortion are serious and can be lasting, particularly when the patient is immature.

(c) The capacity to become pregnant and the capacity for mature judgment concerning the wisdom of abortion are not necessarily related.

(d) Parents ordinarily possess information essential to a physician's exercise of best medical judgment concerning the child.

(e) Parents who are aware that their minor daughter has had an abortion may better ensure that she receives adequate medical attention after the abortion.

III. The legislature further finds that parental consultation is usually desirable and in the best interest of the minor.

2 New Subdivision; Parental Notification Prior to Abortion. Amend RSA 132 by inserting after section 24 the following new subdivision:

Parental Notification Prior to Abortion

132:25 Definitions. In this subdivision:

I. "Abortion" means the use or prescription of any instrument, medicine, drug, or any other substance or device intentionally to terminate the pregnancy of a female known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove an ectopic pregnancy or the products from a spontaneous miscarriage.

II. "Commissioner" means the commissioner of the department of health and human services.

III. "Department" means the department of health and human services.

IV. "Emancipated minor" means any minor female who is or has been married or has by court order otherwise been freed from the care, custody, and control of her parents.

V. "Guardian" means the guardian or conservator appointed under RSA 464-A, for pregnant females.

VI. "Minor" means any person under the age of 18 years.

VII. "Parent" means one parent of the pregnant girl if one is living or the guardian or conservator if the pregnant girl has one.

132:26 Notification Required.

I. No abortion shall be performed upon an unemancipated minor or upon a female for whom a guardian or conservator has been appointed pursuant to RSA 464-A because of a finding of incompetency, until at least 48 hours after written notice of the pending abortion has been delivered in the manner specified in paragraphs II and III.

II. The written notice shall be addressed to the parent at the usual place of abode of the parent and delivered personally to the parent by the physician or an agent.

III. In lieu of the delivery required by paragraph II, notice shall be made by certified mail addressed to the parent at the usual place of abode

of the parent with return receipt requested and with restricted delivery to the addressee, which means the postal employee shall only deliver the mail to the authorized addressee. Time of delivery shall be deemed to occur at 12 o'clock noon on the next day on which regular mail delivery takes place, subsequent to mailing.

132:27 Waiver of Notice.

I. No notice shall be required under RSA 132:26 if:

(a) The attending abortion provider certifies in the pregnant minor's medical record that the abortion is necessary to prevent the minor's death and there is insufficient time to provide the required notice; or

(b) The person or persons who are entitled to notice certify in writing that they have been notified.

II. If such a pregnant minor elects not to allow the notification of her parent or guardian or conservator, any judge of a court of competent jurisdiction shall, upon petition, or motion, and after an appropriate hearing, authorize an abortion provider to perform the abortion if said judge determines that the pregnant minor is mature and capable of giving informed consent to the proposed abortion. If said judge determines that the pregnant minor is not mature, or if the pregnant minor does not claim to be mature, the judge shall determine whether the performance of an abortion upon her without notification of her parent, guardian, or conservator would be in her best interests and shall authorize an abortion provider to perform the abortion without such notification if said judge concludes that the pregnant minor's best interests would be served thereby.

(a) Such a pregnant minor may participate in proceedings in the court on her own behalf, and the court may appoint a guardian ad litem for her. The court shall, however, advise her that she has a right to court-appointed counsel, and shall, upon her request, provide her with such counsel.

(b) Proceedings in the court under this section shall be confidential and shall be given such precedence over other pending matters so that the court may reach a decision promptly and without delay so as to serve the best interest of the pregnant minor. In no case shall the court fail to rule within 7 calendar days from the time the petition is filed. A judge of the court who conducts proceedings under this section shall make in writing specific factual findings and legal conclusions supporting the decision and shall order a record of the evidence to be maintained including the judge's own findings and conclusions.

