

1999 DRAFTING REQUEST

Bill

Received: 10/7/98

Received By: malaigm

Wanted: As time permits

Identical to LRB:

For: Robert Welch (608) 266-0751

By/Representing: Mary Klaver

This file may be shown to any legislator: NO

Drafter: malaigm

May Contact: Mary Klaver (414) 778-5780

Alt. Drafters:

Subject: Children - miscellaneous

Extra Copies:

Topic:

Parental consent for a minor's abortion

Instructions:

Redraft 93-0009/2, but add a requirement that the consent document be notarized

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	malaigm 11/5/98	wjackson 01/5/99		_____			S&L
/1			lpaasch 01/6/99	_____	lrb_docadmin 01/6/99		S&L
/2	malaigm 01/15/99	kgeller 01/19/99	hhagen 01/20/99	_____	lrb_docadmin 01/20/99	lrb_docadmin 01/29/99	S&L
/3	malaigm 02/3/99	wjackson 02/3/99	ismith 02/3/99	_____	lrb_docadmin 02/3/99	lrb_docadmin 02/5/99	

FE Sent For:

04-29-99

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		1/3 JLG 2/3					

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1?	malaigm		VSLP	VSLP JF			

FE Sent For:

<END>



October 22, 1998

Wisconsin Right to Life, Inc.

State Affiliate of the National
Right to Life Committee, Inc.
Washington, DC 20004-2293

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Wisconsin Right to Life, Inc.
10625 West North Avenue, Suite LL
Milwaukee, WI 53226-2331
PH: 414/778-5780
FAX: 414/778-5785
E-MAIL: wrl@inc.net
HMPGE: <http://www.wrl.org>

To: Senator Bob Welch
From: Mary Klaver
Re: Parental Consent Trailer Bill

We just wanted to inform you of the details of the drafting request for the parental consent trailer bill that we initiated on October 2, 1998 on your behalf.

As you know, when the parental consent for abortion law was created in 1992 (1991 Wisconsin Act 263), it contained some serious flaws that need to be corrected. Also, since that time, it has become apparent that some other provisions need to be clarified.

The parental consent trailer bill will do the following:

- ✓ 1. Delete the adult family member consent provisions.
- ✓ 2. Delete the clergy bypass provisions.
- ✓ 3. Delete the suicide exemption (s. 48.375 (4) (b) 1m).
- ✓ 4. Delete the intent requirement from the civil remedy (s. 895.037 (3) (a)).
- ✓ 5. Add a requirement that the parental consent be notarized to eliminate fraudulent signatures. The notary would be required to obtain satisfactory evidence to verify that the person is *in fact* a parent, guardian, legal custodian or foster parent of the minor and that the statements made in the parental consent document are *true*. The *minor's confidentiality* would be protected.
- 6. Conform the medical emergency provision in the parental consent law (s. 48.375 (4) (b) 1) with the medical emergency provision in the informed consent for abortion law (s. 253.10).

For your information, we contacted Senator Rick Grobschmidt and asked him to be the Democratic author of the parental consent trailer bill.

As soon as you receive a draft, please send us a copy so we can review it. Thank you for your assistance.

cc: Senator Grobschmidt
Gordon Malaise

Dedicated successfully since 1968 to advocating for and protecting precious human life.

Please remember the Wisconsin Right to Life Education Fund 501(c)(3) charity and its lifesaving programs in your estate plan. By doing so, you may be able to achieve significant income, gift or estate tax benefits. Please call our development department today for confidential help in successfully implementing the gift plan most suitable for you.

(0505/1)

LRB-0000/2

GMM:kmj:ljd

Wijlksu

1993-1994 LEGISLATURE

all amended stats.

WPO: Proof Vw/stats

9

1993 BILL

requirement

the requirement that before an unemancipated minor ~~may have an abortion~~ she obtain parental or other consent or a judicial waiver of that consent before she may have an abortion

Regenerate

AN ACT to repeal 48.375 (2) (em), 48.375 (4) (b) 1m and 48.375 (7) (bm); to amend

46.24, 48.23 (1) (cm), 48.257 (1) (h), 48.257 (4), 48.27 (9), 48.273 (4) (b), 48.375 (2) (c), 48.375 (4) (a) 1, 48.375 (4) (b) 3, 48.375 (6), 48.375 (7) (a) (intro.), 48.375 (7) (a) 4, 48.375 (7) (b) (intro.), 48.375 (7) (d), 48.375 (7) (f), 146.78 (1) (a) 5, 809.105 (2), 809.105 (3) (a), 809.105 (3) (d), 809.105 (5), 809.105 (8), 809.105 (8m), 809.105 (9), 809.105 (10), 809.105 (11) (a) (intro.), 809.105 (11) (a) 3, 809.105 (11) (cm), 809.105 (11) (d), 809.105 (11) (e), 809.105 (13), 895.037 (3) (a), 895.037 (3) (f) and 895.037 (4); and to create 48.375 (2) (f), 69.186 (1) (j), 895.037 (1) (b) and 895.037 (1) (d) of the statutes, relating to: the authority of adult family members to consent to an unemancipated minor's abortion, the involvement of a member of the clergy in seeking judicial waiver of that consent requirement and the exception to the consent or judicial waiver requirement for minors who are likely to commit suicide.

This bill makes various changes to the law that requires an unemancipated minor to obtain parental or other consent or a judicial waiver of that consent requirement before she may have an abortion (generally referred to as "the requirement").

Under parental consent law, for judicial waiver.

1 2 3 4 5 6 7 8 9 10 11 12 13

Under consent requirements.

Analysis by the Legislative Reference Bureau

Under current law, subject to certain exceptions, an unemancipated minor must have the written consent of one of her parents; or her guardian or legal custodian, if one has been appointed; or an adult family member; or one of her foster parents, if the minor has been placed in a foster home and the minor's parent has signed a waiver granting the department of health and social services, a county

or treatment foster parents

or a treatment foster home

family

before

may have an abortion, she

or of

or of

of

~~This bill requires the consent document to be notarized. The bill also eliminates the authority of an adult family member to consent to an unemancipated minor's abortion.~~

department of human services or social services or the foster parent, the authority to consent to medical services or treatment on behalf of the minor; ~~before having an abortion~~ unless the minor obtains a waiver of this requirement from the circuit court. Current law defines "adult family member" as a grandparent, aunt, uncle, sister or brother who is at least 25 years of age.

or the treatment foster parent

~~This bill limits adult family members who may consent to an unemancipated minor's abortion to those adult family members who are persons acting in the place of a parent. The bill defines "person acting in the place of a parent" as a person who, without seeking adoption, guardianship or legal custody of a minor, has maintained physical custody of the minor, has assumed and discharged all of the duties and responsibilities that are incidental to a parental relationship due to the inability of the minor's parents to assume and discharge those duties and responsibilities, has assumed and discharged responsibility for the minor's financial support and has established an affinity with the minor under which the person has a true interest in the well-being of the minor.~~

Insert A-1

Under current law, the consent or judicial waiver requirement does not apply if the minor provides the person who intends to perform or induce the abortion with a written statement that a parent who has legal custody of the minor, a guardian or legal custodian, an adult family member or a foster parent under the circumstances described above has abused the minor. This bill ~~limits the applicability of this exception, with respect to abuse by an adult family member, to an adult family member who is a person acting in the place of a parent as defined in the bill.~~

eliminates from

Insert A-2

Under current law, a person who intentionally performs or induces an abortion on or for a minor without prior consent or waiver of the consent requirement by a court is liable to the minor and to the minor's parent, guardian and legal custodian for damages arising out of the performance or inducement of the abortion. This bill eliminates the requirement that the violation of the consent or judicial waiver requirement be intentional and adds "adult family members who are persons acting in the place of a parent" as parties to whom a person may be liable for the performance or inducement of an abortion in violation of the consent or judicial waiver requirement.

Under current law, a minor who is seeking an abortion, or a member of the clergy on behalf of the minor, may petition a circuit court for a waiver of the consent requirement. If the minor files a petition on her own behalf, the minor must be present at an initial appearance at which the court appoints counsel for the minor and sets a date for a hearing to determine whether ~~or not~~ the minor is mature and well-informed enough to make the abortion decision on her own or whether ~~or not~~ the performance or inducement of an abortion is in the minor's best interests. If a member of the clergy files a petition on behalf of the minor, the member of the clergy may be present at the initial appearance instead of the minor and the court need not appoint counsel for the minor or set a date for a hearing on the petition. Instead, the member of the clergy must file with the petition an affidavit stating that the member of the clergy has explored with the minor alternative choices for managing the minor's pregnancy, including keeping the baby or placing the baby for adoption, and has discussed with the minor the possibility of obtaining consent for the abortion and

Sub-sub { (E) Judicial waiver procedures.

whether or not obtaining that consent would be in the minor's best interests. The court may grant the petition, without hearing, based on the member of the clergy's affidavit.

This bill eliminates the option of permitting a member of the clergy to file a petition and affidavit on behalf of the minor. Under the bill, the minor must file her own petition and be present at the initial appearance, and the court must appoint counsel for the minor and hold a hearing on the petition.

~~Finally, under current law, the consent or judicial waiver requirement does not apply if a psychiatrist or psychologist states in writing that the psychiatrist or psychologist believes that the minor is likely to commit suicide rather than seek consent or a judicial waiver. This bill eliminates that exception.~~

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 SECTION 1. 46.24¹ of the statutes is amended to read:

2 **46.24 Assistance to minors concerning parental consent for abortion.**

3 If a minor who is contemplating an abortion requests assistance from a county
4 department under s. 46.215, 46.22 or 46.23 in seeking the consent of the minor's

5 ~~parent, guardian or legal custodian, or in seeking the consent of an adult family~~

6 ~~member, as defined in s. 48.375 (2) (b) ^{plain space} who is a person acting in the place of a parent,~~

7 ~~as defined in s. 48.375 (2) (b),~~ for the contemplated abortion or in seeking a waiver

8 from the circuit court, the county department shall provide assistance, including, if

9 so requested, accompanying the minor as appropriate.

10 SECTION 2. 48.23 (1) (cm)¹ of the statutes is amended to read:

11 48.23 (1) (cm) Any minor who is subject to the jurisdiction of the circuit court
12 under s. 48.16 ~~and who is required to appear in court~~ shall be represented by counsel.

