

105TH CONGRESS
2D SESSION

S. 2380

To require the written consent of a parent of an unemancipated minor prior to the provision of contraceptive drugs or devices to such a minor, or the referral of such minor for abortion services, under any federally funded program.

IN THE SENATE OF THE UNITED STATES

JULY 30, 1998

Mr. ASHCROFT introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To require the written consent of a parent of an unemancipated minor prior to the provision of contraceptive drugs or devices to such a minor, or the referral of such minor for abortion services, under any federally funded program.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Putting Parents First
5 Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

1 (1) the family plays a unique role in our cul-
2 ture, it is the institution by which we inculcate and
3 pass down many of our most cherished values;

4 (2) the custody, care, and nurture of the child
5 reside first in the parents, whose primary function
6 and freedom include preparation for obligations the
7 State can neither supply nor hinder;

8 (3) parents have the right and duty to be in-
9 volved in helping their minor children make impor-
10 tant life decisions;

11 (4) whether or not to beget a child is the most
12 fundamental decision in our culture;

13 (5) parental involvement in this crucial decision
14 is necessary to ensure that the sanctity of human
15 life is given appropriate consideration;

16 (6) parental inclusion will result in the protec-
17 tion of human life; and

18 (7) Congress is granted authority in section 5
19 of the 14th Amendment to the Constitution of the
20 United States to enact laws that protect the right to
21 life.

1 **TITLE I—PARENTAL INVOLVE-**
2 **MENT IN THE ABORTION DE-**
3 **CISION**

4 **SEC. 101. PARENTAL CONSENT OR JUDICIAL BYPASS RE-**
5 **QUIRED.**

6 (a) IN GENERAL.—No individual shall knowingly per-
7 form an abortion upon or prescribe an abortifacient to a
8 pregnant woman under the age of 18 years unless—

9 (1) the attending physician has secured the in-
10 formed written consent of the minor and a parent or
11 guardian of the minor; or

12 (2) the attending physician has secured the in-
13 formed written consent of the minor and a court
14 order waiving the need for the consent of a parent
15 or guardian pursuant to the judicial bypass proce-
16 dure described in section 102.

17 (b) PENALTY.—Any person who violates subsection
18 (a) shall be fined not more than \$25,000, or imprisoned
19 for not more than 1 year, or both.

20 **SEC. 102. JUDICIAL BYPASS.**

21 (a) IN GENERAL.—A court of competent jurisdiction
22 shall issue an order waiving the requirement for the in-
23 formed written consent of a parent or guardian under sec-
24 tion 101 if the court finds by clear and convincing evidence
25 on an individual basis that—

1 (1) the process of obtaining the informed writ-
2 ten consent of such parent or guardian is not in the
3 best interests of the minor petitioner; or

4 (2) the minor petitioner is an emancipated
5 minor.

6 (b) PROCEDURES.—

7 (1) CONFIDENTIAL PROCEEDINGS.—A proceed-
8 ing under this section shall be done under seal, be
9 confidential, and ensure the anonymity of the minor
10 petitioner.

11 (2) FILING.—A minor or a minor’s legal rep-
12 resentative may file a petition under this section
13 using the initials of the minor.

14 (3) PREFERENCE.—Proceedings under this sec-
15 tion shall—

16 (A) be given preference over other proceed-
17 ings;

18 (B) be expedited to the extent possible;
19 and

20 (C) be concluded not later than 72 hours
21 after the filing of the petition unless an exten-
22 sion is sought by the minor petitioner.

23 (4) FINDINGS.—A court that conducts proceed-
24 ings under this section shall make written findings
25 of fact and conclusions of law supporting its decision

1 and shall maintain a confidential record of the pro-
 2 ceedings to facilitate appellate review.

3 (5) REVIEW.—A decision under this section de-
 4 nying a request to waive the requirement for the in-
 5 formed consent of a parent or guardian under sec-
 6 tion 101 shall be eligible for expedited appellate re-
 7 view.

8 (c) DEFINITIONS.—In this section:

9 (1) COURT OF COMPETENT JURISDICTION.—
 10 The term “court of competent jurisdiction” means
 11 any State court eligible to hear juvenile or family
 12 law matters, except that States may designate spe-
 13 cific State courts to consider petitions for judicial
 14 bypass under this section.