(c) An expedited confidential appeal shall be available to any such pregnant minor for whom the court denies an order authorizing an abortion without notification. The court shall make a ruling within 7 calendar days from the time of the docketing of the appeal. An order authorizing an abortion without notification shall not be subject to appeal. No filing fees shall be required of any such pregnant minor at either the trial or the appellate level. Access to the trial court for the purposes of such a petition or motion, and access to the appellate courts for purposes of making an appeal from denial of the same, shall be afforded such a pregnant minor 24 hours a day, 7 days a week.

132:28 Penalty. Performance of an abortion in violation of this subdivision shall be a misdemeanor and shall be grounds for a civil action by a person wrongfully denied notification. A person shall not be held liable under this section if the person establishes by written evidence that the person relied upon evidence sufficient to convince a careful and prudent person that the representations of the pregnant minor regarding infor-

mation necessary to comply with this section are bone fide and true, or if the person has attempted with reasonable diligence to deliver notice, but has been unable to do so.

132:29 Severability. If any provision of this subdivision or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect the provisions or applications of this subdivision which can be given effect without the invalid provisions or applications, and to this end, the provisions of this subdivision are severable.

3 Effective Date. This act shall take effect December 31, 2003.

2003-1780s

AMENDED ANALYSIS

This bill prohibits any abortion provider from performing an abortion on certain minors or incompetent females without giving 48 hours' written notice, in person or by certified mail, to a parent or guardian. The bill provides a procedure for alternate notice in certain circumstances.

This bill also establishes a procedure for waiver of the notice in certain circumstances.

SENATOR PRESCOTT: Thank you Mr. President. I rise to offer a floor amendment. As you recall earlier this morning, I presented an amendment that changes the definition of abortion. That is in this bill. Also in this bill is the change of the effective date. The basis of the bill is the House version with the amendments on the abortion definition. Then I changed the effective date from January 1, 2004 to December 31, 2003. If you pass this bill it would take effect this year instead of next year. Thank you Mr. President.

SENATOR BARNES: Thank you Mr. President. As those of you who are keeping score, know that I voted against Senator Prescotts amendment. I was quoted in the newspaper as saying that I would vote for no amendment, because I figure that they are not going to make it amended over in the House. I also told roughly 50 people that called me on the phone, "don't worry, I will not vote for the amendment." I am going to have to say that...there is an old saying that "women have a right to change their mind." Me, as a male Senator, I have a right to change my mind and I am going to support Senator Prescott's amendment because I don't see that we have the votes to pass the original bill from the House. So the goose and the gander or the gander and the goose, so I am going to support Senator Prescott's amendment. I apologize to the people that I told that I would not vote for the amendment. I apologize to the Concord Monitor for telling them a falsehood, but I guess as a male Senator, I have a right to change my mind.

SENATOR SAPARETO: Thank you Mr. President. Mr. President, this amendment is the same amendment that we voted on before, Senator Prescott's amendment, only a change in the effective date. Whether I am the lone Republican hanging out to dry again or not, I am sticking to my principles on this and I cannot support it with the flaws that I mentioned in my previous statements. I would hope that other Senators would also uphold their vote and pass the correct version which I believe is the best version of the parental notification bill. I will not change my vote.

SENATOR ROBERGE: Mr. President, I want to echo Senator Barnes remarks. I promised a lot of people that I would vote for the House version without amendment, but I have become convinced that the latest Senator Prescott amendment will pass and I have changed my mind. I

am going to vote for it. I think that it is a good bill and it is the best that we can do this year. I am very intent that we should pass a parental notification bill. Thank you.

SENATOR BELOW: Yes, I understand that this amendment changes the definition of minor back to under the age of 18 from under age 16, as the bill now reads under the age of 16 being above the age. Sixteen and seventeen being an age of consent for sexual intercourse. So I would like to request that page two, line ten, be divided in the vote on the question, so that particular change could be handled separately.

Senator Below moved to divide the question.

The Chair ruled the floor amendment non divisible.

SENATOR LARSEN: I rise to oppose this action. I think that most of us recognized in what we might refer to as the Sapareto amendment, we were in fact correcting the definition of what is truly a minor, that we were...at least a minor who can consent...that we were correcting some of the flaws of the original bill and the amendment that you have before you has none of those correct features and I would urge you to vote no on this amendment. Leaving what is a better bill to go to the House.