13 SECTION 3. 48.257 (1) (h)¹ of the statutes is amended to read:

14 48.257 (1) (h) If the minor is not represented by counsel, the place where and
15 the manner in which the minor wishes to be notified of proceedings under s. 48.375

1 (7) until appointment of counsel under s. 48.375 (7) (a) 1. ~~If the petition is filed by~~
2 ~~a member of the clergy on behalf of the minor, the place where and manner in which~~
3 ~~the member of the clergy wishes to be notified of proceedings under s. 48.375 (7).~~

4 **SECTION 4.** 48.257 (4) of the statutes is amended to read:

5 48.257 (4) The clerk of circuit court shall give a copy of the petition to the minor
6 ~~or to the member of the clergy who files a petition on behalf of the minor, if any.~~

7 **SECTION 5.** 48.27 (9) of the statutes is amended to read:

8 48.27 (9) Subsections (1) to (8) do not apply in any proceeding under s. 48.375
9 (7). For proceedings under s. 48.375 (7), the circuit court shall provide notice only
10 to the minor, her counsel, ~~if any, the member of the clergy who filed the petition on~~
11 ~~behalf of the minor, if any,~~ and her guardian ad litem, if any. The notice shall contain
12 the title and case number of the proceeding, and the nature, location, date and time
13 of the hearing or other proceeding. Notice to the minor ~~or to the member of the clergy,~~
14 ~~if any,~~ shall be provided as requested under s. 48.257 (1) (i) and, after appointment
15 of the minor's counsel, ~~if any,~~ by her counsel.

16 **SECTION 6.** 48.273 (4) (b) of the statutes is amended to read:

17 48.273 (4) (b) Personal service is required for notice of all proceedings under
18 s. 48.375 (7), except that, if the minor is not represented by counsel, notice to the
19 minor shall be in the manner and at the place designated by the minor in the petition
20 under s. 48.257 (1) until appointment of the minor's counsel, ~~if any,~~ under s. 48.375
21 (7) (a) 1. Notice shall be served immediately for any proceeding under s. 48.375 (7)
22 unless the minor waives the immediate notice. If the minor waives the immediate
23 notice, the notice shall be served at least 24 hours before the time of the hearing
24 under s. 48.375 (7) (b) or any other proceeding under s. 48.375 (7). A minor may, in

1 acknowledging receipt of service of the notice, sign the name "Jane Doe" in lieu of
2 providing the minor's full signature.

3 SECTION 7. 48.375 (2) (c) of the statutes is amended to read:

4 48.375 (2) (c) "Counselor" means a physician including a physician specializing
5 in psychiatry, a licensed psychologist, as defined in s. 455.01 (4), or an ordained
6 member of the clergy, as defined in s. 765.002 (1). "Counselor" does not include any
7 person who is employed by or otherwise affiliated with a reproductive health care
8 facility, a family planning clinic or a family planning agency; any person affiliated
9 with the performance of abortions, except abortions performed to save the life of the
10 mother; or any person who may profit from giving advice to seek an abortion.

11 SECTION 8. 48.375 (2) (em) of the statutes is repealed.

12 SECTION 9. 48.375 (2) (f) of the statutes is created to read:

13 48.375 (2) (f) "Person acting in the place of a parent" means a person, other than
14 a parent, who has intentionally done all of the following with respect to a minor
15 without seeking a court order granting adoption, guardianship or legal custody of the
16 minor:

- 17 1. Maintained physical custody of the minor.
- 18 2. Assumed and discharged all of the duties and responsibilities that are
19 incidental to a parental relationship with the minor, including the duty and
20 responsibility to protect, train, advise and discipline the minor and to provide food,
21 shelter, education and health care for the minor, due to the inability of the minor's
22 parents to perform their parental duties and responsibilities.
- 23 3. Assumed and discharged responsibility for the minor's financial support,
24 including the minor's health care expenses.

SEC. RP; 48.375 (2)(c)

1

4. Established an affinity with the minor under which the person has a true

2

interest in the well-being and general welfare of the minor. *or treatment foster parents*

3

~~SECTION 10. 48.375 (4) (a) 1 of the statutes is amended to read:~~

4

48.375 (4) (a) 1. The person or the person's agent has, either directly or through

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a referring physician or his or her agent, received and made part of the minor's

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medical record the written consent of the minor and the written consent of one of her

7

parents; or of the minor's guardian or legal custodian, if one has been appointed; ~~or~~

8

~~of an adult family member of the minor who is a person acting in the place of a parent;~~

9

or of one of the minor's foster parents, if the minor has been placed in a foster home

10

and the minor's parent has signed a waiver granting the department, a county

11

department ^{or the treatment foster parent} ~~or the foster parent~~ the authority to consent to medical services or

treatment on behalf of the minor.

or treatment foster home

Insert 12 6-12

13

SECTION 11. 48.375 (4) (b) 1 of the statutes is repealed.

14

~~SECTION 12. 48.375 (4) (b) 3 of the statutes is amended to read:~~

15

48.375 (4) (b) 3. The minor provides the person who intends to perform or

16

induce the abortion with a written statement, signed and dated by the minor, that

17

a parent who has legal custody of the minor, or the minor's guardian or legal

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custodian, if one has been appointed, ~~or an adult family member of the minor who~~

19

~~is a person acting in the place of a parent,~~ or a foster parent, if the minor has been

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placed in a foster home and the minor's parent has signed a waiver granting the

21

department, a county department or the foster parent the authority to consent to

22

medical services or treatment on behalf of the minor, has abused, as defined in s.

23

48.981 (1) (a), the minor. The person who intends to perform or induce the abortion

24

shall place the statement in the minor's medical record. The person who intends to

25

perform or induce the abortion shall report the abuse as required under s. 48.981 (2).

Insert 25 6-25

1 **SECTION 13.** 48.375 (6) of the statutes is amended to read:

2 48.375 (6) RIGHT TO PETITION COURT FOR WAIVER. Any pregnant minor who is
3 seeking an abortion in this state, ~~and any member of the clergy on the minor's behalf,~~
4 may file a petition specified under s. 48.257 with any court for a waiver of the
5 parental consent requirement under sub. (4) (a) 1.

6 **SECTION 14.** 48.375 (7) (a) (intro.) of the statutes is amended to read:

7 48.375 (7) (a) *Receipt of petition; initial appearance.* (intro.) On the date that
8 a petition under s. 48.257 is filed, or if it is impossible to do so on that day, on the next
9 calendar day, the court shall hold an initial appearance in chambers at which the
10 minor ~~or the member of the clergy who filed the petition on behalf of the minor, if any,~~
11 is present and shall do all of the following: (.)

12 **SECTION 15.** 48.375 (7) (a) 4 of the statutes is amended to read:

13 48.375 (7) (a) 4. Notify the minor, the minor's counsel, ~~if any, the member of the~~
14 ~~clergy who filed the petition on behalf of the minor, if any,~~ and the minor's guardian
15 ad litem, if any, of the time, date and place of the hearing.

16 **SECTION 16.** 48.375 (7) (b) (intro.) of the statutes is amended to read:

17 48.375 (7) (b) *Hearing; evidence.* (intro.) The court shall hold a confidential
18 hearing on a the petition ~~that is filed by a minor.~~ The hearing shall be held in
19 chambers, unless a public fact-finding hearing is demanded by the minor through
20 her counsel. At the hearing, the court shall consider the report of the guardian ad
21 litem, if any, and hear evidence relating to all of the following:

22 **SECTION 17.** 48.375 (7) (bm) of the statutes is repealed.

23 **SECTION 18.** 48.375 (7) (d) of the statutes is amended to read:

24 48.375 (7) (d) *Time limit.* 1. The court shall make the determination under par.
25 (c) and issue an order within 3 calendar days after the initial appearance unless the

1 minor and her counsel, ~~or the member of the clergy who filed the petition on behalf~~
2 ~~of the minor, if any,~~ consent to an extension of the time period. The order shall be
3 effective immediately. The court shall prepare and file with the clerk of court
4 findings of fact, conclusions of law and a final order granting or denying the petition
5 within 24 hours after making the determination and order. If the court grants the
6 petition, the court shall immediately so notify the minor by personal service on her
7 counsel, ~~or the member of the clergy who filed the petition on behalf of the minor, if~~
8 ~~any,~~ of a certified copy of the court's order granting the petition. If the court denies
9 the petition, the court shall immediately so notify the minor by personal service on
10 her counsel, ~~or the member of the clergy who filed the petition on behalf of the minor,~~
11 ~~if any,~~ of a copy of the court's order denying the petition and shall also notify the minor
12 by her counsel, ~~or the member of the clergy who filed the petition on behalf of the~~
13 ~~minor, if any,~~ that she has a right to initiate an appeal under s. 809.105.

14 1m. Except as provided under s. 48.315 (1) (b), (c) and (f), if the court fails to
15 comply with the time limits specified under subd. 1, ~~without the prior consent of the~~
16 ~~minor and the minor's counsel, if any, or the member of the clergy who filed the~~
17 ~~petition on behalf of the minor, if any,~~ the minor and the minor's counsel, ~~if any, or~~
18 ~~the member of the clergy, if any,~~ shall select a temporary reserve judge, as defined
19 in s. 753.075 (1) (b), to make the determination under par. (c) and issue an order
20 granting or denying the petition and the chief judge of the judicial administrative
21 district in which the court is located shall assign the temporary reserve judge
22 selected by the minor and the minor's counsel, ~~if any, or the member of the clergy, if~~
23 ~~any,~~ to make the determination and issue the order. A temporary reserve judge
24 assigned under this subdivision to make a determination under par. (c) and issue an
25 order granting or denying a petition shall make the determination and issue the

1 order within 2 calendar days after the assignment, unless the minor and her counsel,
 2 ~~if any, or the member of the clergy who filed the petition on behalf of the minor, if any,~~
 3 consent to an extension of that time period. The order shall be effective immediately.
 4 The court shall prepare and file with the clerk of court findings of fact, conclusions ^(plan)
 5 of law and a final order granting or denying the petition, and shall notify the minor
 6 of the court's order, as provided under subd. 1.

7 2. Counsel for the minor, ~~or the member of the clergy who filed the petition on~~
 8 ~~behalf of the minor, if any,~~ shall immediately, upon notification under subd. 1, ^{or 1m}
 9 that the court has granted or denied the petition, notify the minor. If the court has
 10 granted the petition, counsel for the minor, ~~or the member of the clergy who filed the~~
 11 ~~petition on behalf of the minor, if any,~~ shall hand deliver a certified copy of the court
 12 order to the person who intends to perform or induce the abortion. If with reasonable
 13 diligence the person who intends to perform or induce the abortion cannot be located
 14 for delivery, then counsel for the minor, ~~or the member of the clergy who filed the~~
 15 ~~petition on behalf of the minor, if any,~~ shall leave a certified copy of the order with
 16 the person's agent at the person's principal place of business. If a clinic or medical
 17 facility is specified in the petition as the corporation, partnership or other
 18 unincorporated association that employs the person who intends to perform or
 19 induce the abortion, then counsel for the minor, ~~or the member of the clergy who filed~~
 20 ~~the petition on behalf of the minor, if any,~~ shall hand deliver a certified copy of the
 21 order to an agent of the corporation, partnership or other unincorporated association
 22 at its principal place of business. There may be no service by mail or publication.
 23 The person or agent who receives the certified copy of the order under this
 24 subdivision shall place the copy in the minor's medical record.