15 (2) EXPEDITED APPELLATE REVIEW.—The
 16 term “expedited appellate review” means review by
 17 whatever court juvenile or family law matters are
 18 generally appealed to, except that States may des-
 19 ignate specific appellate courts to consider appeals
 20 under this section.

21 **SEC. 103. APPLICATION OF STATE LAWS.**

22 The provisions of this title shall not be construed to
 23 preempt provisions of State law that provide greater pro-
 24 tections to parents of minors seeking abortions than the
 25 protections provided by this title.

1 **TITLE II—PARENTAL INVOLVE-**
2 **MENT IN DECISIONS CON-**
3 **CERNING CONTRACEPTIVES**
4 **AND ABORTION REFERRALS**

5 **SEC. 201. REQUIREMENT OF PRIOR PARENTAL CONSENT.**

6 (a) IN GENERAL.—All federally funded programs
7 that provide for the distribution of contraceptive drugs or
8 devices to minors, or that provide abortion referrals to mi-
9 nors, are, except as provided in subsection (b), required
10 to obtain informed written consent of a custodial parent
11 or custodial legal guardian of a minor prior to the provi-
12 sion of contraceptive drugs or devices or abortion referral
13 information to the minor.

14 (b) EXCEPTION.—The requirement of prior written
15 consent under subsection (a) shall not apply where the
16 minor provides a court order waiving the need for consent
17 of a parent or guardian pursuant to the procedure de-
18 scribed in subsection (c).

19 (c) JUDICIAL BYPASS.—

20 (1) IN GENERAL.—A court of competent juris-
21 diction shall issue an order waiving the requirement
22 for the informed written consent of a parent or
23 guardian under subsection (a) if the court finds by
24 clear and convincing evidence on an individual basis
25 that—

1 (A) the process of obtaining the informed
2 written consent of such parent or guardian is
3 not in the best interests of the minor petitioner;
4 or

5 (B) the minor petitioner is an emancipated
6 minor.

7 (2) PROCEDURES.—

8 (A) CONFIDENTIAL PROCEEDINGS.—A pro-
9 ceeding under this subsection shall be done
10 under seal, be confidential, and ensure the ano-
11 nymity of the minor petitioner.

12 (B) FILING.—A minor or a minor's legal
13 representative may file a petition under this
14 subsection using the initials of the minor.

15 (C) PREFERENCE.—Proceedings under
16 this subsection shall—

17 (i) be given preference over other pro-
18 ceedings;

19 (ii) be expedited to the extent pos-
20 sible; and

21 (iii) be concluded not later than 72
22 hours after the filing of the petition unless
23 an extension is sought by the minor peti-
24 tioner.

(D) FINDINGS.—A court that conducts proceedings under this subsection shall make written findings of fact and conclusions of law supporting its decision and shall maintain a confidential record of the proceedings to facilitate appellate review.

(E) REVIEW.—A decision under this subsection denying a request to waive the requirement for the informed consent of a parent or guardian under subsection (a) shall be eligible for expedited appellate review.

(3) DEFINITIONS.—In this subsection:

(A) COURT OF COMPETENT JURISDICTION.—The term “court of competent jurisdiction” means any State court eligible to hear juvenile or family law matters, except that States may designate specific State courts to consider petitions for judicial bypass under this subsection.

(B) EXPEDITED APPELLATE REVIEW.—The term “expedited appellate review” means review by whatever court juvenile or family law matters are generally appealed to, except that States may designate specific appellate courts to consider appeals under this subsection.

1 (d) USE OF STATE FUNDS.—Nothing in this section
2 shall be construed as prohibiting the distribution of con-
3 traceptive drugs or devices, or the provision of abortion
4 referral information, to unemancipated minors without ob-
5 taining prior written parental consent as required under
6 subsection (a) if—

7 (1) the distribution of such drugs or devices or
8 the provision of such information is paid for through
9 the expenditure by a State of State funds regardless
10 of whether such State funds are provided as part of
11 the State’s contribution to a Federal program; and

12 (2) the State, after the date of enactment of
13 this subsection, takes affirmative action to allow the
14 provision of such drugs, devices or information
15 through the use of State funds without requiring
16 such parental consent.

17 (e) APPLICABILITY OF STATE LAW.—Notwithstand-
18 ing any other provision of law, no provider of services to
19 which this section applies shall be exempt from any State
20 law requiring notification or the reporting of child abuse,
21 child molestation, sexual abuse, rape, or incest.

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