Question is on the adoption of the floor amendment.

A roll call was requested by Senator Barnes.

Seconded by Senator Sapareto.

The following Senators voted Yes: Johnson, Kenney, Boyce, Green, Flanders, Roberge, Clegg, Gatsas, Barnes, Martel, Morse, Prescott.

The following Senators voted No: Gallus, Below, Odell, Peterson, O'Hearn, Foster, Larsen, Sapareto, D'Allesandro, Estabrook, Cohen.

Yeas: 12 - Nays: 11

Floor amendment adopted.

SENATOR PRESCOTT: Mr. President, what is the motion to reconsider this amendment that we just passed? Do I just say reconsider and then ask that we vote again on it? And would that then end the ability for someone else to reconsider?

Recess.

Out of recess.

SENATOR EATON (In the Chair): The question has been answered.

SENATOR PRESCOTT: Thank you Mr. President. I withdraw my request.

Senator Boyce moved the question.

Adopted.

Question is on the adoption of the bill as amended.

A roll call was requested by Senator Boyce.

Seconded by Senator Barnes.

The following Senators voted Yes: Johnson, Kenney, Boyce, Green, Flanders, Roberge, Clegg, Gatsas, Barnes, Martel, Morse, Prescott.

The following Senators voted No: Gallus, Below, Odell, Peterson, O'Hearn, Foster, Larsen, Sapareto, D'Allesandro, Estabrook, Cohen.

Yeas: 12 - Nays: 11

Adopted.

Ordered to third reading.

Recess.

Out of recess.

HB 131, relative to enforcement of negotiable instruments under Article 3 of the Uniform Commercial Code. Banks Committee. Ought to pass, Vote 2-0. Senator Odell for the committee.

SENATOR ODELL: Thank you Mr. President. I move HB 131 ought to pass. An instrument is a written, unconditional promise to pay a fixed amount of money. Current legislation states that the validity of an instrument is negated when the original is lost. This bill will protect the validity of an instrument as long as it has been proven to exist. It is not unusual for banks to originate transactions and have those documents get lost or stolen, usually because of the large volume of instruments involved. The burden of proof rests with the bank to certify a true copy of the original. This legislation clarifies the intent of the law by allowing an instrument to be enforceable if proven to exist. The Banks Committee asks your support for the motion of ought to pass. Thank you Mr. President.

Adopted.

Ordered to third reading.

HB 159, relative to meetings of the directors of nondepository trust companies. Banks Committee. Ought to pass, Vote 2-0. Senator Barnes for the committee.

SENATOR BARNES: Thank you Mr. President. I move HB 159 ought to pass. The Banking Committee unanimously on a 2-0 vote, passed it. It is good. Thank you for your support.

Adopted.

Ordered to third reading.

HB 160, relative to removal or replacement of trustees. Banks Committee. Ought to pass, Vote 2-0. Senator Barnes for the committee.

SENATOR BARNES: Thank you Mr. President. Ditto.

Adopted.

Ordered to third reading.

HB 404, relative to common trust funds. Banks Committee. Ought to pass, Vote 2-0. Senator Flanders for the committee.

SENATOR FLANDERS: Thank you Mr. President. Very briefly, this is legislation to create...to help solve a problem wherein small banks sometimes have their trusts in two different banks. This bill allows them to have it one single unity because of the audits that are performed sometimes cost $20,000 or $30,000 and if it is two different accounts, then the same trust can be assigned two different audits. We ask that this be passed as it makes common sense for small trust accounts. Thank you

Adopted.

Ordered to third reading.

Senator Foster Rule #42 on HB 404.

HB 798, relative to gifts by fiduciaries. Banks Committee. Ought to pass with amendment, Vote 2-0. Senator Barnes for the committee.