25 SECTION 19. 48.375 (7) (f) of the statutes is amended to read:

1 ~~48.375 (7) (f) Certain persons barred from proceedings. No parent, or guardian~~
 2 ~~or legal custodian, if one has been appointed, or foster parent, if the minor has been~~
 3 ~~placed in a foster home and the minor's parent has signed a waiver granting the~~
 4 ~~department, a county department or the foster parent the authority to consent to~~
 5 ~~medical services or treatment on behalf of the minor, or adult family member who~~
 6 ~~is a person acting in the place of a parent, of any minor who is seeking a court~~
 7 ~~determination under this subsection may attend, intervene or give evidence in any~~
 8 ~~proceeding under this subsection.~~

9 SECTION 20. 69.186 (1) (j) of the statutes is created to read:

10 69.186 (1) (j) If the patient is a minor, the category under s. 48.375 (4) (a) 1 into
 11 which the person who provided consent for the abortion fits or, if no consent under
 12 s. 48.375 (4) (a) 1 was provided, the basis under s. 48.375 (4) (a) 2 or (b) on which the
 13 abortion was performed.

14 SECTION 21. 146.78 (1) (a) 5 of the statutes is amended to read:

15 146.78 (1) (a) 5. If the woman is a minor, the availability of services under s.
 16 46.24 to assist a minor who is contemplating an abortion and who wishes to seek the
 17 consent of the minor's parent, guardian or legal custodian, or the consent of an adult
 18 family member, as defined in s. 48.375 (2) (b), ~~of the minor who is a person acting in~~
 19 ~~the place of a parent, as defined in s. 48.375 (2) (f), for the contemplated abortion, or~~
 who wishes to seek a waiver from the circuit court under s. 48.375 (7).

Insert
20
10-20

21 SECTION 22. 809.105 (2) of the statutes is amended to read:

22 809.105 (2) INITIATING AN APPEAL. Only a minor may initiate an appeal under
 23 this section. The minor shall initiate the appeal by filing, ~~or by a member of the clergy~~
 24 ~~filing on the minor's behalf,~~ a notice of appeal with the clerk of the trial court in which
 25 the order appealed from was entered and shall specify in the notice of appeal the

1 order appealed from. At the same time, the minor ~~or member of the clergy~~ shall notify
 2 the court of appeals of the filing of the appeal by sending a copy of the notice of appeal
 3 to the clerk of the court of appeals. The clerk of the trial court shall assist the minor
 4 ~~or member of the clergy~~ in sending a copy of the notice of appeal to the clerk of the
 5 court of appeals. The minor may use the name "Jane Doe" instead of her name on
 6 the notice of appeal and all other papers filed with the court of appeals.

7 SECTION 23. 809.105 (3) (a) [√] of the statutes is amended to read:

8 809.105 (3) (a) *Fee.* No fee for ^{filing} ~~docketing~~ ^(plan) an appeal in the court of appeals under
 9 this section may be required of a minor ~~or of a member of the clergy who files an~~
 10 ~~appeal under this section on behalf of the minor.~~

11 SECTION 24. 809.105 (3) (d) [√] of the statutes is amended to read:

12 809.105 (3) (d) *Statement on transcript.* A minor ~~or member of the clergy~~ may
 13 not be required to file a statement on transcript in an appeal under this section.

14 SECTION 25. 809.105 (5) [√] of the statutes is amended to read:

15 809.105 (5) TRANSCRIPT OF REPORTER'S NOTES. At the time that a minor ~~or~~
 16 ~~member of the clergy~~ files a notice of appeal, the minor ~~or member of the clergy~~ shall
 17 make arrangements with the reporter for the preparation of a transcript of the
 18 reporter's notes of the proceedings under s. 48.375 (7). The reporter shall file the
 19 transcript with the trial court within 2 calendar days after the notice of appeal is
 20 filed. The county of the court that held the proceeding under s. 48.375 (7) shall pay
 21 the expense of transcript preparation under this subsection.

22 SECTION 26. 809.105 (8) [√] of the statutes is amended to read:

23 809.105 (8) ASSIGNMENT AND ADVANCEMENT OF CASES. The court of appeals shall
 24 take cases appealed under this section in an order that ensures that a judgment is
 25 made within 4 calendar days after the appeal has been ~~docketed~~ ^{filed} in the court of

1 appeals. The time limit under this subsection may be extended with the consent of
2 the minor and her counsel, ~~if any, or the member of the clergy who initiated the~~
3 ~~appeal under this section, if any.~~

4 SECTION 27. 809.105 (8^m) of the statutes is amended to read:

5 809.105 (8^m) ORAL ARGUMENT. If the court of appeals determines that a case
6 appealed under this section is to be submitted with oral argument, the oral argument
7 shall be held in chambers or, on motion of the minor through her counsel ~~or through~~
8 ~~the member of the clergy who filed the appeal under this section, if any,~~ or on the
9 court of appeals' own motion, by telephone, unless the minor through her counsel ~~or~~
10 ~~the member of the clergy~~ demands that the oral argument be held in open court.

11 SECTION 28. 809.105 (9^l) of the statutes is amended to read:

12 809.105 (9^l) COSTS. The court of appeals may not assess costs against a minor
13 ~~or member of the clergy~~ in an appeal under this section.

14 SECTION 29. 809.105 (10^l) of the statutes is amended to read:

15 809.105 (10^l) REMITTITUR. (a) A judgment by the court of appeals under this
16 section is effective immediately, without transmittal to the trial court, as an order
17 either granting or denying the petition. If the court of appeals reverses a trial court
18 order denying a petition under s. 48.375 (7), the court of appeals shall immediately
19 so notify the minor by personal service on her counsel ~~or the member of the clergy~~
20 ~~who initiated the appeal under this section, if any,~~ of a certified copy of the order of
21 the court of appeals granting the minor's petition. If the court of appeals affirms the
22 trial court order, it shall immediately so notify the minor by personal service on her
23 counsel ~~or the member of the clergy who initiated the appeal under this section, if~~
24 ~~any,~~ of a copy of the order of the court of appeals denying the petition and shall also
25 notify the minor by her counsel or the member of the clergy who initiated the appeal

1 ~~under this section on behalf of the minor, if any,~~ that she may, under sub. (11), file
2 a petition for review with the supreme court under s. 809.62. The court of appeals
3 shall pay the expenses of service of notice under this subsection. The clerk of the
4 court of appeals shall transmit to the trial court the judgment and opinion of the court
5 of appeals and the record in the case filed under sub. (4), within 31 days after the date
6 that the judgment and opinion of the court of appeals are filed. If a petition for review
7 is filed under sub. (11), the transmittal shall be made within 31 days after the date
8 that the supreme court rules on the petition for review.

9 (b) Counsel for the minor, ~~if any, or the member of the clergy who initiated the~~
10 ~~appeal under this section, if any,~~ shall immediately, upon notification under par. (a)
11 that the court of appeals has granted or denied the petition, notify the minor. If the
12 court of appeals has granted the petition, counsel for the minor, ~~if any, or the member~~
13 ~~of the clergy who initiated the appeal under this section, if any,~~ shall hand deliver
14 a certified copy of the order of the court of appeals to the person who intends to
15 perform or induce the abortion. If with reasonable diligence the person who intends
16 to perform or induce the abortion cannot be located for delivery, then counsel for the
17 minor, ~~if any, or the member of the clergy who initiated the appeal under this section,~~
18 ~~if any,~~ shall leave a certified copy of the order with the person's agent at the person's
19 principal place of business. If a clinic or medical facility is specified in the petition
20 as the corporation, partnership or other unincorporated association that employs the
21 person who intends to perform or induce the abortion, then counsel for the minor, ~~if~~
22 ~~any, or the member of the clergy who initiated the appeal under this section, if any,~~
23 shall hand deliver a certified copy of the order to an agent of the corporation,
24 partnership or other unincorporated association at its principal place of business.
25 There may be no service by mail or publication. The person or agent who receives

limited liability company,

1 the certified copy of the order under this paragraph shall place the copy in the minor's
2 medical record.

3 **SECTION 30.** 809.105 (11) (a) (intro.) of the statutes is amended to read:

4 809.105 (11) (a) (intro.) Only a minor ~~or the member of the clergy who initiated~~
5 ~~the appeal under this section, if any,~~ may initiate a review of an appeal under this
6 section. The petition for review of an appeal in the supreme court shall contain:

7 **SECTION 31.** 809.105 (11) (a) 3 of the statutes is amended to read:

8 809.105 (11) (a) 3. The judgment and opinion of the court of appeals, and the
9 findings of fact, conclusions of law and final order of the trial court that were
10 furnished to the court of appeals. The court of appeals shall provide a copy of these
11 papers to the minor, ~~if any, the member of the clergy who initiated the appeal under~~
12 ~~this section, if any,~~ her counsel or her guardian ad litem, if any, immediately upon
13 request.

14 **SECTION 32.** 809.105 (11) (cm) of the statutes is amended to read:

15 809.105 (11) (cm) If the supreme court determines that a case reviewed under
16 this subsection is to be submitted with oral argument, the oral argument shall be
17 held in chambers or, on motion of the minor through her counsel ~~or through the~~
18 ~~member of the clergy who initiated the appeal under this section, if any,~~ or on the
19 supreme court's own motion, by telephone, unless the minor through her counsel ~~or~~
20 ~~the member of the clergy~~ demands that the oral argument be held in open court.

21 **SECTION 33.** 809.105 (11) (d) of the statutes is amended to read:

22 809.105 (11) (d) A judgment or decision by the supreme court under this section
23 is effective immediately, without transmittal to the trial court, as an order either
24 granting or denying the petition. If the supreme court reverses a court of appeals
25 order affirming a trial court order denying a petition under s. 48.375 (7), the supreme

1 court shall immediately so notify the minor by personal service on her counsel, if any,
2 ~~or on the member of the clergy who initiated the appeal under this section, if any,~~ of
3 a certified copy of the order of the supreme court granting the minor's petition. If the
4 supreme court affirms the order of the court of appeals, it shall immediately so notify
5 the minor by her counsel ~~or by the member of the clergy who initiated the appeal~~
6 ~~under this section, if any.~~ The clerk of the supreme court shall transmit to the trial
7 court the judgment, or decision, and opinion of the supreme court and the complete
8 record in the case within 31 days after the date that the judgment, or decision, and
9 opinion of the supreme court are filed. The supreme court shall pay the expense of
10 service of notice under this subsection.

11 ~~SECTION 34. 809.105 (11) (e) of the statutes is amended to read:~~

12 ~~809.105 (11) (e) Counsel for the minor if any, or the member of the clergy who~~
13 ~~initiated the appeal under this section, if any, shall immediately, upon notification~~
14 ~~under par. (d) that the supreme court has granted or denied the petition, notify the~~
15 ~~minor. If the supreme court has granted the petition, counsel for the minor if any,~~
16 ~~or the member of the clergy who initiated the appeal under this section, if any, shall~~
17 ~~hand deliver a certified copy of the order of the supreme court to the person who~~
18 ~~intends to perform or induce the abortion. If with reasonable diligence the person~~
19 ~~who intends to perform or induce the abortion cannot be located for delivery, then~~
20 ~~counsel for the minor if any, or the member of the clergy who initiated the appeal~~
21 ~~under this section, if any, shall leave a certified copy of the order with the person's~~
22 ~~agent at the person's principal place of business. If a clinic or medical facility is~~
23 ~~specified in the petition as the corporation, partnership or other unincorporated~~
24 ~~association that employs the person who intends to perform or induce the abortion,~~
25 ~~then counsel for the minor, if any, or the member of the clergy who initiated the~~

1 appeal under this section, if any, shall hand deliver a certified copy of the order to an
 2 agent of the corporation, partnership or other unincorporated association at its
 3 principal place of business. There may be no service by mail or publication. The
 4 person or agent who receives the certified copy of the order under this paragraph
 5 shall place the order in the minor's medical record.

6 ~~SECTION 35. 809.105 (13) of the statutes is amended to read:~~

7 ~~809.105 (13) CERTAIN PERSONS BARRED FROM PROCEEDINGS. No parent, or~~
 8 ~~guardian or legal custodian, if one has been appointed, or foster parent, if the minor~~
 9 ~~has been placed in a foster home, and the minor's parent has signed a waiver~~
 10 ~~granting the department of health and social services, a county department under~~
 11 ~~s. 46.215, 46.22 or 46.23 or the foster parent the authority to consent to medical~~
 12 ~~services or treatment on behalf of the minor, or adult family member, as defined in~~
 13 ~~s. 48.375 (2) (b), who is a person acting in the place of a parent, as defined in s. 48.375~~
 14 ~~(2)(c), of any minor who has initiated an appeal under this section may attend or~~
 15 ~~intervene in any proceeding under this section.~~

16 ~~SECTION 36. 895.037 (1) (b) of the statutes is created to read:~~

17 895.037 (1) (b) "Adult family member" has the meaning given in s. 48.375 (2)
 18 (b).

19 ~~SECTION 37. 895.037 (1) (d) of the statutes is created to read:~~

20 ~~895.037 (1) (d) "Person acting in the place of a parent" has the meaning given~~
 21 ~~in s. 48.375 (2) (f).~~

22 ~~SECTION 38. 895.037 (3) (a) of the statutes is amended to read:~~ (plain)

23 895.037 (3) (a) A person who intentionally violates s. 48.375 (4) is liable to the
 24 minor on or for whom the abortion was performed or induced and ^{to del} to the minor's
 25 parent, guardian and legal custodian ~~and to any adult family member who is a person~~

Insert
16-21

1 ~~acting in the place of a parent~~ for damages arising out of the performance or
2 inducement of the abortion including, but not limited to, damages for personal injury
3 and emotional and psychological distress.

4 **SECTION 39.** 895.037 (3) (f) of the statutes is amended to read:
5 895.037 (3) (f) Nothing in this subsection limits the common law rights of
6 parents, guardians, legal custodians ~~and minors or adult family members who are~~
7 persons acting in the place of a parent.

8 **SECTION 40.** 895.037 (4) of the statutes is amended to read:
9 895.037 (4) CONFIDENTIALITY. The identity of a minor who is the subject of an
10 action under this section ~~and~~, the identity of the minor's parents, guardian and legal
11 custodian and the identity of any adult family member who is a person acting in the
12 place of a parent shall be kept confidential and may not be disclosed, except to the
13 court, the parties, their counsel, witnesses and other persons approved by the court.
14 All papers filed in and all records of a court relating to an action under this section
15 shall identify the minor as "Jane Doe" and shall identify her parents, guardian and
16 legal custodian, and any adult family member who is a person acting in the place of
17 a parent, by initials only. All hearings relating to an action under this section shall
18 be held in chambers unless the minor demands a hearing in open court and her
19 parents, guardian or legal custodian ~~do~~, or an adult family member who is a person
20 acting in the place of a parent, does not object. If a public hearing is not held, only
21 the parties, their counsel, witnesses and other persons requested by the court, or
22 requested by a party and approved by the court, may be present.

WFO
Fix Comments
23
24

23 **SECTION 41. Initial applicability.** (1) ABORTIONS PERFORMED OR INDUCED. The
24 treatment of sections 48.375 (2)(b) and (4) (a) 1 and (b) 1m and 3 and 895.037 (1)(b)

46.24

69.186(1)(j)

1 ~~and (d)~~ (3) (a) ~~and (f) and (g)~~ of the statutes first applies to abortions performed or
2 induced on the effective date of this subsection. (C)and

3 (2) WAIVER PETITIONS FILED. The treatment of sections 48.23 (1) (cm), 48.257 (1)
4 (h) and (4), 48.27 (9), 48.273 (4) (b), 48.375 (2) (em), (6) and (7) (a) (intro.) and 4 (b)
5 (intro.), (bm), (d) and (f) and 809.105 (2), (3) (a) and (d), (5), (8), (8m), (9), (10), (11)
6 (a) (intro.) and 3 (cm), (d) and (e) and (13) of the statutes first applies to petitions filed
7 to initiate a proceeding under section 48.375 (7) of the statutes, as affected by this
8 act, on the effective date of this subsection.

9 (END)

Insert 6-12

Section #. 48.375 (4) (a) 1. of the statutes is amended to read:

48.375 (4) (a) 1. The person or the person's agent has, either directly or through a referring physician or his or her agent, received and made part of the minor's medical record, under the requirements of s. 253.10, the voluntary and informed written consent of the minor and the voluntary and informed written consent of one of her parents; or of the minor's guardian or legal custodian, if one has been appointed; ~~or of an adult family member of the minor;~~ or of one of the minor's foster parents or treatment foster parents, if the minor has been placed in a foster home or treatment foster home and the minor's parent has signed a waiver granting the department, a county department, the foster parent or the treatment foster parent the authority to consent to medical services or treatment on behalf of the minor.

History: 1991 a. 263, 315; 1993 a. 112, 230, 446; 1995 a. 77, 275, 309.

~~The minor and her parent, guardian, legal custodian, foster parent or treatment foster parent shall sign the consent, and the consent shall be acknowledged before a notary public. ~~in~~ A notary public ^{who} ~~acquires~~ acknowledge of the contents of a consent before whom a consent is acknowledged under this subdivision shall keep confidential any information acquired in taking the acknowledgment.~~

Insert 6/12

The minor and her parent, guardian, legal custodian,

foster parent or treatment foster parent shall sign and

document

acknowledge the consent before a notary public. In

~~acknowledging a consent document, the person signing the document in the capacity as the parent, guardian, legal custodian, foster parent or treatment foster parent shall~~

taking the acknowledgements, the notary public shall determine,

either from personal knowledge or satisfactory evidence, that the

persons appearing before the notary public and making the

acknowledgements are the persons whose true signatures are

on the consent document and that the person signing the

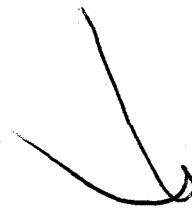
consent document in the capacity of parent, guardian, legal

custodian, foster parent or treatment foster parent ~~is~~ of

the minor is, in fact, the parent, guardian, legal custodian,

Insert 6-12

foster parent or treatment foster parent of the minor and
does, in fact, have the authority to consent to medical
services or treatment on behalf of the minor. A notary
public who takes an acknowledgment under this subdivision
shall keep confidential any information acquired in taking
the acknowledgment.



Insert 6-12

Section #. 48.375 (1) (b) 1. of the statutes is amended to read:

A

48.375 (4) (b) 1. ~~The person who intends to perform or induce the abortion believes, to the best of his or her medical judgment based on the facts of the case before him or her, that a medical emergency exists that complicates the pregnancy so as to require an immediate abortion.~~

History: 1991 a. 263, 315; 1993 a. 112, 230, 446; 1995 a. 77, 275, 309.

, as defined in 4. 253.10 (2)(d),

(end insert)

Insert 6-25

Section #. 48.375 (4) (b) 3. of the statutes is amended to read:

48.375 (4) (b) 3. The minor provides the person who intends to perform or induce the abortion with a written statement, signed and dated by the minor, that a parent who has legal custody of the minor, or the minor's guardian or legal custodian, if one has been appointed, ~~or an adult family member of the minor,~~ or a foster parent or treatment foster parent, if the minor has been placed in a foster home or treatment foster home and the minor's parent has signed a waiver granting the department, a county department, the foster parent or the treatment foster parent the authority to consent to medical services or treatment on behalf of the minor, has inflicted abuse on the minor. The person who intends to perform or induce the abortion shall place the statement in the minor's medical record. The person who intends to perform or induce the abortion shall report the abuse as required under s. 48.981 (2).

History: 1991 a. 263, 315; 1993 a. 112, 230, 446; 1995 a. 77, 275, 309.

(End Insert)

Insert 10-20

~~Section # 48.375 (7) (f) of the statutes is amended to read:~~

48.375 (7) (f) *Certain persons barred from proceedings.* No parent, or guardian or legal custodian, if one has been appointed, or foster parent or treatment foster parent, if the minor has been placed in a foster home or treatment foster home and the minor's parent has signed a waiver granting the department, a county department, the foster parent or the treatment foster parent the authority to consent to medical services or treatment on behalf of the minor, or adult family member, of any minor who is seeking a court determination under this subsection may attend, intervene or give evidence in any proceeding under this subsection.

History: 1991 a. 263, 315; 1993 a. 112, 230, 446; 1995 a. 77, 275, 309.