Banks
May 14, 2003
2003-1629s
01/09

Amendment to HB 798

Amend the bill by replacing all after the enacting clause with the following:

1 Estate Planning by Guardian. Amend RSA 464-A:26-a, III(b) through (g) to read as follows:

(b) The anticipated results including any income, estate, or inheritance tax savings, ***and, if the gift is being made in order to qualify the ward for Medicaid, any resulting period of Medicaid disqualification;***

(c) The ward's wishes, if known;

(d) The ward's financial condition, including present and anticipated future expenses for maintenance, support, and medical care, debts, and support obligations;

(e) The ward's medical condition;

(f) The ward's prior estate planning action, including significant life-time gifts, will, beneficiary designations, joint ownership, or trusts; ~~[and]~~

(g) The ward's family situation, including the family members who would inherit from the ward if the ward dies intestate;

(h) Whether the gift is intended to reduce the ward's assets or income in order to qualify the ward for Medicaid or other governmental benefits;

(i) The ward's housing situation during the 12 months prior to the filing of the petition; and

(j) A description of the care and services that the ward requires and is currently receiving.

2 Estate Planning by Guardian. Amend RSA 464-A:26-a, V to read as follows:

V. Before authorizing the guardian to make lifetime gifts or to plan for the testamentary distribution of the ward's estate, the probate court must find, by a preponderance of the evidence, that[:

~~(a)~~] the proposed gifts and/or testamentary plan are consistent with the ward's wishes[;] or, ***based on the circumstances as they then exist, that:***

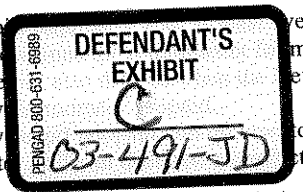
[~~(b)~~] ***(a)*** The testamentary distribution of the ward's estate will minimize taxation and/or facilitate distribution of the ward's estate to family, friends, or charities who would be likely recipients of gifts from the ward;

(b) The proposed gift is not likely to adversely affect the ward's housing options, access to care and services, or general welfare;

(c) The proposed gift does not create a foreseeable risk that the ward will be deprived of sufficient assets to cover his or her needs during any period of medicaid ineligibility that would result from the proposed gift; and

(d) The proposed gift is not likely to result in premature or unnecessary nursing home placement or institutionalization of the ward, or compromise the ward's access to care or services in the least restrictive setting in which his or her needs can be met.

AMENDED ANALYSIS



This b very 5 years by licensed attorneys to authorize the suprem
court to mandatory membership in the New Hampshire Bar Associ
tion. The ew Hampshire Bar Association may lobby the general cou
Majority
Majority o third reading
Rep. Pet t of interest and did not participate.

HB 491, relative to unlawful discriminatory practices in public accommodations. **INEXPEDIEN**
TO LEGISLATE
Rep. James W. Craig for Judiciary: This bill sought to amend the statute regarding the state commi
sion for human rights which makes it unlawful to discriminate against people on the basis of ag
sex, race, color, marital status, physical or mental disability, creed, national origin or sexual orient
tion. This bill would have included in that list the right to keep and bear arms as enumerated in Pa
1, article 2-a of the New Hampshire Constitution. The majority believes that one has to balance t
rights of the owners of public accommodations against the rights of their establishments. Nine mem
bers of the Judiciary Committee felt that these owners should not be forced to accept people bearin
arms into their places of business. Finally, in these times of heightened prevention against terror
activity, it is not good policy to mandate the right to have arms in places of public accommodation
which include restaurants, barber shops, theaters, golf courses, sports arenas, music halls and oth
public places. Vote 9-6.
Adopted.
Rep. Coughlin declared a conflict of interest and did not participate.

HB 707-FN, relative to the statute of limitations in sexual assault cases. **INEXPEDIENT**
LEGISLATE
Rep. Terri C. Dudley for Judiciary: This bill would have extended the statute of limitations for c
suits for sexual assault cases under RSA 632-A and 639:2 from the present three years to 22 ye
following the victim's 18th birthday (to the age of 40); the same as in the criminal process. T
committee felt that the purpose of a statute of limitations is to bring a case to a reasonable closu
and to allow persons to get on with their lives. To allow possible civil suits to hang over our citizens'
heads for such a long period of time when evidence becomes stale, evidence is lost, and memori
fade while jeopardizing the reputations and financial resources of respondents is unjust. It would furth
open the doors for fraudulent accusations late in life with monetary considerations the primary imp
tus for the suit. Vote 13-3.
Adopted.