Strike

Insert 10-20

Section #. 69.186 (1) (j) of the statutes is amended to read:

69.186 (1) (j) If the patient is a minor, whether consent was provided under s. 48.375 (4) (a) 1. for the abortion and, if so, the relationship of the individual providing consent to the minor; or, if consent under s. 48.375 (4) (a) 1. was not provided, on which of the bases under s. 48.375 (4) (a) 2. or (b) 1., 1g., ~~1m.~~ 2. or 3. the abortion was performed.

History: 1985 a. 315; 1995 a. 309; 1997 a. 27.

(end of insert)

Insert 16-21

(use twice)

Section #. 809.105 (11) (e) of the statutes is amended to read:

limited liability company,

809.105 (11) (e) Counsel for the minor, if any, or the member of the clergy who initiated the appeal, ^{plain space} shall immediately, upon notification under par. (d) that the supreme court has granted or denied the petition, notify the minor. If the supreme court has granted the petition, counsel for the minor, if any, or the member of the clergy who initiated the appeal under this section, ^{plain space} shall hand deliver a certified copy of the order of the supreme court to the person who intends to perform or induce the abortion. If with reasonable diligence the person who intends to perform or induce the abortion cannot be located for delivery, then counsel for the minor, if any, or the member of the clergy who initiated the appeal under this section, ^{plain space} shall leave a certified copy of the order with the person's agent at the person's principal place of business. If a clinic or medical facility is specified in the petition as the corporation, partnership or other unincorporated association that employs the person who intends to perform or induce the abortion, then counsel for the minor, if any, or the member of the clergy who initiated the appeal under this section, if any, shall hand deliver a certified copy of the order to an agent of the corporation, partnership or other unincorporated association at its principal place of business. There may be no service by mail or publication. The person or agent who receives the certified copy of the order under this paragraph shall place the order in the minor's medical record.

History: 1991 a. 263, 315; 1993 a. 213, 446; 1995 a. 27 s. 9126 (19); 1995 a. 201, 224.



Insert 16-21

Section #. 809.105 (13) of the statutes is amended to read:

809.105 (13) CERTAIN PERSONS BARRED FROM PROCEEDINGS. No parent, or guardian or legal custodian, if one has been appointed, or foster parent or treatment foster parent, if the minor has been placed in a foster home or treatment foster home, and the minor's parent has signed a waiver granting the department of health and family services, a county department under s. 46.215, 46.22 or 46.23, the foster parent or the treatment foster parent the authority to consent to medical services or treatment on behalf of the minor, ~~or adult family member, as defined in s. 48.375 (2) (b),~~ of any minor who has initiated an appeal under this section may attend or intervene in any proceeding under this section.

History: 1991 a. 263, 315; 1993 a. 213, 446; 1995 a. 27 s. 9126 (19); 1995 a. 201, 224.

plain space

(end of insert)

Insert A-1

This bill eliminates the authority of an adult family member to consent to an unemancipated minor's abortion. The bill also requires the minor and the parent, guardian, legal custodian, foster parent or treatment foster parent who consents to the minor's abortion to sign and acknowledge, that is, declare that they have ~~executed~~ signed the consent document for the purpose stated in the consent document, before a notary public. The bill requires the notary public, in taking the acknowledgments, to determine, either from personal knowledge or satisfactory evidence, that the persons appearing before the notary public and making the acknowledgments are the persons whose signatures are on the consent document and that the person signing the consent document, ~~is~~ ^{is} the parent, guardian, legal custodian, foster parent or treatment

~~Insert A-1~~

of the minor

Foster parent is, in fact, the parent, guardian, legal custodian, foster parent, or treatment foster parent of the minor and does, in fact, have the authority to consent to medical services or treatment on behalf of the minor. The bill also requires the notary public to keep confidential any information acquired in taking the acknowledgment.

or judicial waiver

915-915
(F)(B) Exceptions to consent requirement.
(end of insert)

Insert A-2

Under current law, the consent or judicial waiver requirement also does not apply if the person who intends to perform or induce the abortion believes, to the best of his or her medical judgment based on the facts of the case before him or her, that a medical emergency exists that complicates the pregnancy so as to require an immediate abortion. This bill provides that the consent or judicial waiver requirement does not apply if a medical emergency, as defined in the law requiring & voluntary and informed consent to any abortion (informed consent law) exists. The informed consent law defines a "medical emergency" as a condition, ~~in~~ that, in a physician's reasonable medical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death or for

Asset A2)

which a 24-hour delay in the performance or inducement of the abortion will create a serious risk of substantial and irreversible impairment of one or more of the woman's major bodily functions.

In addition, under current law, the consent or judicial waiver requirement does not apply if a psychiatrist or psychologist states in writing that he or she believes that the minor is likely to commit suicide rather than seek consent or a judicial waiver. This bill eliminates that exception.

~~sub-sec 2~~ (I) Civil liability for violation of consent or judicial waiver requirement.

(end of part)

12 1/15/98 Mary Klarer

① Minor's signature need not be notarized

② Parent must show notary public one or more

ID's w/ name, address, signature and photo



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-0505/A
GMM:wlj&ksh:lp

2
RMR

1999 BILL

REGEN

1 AN ACT *to repeal* 48.375 (2) (b), 48.375 (2) (em), 48.375 (4) (b) 1m. and 48.375 (7)
2 (bm); and *to amend* 46.24, 48.23 (1) (cm), 48.257 (1) (h), 48.257 (4), 48.27 (9),
3 48.273 (4) (b), 48.375 (2) (c), 48.375 (4) (a) 1., 48.375 (4) (b) 1., 48.375 (4) (b) 3.,
4 48.375 (6), 48.375 (7) (a) (intro.), 48.375 (7) (a) 4., 48.375 (7) (b) (intro.), 48.375
5 (7) (d), 48.375 (7) (f), 69.186 (1) (j), 809.105 (2), 809.105 (3) (a), 809.105 (3) (d),
6 809.105 (5), 809.105 (8), 809.105 (8m), 809.105 (9), 809.105 (10), 809.105 (11)
7 (a) (intro.), 809.105 (11) (a) 3., 809.105 (11) (cm), 809.105 (11) (d), 809.105 (11)
8 (e), 809.105 (13) and 895.037 (3) (a) of the statutes; **relating to:** the
9 requirement that an unemancipated minor obtain parental or other consent or
10 a judicial waiver of that consent requirement before she have an abortion.

Analysis by the Legislative Reference Bureau

This bill makes various changes to the law that requires an unemancipated minor to obtain parental or other consent or a judicial waiver of that consent requirement before she may have an abortion (generally referred to as "the parental consent" law).

BILL***Consent or judicial waiver requirement.***

Under current law, subject to certain exceptions, before an unemancipated minor may have an abortion, she must have the written consent of one of her parents; or of her guardian or legal custodian, if one has been appointed; or of an adult family member; or one of her foster parents or treatment foster parents, if the minor has been placed in a foster home or a treatment foster home and the minor's parent has signed a waiver granting the department of health and family services, a county department of human services or social services, the foster parent or the treatment foster parent the authority to consent to medical services or treatment on behalf of the minor; unless the minor obtains a waiver of this requirement from the circuit court. Current law defines "adult family member" as a grandparent, aunt, uncle, sister or brother who is at least 25 years of age.

This bill eliminates the authority of an adult family member to consent to an unemancipated minor's abortion. The bill also requires ^{he or she has} the minor and the parent, guardian, legal custodian, foster parent or treatment foster parent who consents to the minor's abortion to sign and acknowledge, that is, declare that they have signed the consent document for the purpose stated in the consent document, before a notary public. The bill requires the notary public, in taking the acknowledgments, to determine, either from personal knowledge or satisfactory evidence, that the persons appearing before the notary public and making the acknowledgments ^{is} are the persons whose signatures are on the consent document and that the person signing the consent document as the parent, guardian, legal custodian, foster parent or treatment foster parent of the minor is, in fact, the parent, guardian, legal custodian, foster parent or treatment foster parent of the minor and does, in fact, have the authority to consent to medical services or treatment on behalf of the minor. The bill also requires the notary public to keep confidential any information acquired in taking the acknowledgment. ^{that the person}

Exceptions to consent or judicial waiver requirement.

~~Under current law, the consent or judicial waiver requirement does not apply if the minor provides the person who intends to perform or induce the abortion with a written statement that a parent who has legal custody of the minor, a guardian or legal custodian, an adult family member or a foster parent under the circumstances described above has abused the minor. This bill eliminates from this exception abuse by an adult family member.~~

Under current law, the consent or judicial waiver requirement also does not apply if the person who intends to perform or induce the abortion believes, to the best of his or her medical judgment based on the facts of the case before him or her, that a medical emergency exists that complicates the pregnancy so as to require an immediate abortion. This bill provides that the consent or judicial waiver requirement does not apply if a medical emergency, as defined in the law, requiring voluntary and informed consent to an abortion (informed consent law) exists. The informed consent law defines a "medical emergency" as a condition that, in a physician's reasonable medical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death or for which a 24-hour delay in the performance or inducement of the

BILL

abortion will create a serious risk of substantial and irreversible impairment of one or more of the woman's major bodily functions.

In addition, under current law, the consent or judicial waiver requirement does not apply if a psychiatrist or psychologist states in writing that he or she believes that the minor is likely to commit suicide rather than seek consent or a judicial waiver. This bill eliminates that exception.

Civil liability for violation of consent or judicial waiver requirement.

Under current law, a person who intentionally performs or induces an abortion on or for a minor without prior consent or waiver of the consent requirement by a court is liable to the minor and to the minor's parent, guardian and legal custodian for damages arising out of the performance or inducement of the abortion. This bill eliminates the requirement that the violation of the consent or judicial waiver requirement be intentional.

Judicial waiver procedures.

Under current law, a minor who is seeking an abortion, or a member of the clergy on behalf of the minor, may petition a circuit court for a waiver of the consent requirement. If the minor files a petition on her own behalf, the minor must be present at an initial appearance at which the court appoints counsel for the minor and sets a date for a hearing to determine whether the minor is mature and well-informed enough to make the abortion decision on her own or whether the performance or inducement of an abortion is in the minor's best interests. If a member of the clergy files a petition on behalf of the minor, the member of the clergy may be present at the initial appearance instead of the minor and the court need not appoint counsel for the minor or set a date for a hearing on the petition. Instead, the member of the clergy must file with the petition an affidavit stating that the member of the clergy has explored with the minor alternative choices for managing the minor's pregnancy, including keeping the baby or placing the baby for adoption, and has discussed with the minor the possibility of obtaining consent for the abortion and whether or not obtaining that consent would be in the minor's best interests. The court may grant the petition, without hearing, based on the member of the clergy's affidavit.

This bill eliminates the option of permitting a member of the clergy to file a petition and affidavit on behalf of the minor. Under the bill, the minor must file her own petition and be present at the initial appearance, and the court must appoint counsel for the minor and hold a hearing on the petition.

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 46.24 of the statutes is amended to read:

BILL**1 46.24 Assistance to minors concerning parental consent for abortion.**

2 If a minor who is contemplating an abortion requests assistance from a county
3 department under s. 46.215, 46.22 or 46.23 in seeking the consent of the minor's
4 parent, guardian or legal custodian, ~~or in seeking the consent of an adult family~~
5 ~~member, as defined in s. 48.375 (2) (b),~~ for the contemplated abortion or in seeking
6 a waiver from the circuit court, the county department shall provide assistance,
7 including, if so requested, accompanying the minor as appropriate.

8 **SECTION 2.** 48.23 (1) (cm) of the statutes is amended to read:

9 48.23 (1) (cm) Any minor who is subject to the jurisdiction of the circuit court
10 under s. 48.16 ~~and who is required to appear in court~~ shall be represented by counsel.

11 **SECTION 3.** 48.257 (1) (h) of the statutes is amended to read:

12 48.257 (1) (h) If the minor is not represented by counsel, the place where and
13 the manner in which the minor wishes to be notified of proceedings under s. 48.375
14 (7) until appointment of counsel under s. 48.375 (7) (a) 1. ~~If the petition is filed by~~
15 ~~a member of the clergy on behalf of the minor, the place where and manner in which~~
16 ~~the member of the clergy wishes to be notified of proceedings under s. 48.375 (7).~~

17 **SECTION 4.** 48.257 (4) of the statutes is amended to read:

18 48.257 (4) The clerk of circuit court shall give a copy of the petition to the minor
19 ~~or to the member of the clergy who files a petition on behalf of the minor, if any.~~

20 **SECTION 5.** 48.27 (9) of the statutes is amended to read:

21 48.27 (9) Subsections (1) to (8) do not apply in any proceeding under s. 48.375
22 (7). For proceedings under s. 48.375 (7), the circuit court shall provide notice only
23 to the minor, her counsel, ~~if any, the member of the clergy who filed the petition on~~
24 ~~behalf of the minor, if any,~~ and her guardian ad litem, if any. The notice shall contain
25 the title and case number of the proceeding, and the nature, location, date and time

BILL

1 of the hearing or other proceeding. Notice to the minor ~~or to the member of the clergy,~~
2 if any, shall be provided as requested under s. 48.257 (1) (h) and, after appointment
3 of the minor's counsel, ~~if any,~~ by her counsel.

4 **SECTION 6.** 48.273 (4) (b) of the statutes is amended to read:

5 48.273 (4) (b) Personal service is required for notice of all proceedings under
6 s. 48.375 (7), except that, if the minor is not represented by counsel, notice to the
7 minor shall be in the manner and at the place designated by the minor in the petition
8 under s. 48.257 (1) until appointment of the minor's counsel, ~~if any,~~ under s. 48.375
9 (7) (a) 1. Notice shall be served immediately for any proceeding under s. 48.375 (7)
10 unless the minor waives the immediate notice. If the minor waives the immediate
11 notice, the notice shall be served at least 24 hours before the time of the hearing
12 under s. 48.375 (7) (b) or any other proceeding under s. 48.375 (7). A minor may, in
13 acknowledging receipt of service of the notice, sign the name "Jane Doe" in lieu of
14 providing the minor's full signature.

15 **SECTION 7.** 48.375 (2) (b) of the statutes is repealed.

16 **SECTION 8.** 48.375 (2) (c) of the statutes is amended to read:

17 48.375 (2) (c) "Counselor" means a physician including a physician specializing
18 in psychiatry, a licensed psychologist, as defined in s. 455.01 (4), or an ordained
19 member of the clergy, as defined in s. 765.002 (1). "Counselor" does not include any
20 person who is employed by or otherwise affiliated with a reproductive health care
21 facility, a family planning clinic or a family planning agency; any person affiliated
22 with the performance of abortions, except abortions performed to save the life of the
23 mother; or any person who may profit from giving advice to seek an abortion.

24 **SECTION 9.** 48.375 (2) (em) of the statutes is repealed.

25 **SECTION 10.** 48.375 (4) (a) 1. of the statutes is amended to read:

BILL

consisting of one or more forms of identification
containing the name, address, signature and
photograph of the person

1 48.375 (4) (a) 1. The person or the person's agent has, either directly or through
 2 a referring physician or his or her agent, received and made part of the minor's
 3 medical record, under the requirements of s. 253.10, the voluntary and informed
 4 written consent of the minor and the voluntary and informed written consent of one
 5 of her parents; or of the minor's guardian or legal custodian, if one has been
 6 appointed; ~~or of an adult family member of the minor;~~ or of one of the minor's foster
 7 parents or treatment foster parents, if the minor has been placed in a foster home
 8 or treatment foster home and the minor's parent has signed a waiver granting the
 9 department, a county department, the foster parent or the treatment foster parent
 10 the authority to consent to medical services or treatment on behalf of the minor. The
 11 minor and her parent, guardian, legal custodian, foster parent or treatment foster
 12 parent shall sign and acknowledge the consent document before a notary public. In
 13 taking the acknowledgements, the notary public shall determine, either from
 14 personal knowledge or ^{from} satisfactory evidence, that the persons appearing before the
 15 notary public and making the acknowledgments ^{is} are the persons whose true
 16 signatures ^{is} are on the consent document and that the person signing the consent
 17 document in the capacity of parent, guardian, legal custodian, foster parent or
 18 treatment foster parent of the minor is, in fact, the parent, guardian, legal custodian,
 19 foster parent or treatment foster parent of the minor and does, in fact, have the
 20 authority to consent to medical services or treatment on behalf of the minor. A notary
 21 public who takes an acknowledgment under this subdivision shall keep confidential
 22 any information acquired in taking the acknowledgment.

✓ appearing before the notary public and making the acknowledgment

SECTION 11. 48.375 (4) (b) 1. of the statutes is amended to read:

24 48.375 (4) (b) 1. ~~The person who intends to perform or induce the abortion~~
 25 ~~believes, to the best of his or her medical judgment based on the facts of the case~~

The notary public shall also determine, either from personal knowledge or from satisfactory evidence,

BILL

1 before him or her, that a A medical emergency, as defined in s. 253.10 (2) (d), exists
2 that complicates the pregnancy so as to require an immediate abortion.

3 **SECTION 12.** 48.375 (4) (b) 1m. of the statutes is repealed.

4 **SECTION 13.** 48.375 (4) (b) 3. of the statutes is amended to read:

5 48.375 (4) (b) 3. The minor provides the person who intends to perform or
6 induce the abortion with a written statement, signed and dated by the minor, that
7 a parent who has legal custody of the minor, or the minor's guardian or legal
8 custodian, if one has been appointed, ~~or an adult family member of the minor~~, or a
9 foster parent or treatment foster parent, if the minor has been placed in a foster home
10 or treatment foster home and the minor's parent has signed a waiver granting the
11 department, a county department, the foster parent or the treatment foster parent
12 the authority to consent to medical services or treatment on behalf of the minor, has
13 inflicted abuse on the minor. The person who intends to perform or induce the
14 abortion shall place the statement in the minor's medical record. The person who
15 intends to perform or induce the abortion shall report the abuse as required under
16 s. 48.981 (2).

17 **SECTION 14.** 48.375 (6) of the statutes is amended to read:

18 48.375 (6) RIGHT TO PETITION COURT FOR WAIVER. Any pregnant minor who is
19 seeking an abortion in this state, ~~and any member of the clergy on the minor's behalf~~,
20 may file a petition specified under s. 48.257 with any court for a waiver of the
21 parental consent requirement under sub. (4) (a) 1.

22 **SECTION 15.** 48.375 (7) (a) (intro.) of the statutes is amended to read:

23 48.375 (7) (a) *Receipt of petition; initial appearance.* (intro.) On the date that
24 a petition under s. 48.257 is filed, or if it is impossible to do so on that day, on the next
25 calendar day, the court shall hold an initial appearance in chambers at which the

BILL

1 minor ~~or the member of the clergy who filed the petition on behalf of the minor, if any,~~
2 is present and shall do all of the following:

3 **SECTION 16.** 48.375 (7) (a) 4. of the statutes is amended to read:

4 48.375 (7) (a) 4. Notify the minor, the minor's counsel, ~~if any, the member of the~~
5 ~~clergy who filed the petition on behalf of the minor, if any,~~ and the minor's guardian
6 ad litem, if any, of the time, date and place of the hearing.

7 **SECTION 17.** 48.375 (7) (b) (intro.) of the statutes is amended to read:

8 48.375 (7) (b) *Hearing; evidence.* (intro.) The court shall hold a confidential
9 hearing on a the petition ~~that is filed by a minor.~~ The hearing shall be held in
10 chambers, unless a public fact-finding hearing is demanded by the minor through
11 her counsel. At the hearing, the court shall consider the report of the guardian ad
12 litem, if any, and hear evidence relating to all of the following:

13 **SECTION 18.** 48.375 (7) (bm) of the statutes is repealed.

14 **SECTION 19.** 48.375 (7) (d) of the statutes is amended to read:

15 48.375 (7) (d) *Time limit.* 1. The court shall make the determination under par.
16 (c) and issue an order *within 3 calendar days after the initial appearance unless the*
17 *minor and her counsel, or the member of the clergy who filed the petition on behalf*
18 *of the minor, if any, consent to an extension of the time period.* The order shall be
19 effective immediately. The court shall prepare and file with the clerk of court
20 findings of fact, conclusions of law and a final order granting or denying the petition
21 within 24 hours after making the determination and order. If the court grants the
22 petition, the court shall immediately so notify the minor by personal service on her
23 counsel, ~~or the member of the clergy who filed the petition on behalf of the minor, if~~
24 ~~any,~~ of a certified copy of the court's order granting the petition. If the court denies
25 the petition, the court shall immediately so notify the minor by personal service on

BILL

1 her counsel, ~~or the member of the clergy who filed the petition on behalf of the minor,~~
2 if any, of a copy of the court's order denying the petition and shall also notify the minor
3 by her counsel, ~~or the member of the clergy who filed the petition on behalf of the~~
4 ~~minor, if any,~~ that she has a right to initiate an appeal under s. 809.105.