HB 763-FN, requiring parental notification before abortions may be performed on unemancipat
minors. **MAJORITY: OUGHT TO PASS WITH AMENDMENT. MINORITY: INEXPE**
ENT TO LEGISLATE.
Rep. Phyllis L. Woods for the Majority of Judiciary: The majority of the committee believes it's tim
to return parental rights to parents. Abortion is the only constitutionally protected medical procedu
That is why, in the absence of parental involvement law, abortion providers may perform secret ab
tions on minors without notifying the parent. This is, therefore, one of those circumstances where t
state must be proactive in order to insure parental rights for our families and protection for our daug
ters. If we are to hold parents to the responsibilities and duties of parenthood, then it follows that
must not withhold information and knowledge about, and input into, decisions that affect their mi
children's health care. This bill, with this language, has been upheld by the US Supreme Court wh
stated, "The medical, emotional, and psychological consequences of an abortion are serious and
be lasting; this is particularly so when the patient is immature. An adequate medical and psycholo
cal case history is important to the physician. Parents can provide medical and psychological data
A girl, age seventeen or younger, who finds herself in a crisis pregnancy, may not possess the em
tional stability, knowledge of crucial family medical information, and the ability to comprehend lon
term consequences of her actions. She is too young to make important life altering decisions on
own behalf without the benefit of a parent or guardian's counsel. While we recognize that some g
will talk to their parents in times of crisis, this bill is for the more typical girl who has a fairly g

lationship with her parents but is anxious and afraid because she is pregnant. For those girls who
e determined not to involve their parents the bill provides for an exception, which is required by the
preme Court, for a judicial bypass. Vote 10-9.
Nancy M. Ford for the Minority of Judiciary: The minority believes that a young woman who con-
nts an unplanned pregnancy will seek guidance and counsel from those adults who care for her most
know her best, including her parents. We also recognize that most young women (almost 2/3) do turn
their parents- whether or not mandatory notification laws have been enacted. However, we are com-
lled to protect the health and safety of teenage girls who live in family situations that are troubled
abusive and not open to healthy communication at the time of a crisis pregnancy. There is no
gic formula for healthy parent-teen communication and we, as legislators, do not believe that
acting this law will improve these relationships at the time of a crisis pregnancy. Nor do we be-
ve that a young woman should be subject to the intimidation and complexity of navigating the court
ocess and placing her future in the hands of a judge. Current law recognizes that mature minors
ve the capacity to make important health decisions, including consent to prenatal care, to cesarean
ction and to other pregnancy services. Today in New Hampshire, young women faced with an
planned pregnancy are provided with thorough, unbiased counseling and information by health care
oviders about their options. They are encouraged to involve their parents and other supportive adults
decision-making and medical treatment. When abusive situations are presented to health care pro-
ders and counselors, they are reported to child protection officials, as current law requires.

Majority Amendment (0703h)

mend RSA 132:27 through 132:30 as inserted by section 2 of the bill by replacing them with the
owing:
32:27 Waiver of Notice.
I. No notice shall be required under RSA 132:26 if:
(a) The attending abortion provider certifies in the pregnant minor's medical record that the
ortion is necessary to prevent the minor's death and there is insufficient time to provide the re-
ired notice; or
(b) The person or persons who are entitled to notice certify in writing that they have been
tified.
II. If such a pregnant minor elects not to allow the notification of her parent or guardian or
nservator, any judge of a court of competent jurisdiction shall, upon petition, or motion, and after
appropriate hearing, authorize an abortion provider to perform the abortion if said judge deter-
nes that the pregnant minor is mature and capable of giving informed consent to the proposed
ortion. If said judge determines that the pregnant minor is not mature, or if the pregnant minor
s not claim to be mature, the judge shall determine whether the performance of an abortion upon
without notification of her parent, guardian, or conservator would be in her best interests and
ll authorize an abortion provider to perform the abortion without such notification if said judge
cludes that the pregnant minor's best interests would be served thereby.
(a) Such a pregnant minor may participate in proceedings in the court on her own behalf,
the court may appoint a guardian ad litem for her. The court shall, however, advise her that she
a right to court-appointed counsel, and shall, upon her request, provide her with such counsel.
(b) Proceedings in the court under this section shall be confidential and shall be given such
cedence over other pending matters so that the court may reach a decision promptly and with-
delay so as to serve the best interest of the pregnant minor. In no case shall the court fail to rule
hin 7 calendar days from the time the petition is filed. A judge of the court who conducts pro-
dings under this section shall make in writing specific factual findings and legal conclusions
pporting the decision and shall order a record of the evidence to be maintained including the
ge's own findings and conclusions.
(c) An expedited confidential appeal shall be available to any such pregnant minor for
om the court denies an order authorizing an abortion without notification. The court shall
ke a ruling within 7 calendar days from the time of the docketing of the appeal. An order
thorizing an abortion without notification shall not be subject to appeal. No filing fees shall
required of any such pregnant minor at either the trial or the appellate level. Access to the
l court for the purposes of such a petition or motion, and access to the appellate courts for
rposes of making an appeal from denial of the same, shall be afforded such a pregnant minor
hours a day, 7 days a week.

132:28 Penalty. Performance of an abortion in violation of this subdivision shall be a misdemeanor and shall be grounds for a civil action by a person wrongfully denied notification. A person shall not be held liable under this section if the person establishes by written evidence that the person relied upon evidence sufficient to convince a careful and prudent person that the representations of the pregnant minor regarding information necessary to comply with this section are bone fide and true, or if the person has attempted with reasonable diligence to deliver notice, but has been unable to do so.

132:29 Severability. If any provision of this subdivision or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect the provisions or applications of this subdivision which can be given effect without the invalid provisions or applications, and to this end, the provisions of this subdivision are severable.

AMENDED ANALYSIS

This bill prohibits any abortion provider from performing an abortion on certain minors or incompetent females without giving 48 hours' written notice, in person or by certified mail, to a parent or guardian. The bill provides a procedure for alternate notice in certain circumstances.

This bill also establishes a procedure for waiver of the notice in certain circumstances.

Majority amendment adopted.

MOTION TO LIMIT DEBATE

Rep. McKinney moved that the debate on ***HB 763-FN,*** requiring parental notification before abortions may be performed on unemancipated minors, be limited to 15 minutes for each side, including questions.

Adopted.

The question being adoption of the majority report.
Reps. Lasky, Graham, Jacobson and Hager spoke against.
Reps. Mooney, Woods, Vaillancourt and Lefebvre spoke in favor.
Rep. Phyllis Woods requested a roll call; sufficiently seconded.
The question being adoption of the majority report.

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YEAS 187

BELKNAP

Ahern, Omer Jr	Bartlett, Gordon	Boyce, Laurie	Clark, Charles
Dewhirst, Glenn	Fitzgerald, James	Flanders, Donald	Holbrook, Robert
Lawton, David	Nedeau, Stephen	Thomas, John	Wendelboe, Fran

CARROLL

Brown, Carolyn	Derby, Mark	Hatch, Paul	Kenney, Bettie
Mock, Henry	Stevens, Stanley		

CHESHIRE

Fish, Douglas	Laurent, John	Liebl, George	Manning, Joseph
Parkhurst, Henry	Royce, H Charles		

COOS

Brady, Mark	King, Frederick	Richardson, Herbert	Stohl, Eric
Tholl, John Jr			

GRAFTON

Dorsett, Andrew	Dudley, Terri	Gilman, G Michael	Gionet, Edmond
Giuda, Robert	Ingbretson, Paul	Maybeck, Margie	Naro, Debra
Sorg, Gregory	Williams, Burton		