5 1m. Except as provided under s. 48.315 (1) (b), (c) and (f), if the court fails to
6 comply with the time limits specified under subd. 1. without the prior consent of the
7 minor and the minor's counsel, ~~if any, or the member of the clergy who filed the~~
8 ~~petition on behalf of the minor, if any,~~ the minor and the minor's counsel, ~~if any, or~~
9 ~~the member of the clergy, if any,~~ shall select a temporary reserve judge, as defined
10 in s. 753.075 (1) (b), to make the determination under par. (c) and issue an order
11 granting or denying the petition and the chief judge of the judicial administrative
12 district in which the court is located shall assign the temporary reserve judge
13 selected by the minor and the minor's counsel, ~~if any, or the member of the clergy, if~~
14 ~~any,~~ to make the determination and issue the order. A temporary reserve judge
15 assigned under this subdivision to make a determination under par. (c) and issue an
16 order granting or denying a petition shall make the determination and issue the
17 order within 2 calendar days after the assignment, unless the minor and her counsel,
18 ~~if any, or the member of the clergy who filed the petition on behalf of the minor, if any,~~
19 consent to an extension of that time period. The order shall be effective immediately.
20 The court shall prepare and file with the clerk of court findings of fact, conclusions
21 of law and a final order granting or denying the petition, and shall notify the minor
22 of the court's order, as provided under subd. 1.

23 2. Counsel for the minor, ~~or the member of the clergy who filed the petition on~~
24 ~~behalf of the minor, if any,~~ shall immediately, upon notification under subd. 1. or 1m.
25 that the court has granted or denied the petition, notify the minor. If the court has

BILL**SECTION 19**

1 granted the petition, counsel for the minor, ~~or the member of the clergy who filed the~~
2 ~~petition on behalf of the minor, if any,~~ shall hand deliver a certified copy of the court
3 order to the person who intends to perform or induce the abortion. If with reasonable
4 diligence the person who intends to perform or induce the abortion cannot be located
5 for delivery, then counsel for the minor, ~~or the member of the clergy who filed the~~
6 ~~petition on behalf of the minor, if any,~~ shall leave a certified copy of the order with
7 the person's agent at the person's principal place of business. If a clinic or medical
8 facility is specified in the petition as the corporation, limited liability company,
9 partnership or other unincorporated association that employs the person who
10 intends to perform or induce the abortion, then counsel for the minor, ~~or the member~~
11 ~~of the clergy who filed the petition on behalf of the minor, if any,~~ shall hand deliver
12 a certified copy of the order to an agent of the corporation, limited liability company,
13 partnership or other unincorporated association at its principal place of business.
14 There may be no service by mail or publication. The person or agent who receives
15 the certified copy of the order under this subdivision shall place the copy in the
16 minor's medical record.

17 **SECTION 20.** 48.375 (7) (f) of the statutes is amended to read:

18 48.375 (7) (f) *Certain persons barred from proceedings.* No parent, or guardian
19 or legal custodian, if one has been appointed, or foster parent or treatment foster
20 parent, if the minor has been placed in a foster home or treatment foster home and
21 the minor's parent has signed a waiver granting the department, a county
22 department, the foster parent or the treatment foster parent the authority to consent
23 to medical services or treatment on behalf of the minor, ~~or adult family member,~~ of
24 any minor who is seeking a court determination under this subsection may attend,
25 intervene or give evidence in any proceeding under this subsection.

BILL

1 **SECTION 21.** 69.186 (1) (j) of the statutes is amended to read:

2 69.186 (1) (j) If the patient is a minor, whether consent was provided under s.
3 48.375 (4) (a) 1. for the abortion and, if so, the relationship of the individual providing
4 consent to the minor; or, if consent under s. 48.375 (4) (a) 1. was not provided, on
5 which of the bases under s. 48.375 (4) (a) 2. or (b) 1., 1g., ~~1m.~~ 2. or 3. the abortion was
6 performed.

7 **SECTION 22.** 809.105 (2) of the statutes is amended to read:

8 809.105 (2) INITIATING AN APPEAL. Only a minor may initiate an appeal under
9 this section. The minor shall initiate the appeal by filing, ~~or by a member of the clergy~~
10 ~~filing on the minor's behalf,~~ a notice of appeal with the clerk of the trial court in which
11 the order appealed from was entered and shall specify in the notice of appeal the
12 order appealed from. At the same time, the minor ~~or member of the clergy~~ shall notify
13 the court of appeals of the filing of the appeal by sending a copy of the notice of appeal
14 to the clerk of the court of appeals. The clerk of the trial court shall assist the minor
15 ~~or member of the clergy~~ in sending a copy of the notice of appeal to the clerk of the
16 court of appeals. The minor may use the name "Jane Doe" instead of her name on
17 the notice of appeal and all other papers filed with the court of appeals.

18 **SECTION 23.** 809.105 (3) (a) of the statutes is amended to read:

19 809.105 (3) (a) *Fee.* No fee for filing an appeal in the court of appeals under this
20 section may be required of a minor ~~or of a member of the clergy who files an appeal~~
21 ~~under this section on behalf of the minor.~~

22 **SECTION 24.** 809.105 (3) (d) of the statutes is amended to read:

23 809.105 (3) (d) *Statement on transcript.* A minor ~~or member of the clergy~~ may
24 not be required to file a statement on transcript in an appeal under this section.

25 **SECTION 25.** 809.105 (5) of the statutes is amended to read:

BILL

1 809.105 (5) TRANSCRIPT OF REPORTER'S NOTES. At the time that a minor or
2 ~~member of the clergy~~ files a notice of appeal, the minor ~~or member of the clergy~~ shall
3 make arrangements with the reporter for the preparation of a transcript of the
4 reporter's notes of the proceedings under s. 48.375 (7). The reporter shall file the
5 transcript with the trial court within 2 calendar days after the notice of appeal is
6 filed. The county of the court that held the proceeding under s. 48.375 (7) shall pay
7 the expense of transcript preparation under this subsection.

8 **SECTION 26.** 809.105 (8) of the statutes is amended to read:

9 809.105 (8) ASSIGNMENT AND ADVANCEMENT OF CASES. The court of appeals shall
10 take cases appealed under this section in an order that ensures that a judgment is
11 made within 4 calendar days after the appeal has been filed in the court of appeals.
12 The time limit under this subsection may be extended with the consent of the minor
13 and her counsel, ~~if any, or the member of the clergy who initiated the appeal under~~
14 ~~this section, if any.~~

15 **SECTION 27.** 809.105 (8m) of the statutes is amended to read:

16 809.105 (8m) ORAL ARGUMENT. *If the court of appeals determines that a case*
17 *appealed under this section is to be submitted with oral argument, the oral argument*
18 *shall be held in chambers or, on motion of the minor through her counsel or through*
19 ~~*the member of the clergy who filed the appeal under this section, if any,*~~ *or on the*
20 *court of appeals' own motion, by telephone, unless the minor through her counsel or*
21 ~~*the member of the clergy*~~ *demands that the oral argument be held in open court.*

22 **SECTION 28.** 809.105 (9) of the statutes is amended to read:

23 809.105 (9) COSTS. The court of appeals may not assess costs against a minor
24 ~~or member of the clergy~~ in an appeal under this section.

25 **SECTION 29.** 809.105 (10) of the statutes is amended to read:

BILL

1 809.105 (10) REMITTITUR. (a) A judgment by the court of appeals under this
2 section is effective immediately, without transmittal to the trial court, as an order
3 either granting or denying the petition. If the court of appeals reverses a trial court
4 order denying a petition under s. 48.375 (7), the court of appeals shall immediately
5 so notify the minor by personal service on her counsel or the member of the clergy
6 ~~who initiated the appeal under this section, if any,~~ of a certified copy of the order of
7 the court of appeals granting the minor's petition. If the court of appeals affirms the
8 trial court order, it shall immediately so notify the minor by personal service on her
9 ~~counsel or the member of the clergy who initiated the appeal under this section, if~~
10 ~~any,~~ of a copy of the order of the court of appeals denying the petition and shall also
11 notify the minor by her counsel ~~or the member of the clergy who initiated the appeal~~
12 ~~under this section on behalf of the minor, if any,~~ that she may, under sub. (11), file
13 a petition for review with the supreme court under s. 809.62. The court of appeals
14 shall pay the expenses of service of notice under this subsection. The clerk of the
15 court of appeals shall transmit to the trial court the judgment and opinion of the court
16 of appeals and the record in the case filed under sub. (4), within 31 days after the date
17 that the judgment and opinion of the court of appeals are filed. If a petition for review
18 is filed under sub. (11), the transmittal shall be made within 31 days after the date
19 that the supreme court rules on the petition for review.

20 (b) Counsel for the minor, ~~if any, or the member of the clergy who initiated the~~
21 ~~appeal under this section, if any,~~ shall immediately, upon notification under par. (a)
22 that the court of appeals has granted or denied the petition, notify the minor. If the
23 court of appeals has granted the petition, counsel for the minor, ~~if any, or the member~~
24 ~~of the clergy who initiated the appeal under this section, if any,~~ shall hand deliver
25 a certified copy of the order of the court of appeals to the person who intends to

BILL

1 perform or induce the abortion. If with reasonable diligence the person who intends
2 to perform or induce the abortion cannot be located for delivery, then counsel for the
3 minor, ~~if any, or the member of the clergy who initiated the appeal under this section,~~
4 ~~if any,~~ shall leave a certified copy of the order with the person's agent at the person's
5 principal place of business. If a clinic or medical facility is specified in the petition
6 as the corporation, limited liability company, partnership or other unincorporated
7 association that employs the person who intends to perform or induce the abortion,
8 then counsel for the minor, ~~if any, or the member of the clergy who initiated the~~
9 ~~appeal under this section, if any,~~ shall hand deliver a certified copy of the order to an
10 agent of the corporation, limited liability company, partnership or other
11 unincorporated association at its principal place of business. There may be no
12 service by mail or publication. The person or agent who receives the certified copy
13 of the order under this paragraph shall place the copy in the minor's medical record.

14 **SECTION 30.** 809.105 (11) (a) (intro.) of the statutes is amended to read:

15 809.105 (11) (a) (intro.) Only a minor ~~or the member of the clergy who initiated~~
16 ~~the appeal under this section, if any,~~ may initiate a review of an appeal under this
17 section. The petition for review of an appeal in the supreme court shall contain:

18 **SECTION 31.** 809.105 (11) (a) 3. of the statutes is amended to read:

19 809.105 (11) (a) 3. The judgment and opinion of the court of appeals, and the
20 findings of fact, conclusions of law and final order of the trial court that were
21 furnished to the court of appeals. The court of appeals shall provide a copy of these
22 papers to the minor, ~~if any, the member of the clergy who initiated the appeal under~~
23 ~~this section, if any,~~ her counsel or her guardian ad litem, ~~if any,~~ immediately upon
24 request.