HILLSBOROUGH

Adams, Jarvis	Allen, Timothy	Arnold, Thomas Jr	Artz, Lawrence
Balboni, Michael	Balcom, John	Baroody, Benjamin	Batula, Peter
Chabot, Robert	Christiansen, Lars	Coughlin, Pamela	Crane, Elenore Casey
Dionne, Kimberley	Elliott, Larry	Emerton, Larry	Fields, Dennis
Fletcher, Richard	Gibson, John	Gonzalez, Carlos	Goulet, Maurice
Goyette, Peter Jr	Hagan, Barbara	Haley, Robert	Hall, Charles
Hallyburton, Margaret	Hansen, Ryan	Harrington, Paul	Hawkins, Ken
Hinkle, Peyton	Hopper, Gary	Infantine, William	Jasper, Shawn
Jean, Claudette	Kerns, J Edward	L'Heureux, Robert	Laflamme, Charles
LaFlamme, Paul	Lawrence, James	Lefebvre, Roland	Luebkert, Bernard
McDonough-Wallace, Alice	McHugh, Claire	Mercer, Robert	Milligan, Robert
Mooney, Maureen	Mosher, William	O'Brien, Lori	Pappas, Marc
Pilotte, Maurice	Price, Pamela	Reeves, Sandra	Rowe, Robert
Slocum, Lee	Souza, Kathleen	Stepanek, Stephen	Sullivan, Peter
Sweeney, Cynthia	Tahir, Saghir	Vaillancourt, Steve	Wheeler, James

MERRIMACK

DeStefano, Stephen	Dunne, Christopher	Field, William	Hess, David
Kennedy, Richard	L'Heureux, Stephen	Leber, William	Nutter, Edward
Ouellette, Robert	Perkins, Randy	Reed, Dennis	Soltani, Tony

ROCKINGHAM

Allen, Mary	Bicknell, Elbert	Bishop, Franklin	Cady, Harriet
Camm, Kevin	Carson, Sharon	Cooney, Richard	DiFruscia, Anthony
Dodge, Robert	Dumaine, Dudley	Dupuis, Roland	Fesh, Bob
Flayhan, Mary Lou	Gilbert, Karl	Gillick, Thomas	Griffin, Mary
Hamel, Albert	Headd, James	Holland, James Jr	Hughes, Daniel
Ingram, Russell	Introne, Robert	Itse, Daniel	Johnson, Rogers
Katsakiores, George	Katsakiores, Phyllis	Kobel, Rudolph	Langone, John
Letourneau, Robert	Major, Norman	Morris, Richard	Noyes, Richard
Packard, Sherman	Priestley, Anne	Putnam, Ed II	Quandt, Matthew
Poessner, Kurt	Ruffner, Walter	Smith, Donald	Smith, Paul
Stone, Joseph	Stritch, C Donald	Vallone, Matthew	Varrell, Thomas
Waterhouse, Kevin	Welch, David	Weldy, Norman Jr	Weyler, Kenneth
Wiley, Robert	Winchell, George	Zolla, William	

STRAFFORD

Wilbert, Russell	Bemis, Alan	Berube, Roger	Callaghan, Frank
Campbell, W Packy	Cataldo, Sam	Easson, Timothy	Harrington, Michael
Leon, Richard	Hollinger, Jeffrey	Musler, George	Newton, Clifford
Scott, David	Twombly, James	Woods, Phyllis	

SULLIVAN

Donovan, Thomas	Rodeschin, Beverly

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BELKNAP

Allen, Janet	Pilliod, James	Russell, David	Whalley, Michael

CARROLL

Gibson, David Jr	Dickinson, Howard	McConkey, Mark	Merrow, Harry
Olimpio, J Lisbeth	Patten, Betsey	Philbrick, Donald	

CHESHIRE

Allen, Peter	Batchelder, Robert	Dexter, Judson	Dunn, James
Alton, Daniel	Espiefs, Peter	Hunt, John	Meader, David
Mitchell, McKim	Pratt, Irene	Pratt, John	Richardson, Barbara
Robertson, Timothy	Slack, Pamela	Smith, Edwin	Weed, Charles