25 **SECTION 32.** 809.105 (11) (cm) of the statutes is amended to read:

BILL

1 809.105 (11) (cm) If the supreme court determines that a case reviewed under
2 this subsection is to be submitted with oral argument, the oral argument shall be
3 held in chambers or, on motion of the minor through her counsel ~~or through the~~
4 ~~member of the clergy who initiated the appeal under this section, if any,~~ or on the
5 supreme court's own motion, by telephone, unless the minor through her counsel ~~or~~
6 ~~the member of the clergy~~ demands that the oral argument be held in open court.

7 **SECTION 33.** 809.105 (11) (d) of the statutes is amended to read:

8 809.105 (11) (d) A judgment or decision by the supreme court under this section
9 is effective immediately, without transmittal to the trial court, as an order either
10 granting or denying the petition. If the supreme court reverses a court of appeals
11 order affirming a trial court order denying a petition under s. 48.375 (7), the supreme
12 court shall immediately so notify the minor by personal service on her counsel, ~~if any,~~
13 ~~or on the member of the clergy who initiated the appeal under this section, if any,~~ of
14 a certified copy of the order of the supreme court granting the minor's petition. If the
15 supreme court affirms the order of the court of appeals, it shall immediately so notify
16 the minor by her counsel ~~or by the member of the clergy who initiated the appeal~~
17 ~~under this section, if any.~~ The clerk of the supreme court shall transmit to the trial
18 court the judgment, or decision, and opinion of the supreme court and the complete
19 record in the case within 31 days after the date that the judgment, or decision, and
20 opinion of the supreme court are filed. The supreme court shall pay the expense of
21 service of notice under this subsection.

22 **SECTION 34.** 809.105 (11) (e) of the statutes is amended to read:

23 809.105 (11) (e) Counsel for the minor, ~~if any, or the member of the clergy who~~
24 ~~initiated the appeal under this section, if any,~~ shall immediately, upon notification
25 under par. (d) that the supreme court has granted or denied the petition, notify the

BILL

1 minor. If the supreme court has granted the petition, counsel for the minor, ~~if any,~~
2 ~~or the member of the clergy who initiated the appeal under this section, if any,~~ shall
3 hand deliver a certified copy of the order of the supreme court to the person who
4 intends to perform or induce the abortion. If with reasonable diligence the person
5 who intends to perform or induce the abortion cannot be located for delivery, then
6 counsel for the minor, ~~if any, or the member of the clergy who initiated the appeal~~
7 ~~under this section, if any,~~ shall leave a certified copy of the order with the person's
8 agent at the person's principal place of business. If a clinic or medical facility is
9 specified in the petition as the corporation, limited liability company, partnership or
10 other unincorporated association that employs the person who intends to perform or
11 induce the abortion, then counsel for the minor, ~~if any, or the member of the clergy~~
12 ~~who initiated the appeal under this section, if any,~~ shall hand deliver a certified copy
13 of the order to an agent of the corporation, limited liability company, partnership or
14 other unincorporated association at its principal place of business. There may be no
15 service by mail or publication. The person or agent who receives the certified copy
16 of the order under this paragraph shall place the order in the minor's medical record.

17 **SECTION 35.** 809.105 (13) of the statutes is amended to read:

18 809.105 (13) CERTAIN PERSONS BARRED FROM PROCEEDINGS. No parent, or
19 guardian or legal custodian, if one has been appointed, or foster parent or treatment
20 foster parent, if the minor has been placed in a foster home or treatment foster home,
21 and the minor's parent has signed a waiver granting the department of health and
22 family services, a county department under s. 46.215, 46.22 or 46.23, the foster
23 parent or the treatment foster parent the authority to consent to medical services or
24 treatment on behalf of the minor, ~~or adult family member, as defined in s. 48.375 (2)~~

BILL

1 ~~(b)~~, of any minor who has initiated an appeal under this section may attend or
2 intervene in any proceeding under this section.

3 **SECTION 36.** 895.037 (3) (a) of the statutes is amended to read:

4 895.037 (3) (a) A person who ~~intentionally~~ violates s. 48.375 (4) is liable to the
5 minor on or for whom the abortion was performed or induced and to the minor's
6 parent, guardian and legal custodian for damages arising out of the performance or
7 inducement of the abortion including, but not limited to, damages for personal injury
8 and emotional and psychological distress.

9 **SECTION 37. Initial applicability.**

10 (1) **ABORTIONS PERFORMED OR INDUCED.** The treatment of sections 46.24, 48.375
11 (2) (b) and (4) (a) 1. and (b) 1., 1m. and 3., 69.186 (1) (j) and 895.037 (3) (a) of the
12 statutes first applies to abortions performed or induced on the effective date of this
13 subsection.

14 (2) **WAIVER PETITIONS FILED.** The treatment of sections 48.23 (1) (cm), 48.257 (1)
15 (h) and (4), 48.27 (9), 48.273 (4) (b), 48.375 (2) (c) and (em), (6) and (7) (a) (intro.) and
16 4., (b) (intro.), (bm), (d) and (f) and 809.105 (2), (3) (a) and (d), (5), (8), (8m), (9), (10),
17 (11)(a) (intro.) and 3., (cm), (d) and (e) and (13) of the statutes first applies to petitions
18 filed to initiate a proceeding under section 48.375 (7) of the statutes, as affected by
19 this act, on the effective date of this subsection.

20

(END)

**SUBMITTAL
FORM**

**LEGISLATIVE REFERENCE BUREAU
Legal Section Telephone: 266-3561
5th Floor, 100 N. Hamilton Street**

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and sign on the appropriate line(s) below.

Date: 1/20/99

To: Senator Welch

Relating to LRB drafting number: LRB-0505

Topic

Parental consent for a minor's abortion

Subject(s)

Children - miscellaneous

1. **JACKET** the draft for introduction _____

in the **Senate** or the **Assembly** _____ (check only one). Only the requester under whose name the drafting request is entered in the LRB's drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. **REDRAFT.** See the changes indicated or attached _____.

A revised draft will be submitted for your approval with changes incorporated.

3. Obtain **FISCAL ESTIMATE NOW.** prior to introduction _____.

If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

Gordon M. Malaise, Senior Legislative Attorney
Telephone: (608) 266-9738

Les Wakfield

2/3/99

13

Conform Analysis to Companion

LRB-1990/1

BILL***Consent or judicial waiver requirement.***

Under current law, subject to certain exceptions, before an unemancipated minor may have an abortion, she must have the written consent of one of her parents; or of her guardian or legal custodian, if one has been appointed; or of an adult family member; or one of her foster parents or treatment foster parents, if the minor has been placed in a foster home or a treatment foster home and the minor's parent has signed a waiver granting the department of health and family services, a county department of human services or social services, the foster parent or the treatment foster parent the authority to consent to medical services or treatment on behalf of the minor; unless the minor obtains a waiver of this requirement from the circuit court. Current law defines "adult family member" as a grandparent, aunt, uncle, sister or brother who is at least 25 years of age.

This bill eliminates the authority of an adult family member to consent to an unemancipated minor's abortion. The bill also requires the parent, guardian, legal custodian, foster parent or treatment foster parent who consents to the minor's abortion to sign and acknowledge, that is, declare that he or she has signed the consent document for the purpose stated in the consent document, before a notary public. The bill requires the notary public, in taking the acknowledgment, to determine, either from personal knowledge or satisfactory evidence, that the person appearing before the notary public and making the acknowledgment is the person whose signature is on the consent document, that the person is, in fact, the parent, guardian, legal custodian, foster parent or treatment foster parent of the minor and that the person does, in fact, have the authority to consent to medical services or treatment on behalf of the minor. The bill also requires the notary public to keep confidential any information acquired in taking the acknowledgment.

Exceptions to consent or judicial waiver requirement.

Under current law, the consent or judicial waiver requirement also does not apply if the person who intends to perform or induce the abortion believes, to the best of his or her medical judgment based on the facts of the case before him or her, that a medical emergency exists that complicates the pregnancy so as to require an immediate abortion. This bill provides that the consent or judicial waiver requirement does not apply if a medical emergency, as defined in the law requiring voluntary and informed consent to an abortion (informed consent law), exists. The informed consent law defines a "medical emergency" as a condition that, in a physician's reasonable medical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death or for which a 24-hour delay in the performance or inducement of the abortion will create a serious risk of substantial and irreversible impairment of one or more of the woman's major bodily functions.

In addition, under current law, the consent or judicial waiver requirement does not apply if a psychiatrist or psychologist states in writing that he or she believes that the minor is likely to commit suicide rather than seek consent or a judicial waiver. This bill eliminates that exception.



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-0505/1
GMM:wlj&ksh:hmh

3
MR

(p. 2)

SOON

1999 BILL

REGEN

1 AN ACT to ~~repeal~~ 48.375 (2) (b), 48.375 (2) (em), 48.375 (4) (b) 1m. and 48.375 (7)
2 (bm); and to amend 46.24, 48.23 (1) (cm), 48.257 (1) (h), 48.257 (4), 48.27 (9),
3 48.273 (4) (b), 48.375 (2) (c), 48.375 (4) (a) 1., 48.375 (4) (b) 1., 48.375 (4) (b) 3.,
4 48.375 (6), 48.375 (7) (a) (intro.), 48.375 (7) (a) 4., 48.375 (7) (b) (intro.), 48.375
5 (7) (d), 48.375 (7) (f), 69.186 (1) (j), 809.105 (2), 809.105 (3) (a), 809.105 (3) (d),
6 809.105 (5), 809.105 (8), 809.105 (8m), 809.105 (9), 809.105 (10), 809.105 (11)
7 (a) (intro.), 809.105 (11) (a) 3., 809.105 (11) (cm), 809.105 (11) (d), 809.105 (11)
8 (e), 809.105 (13) and 895.037 (3) (a) of the statutes; relating to: the
9 requirement that an unemancipated minor obtain parental or other consent or
10 a judicial waiver of that consent requirement before she ^{has} ~~have~~ an abortion.

Analysis by the Legislative Reference Bureau

This bill makes various changes to the law that requires an unemancipated minor to obtain parental or other consent or a judicial waiver of that consent requirement before she may have an abortion (generally referred to as "the parental consent" law).

BILL***Consent or judicial waiver requirement.***

Under current law, subject to certain exceptions, before an unemancipated minor may have an abortion, she must have the written consent of one of her parents; or of her guardian or legal custodian, if one has been appointed; or of an adult family member; or one of her foster parents or treatment foster parents, if the minor has been placed in a foster home or a treatment foster home and the minor's parent has signed a waiver granting the department of health and family services, a county department of human services or social services, the foster parent or the treatment foster parent the authority to consent to medical services or treatment on behalf of the minor; unless the minor obtains a waiver of this requirement from the circuit court. Current law defines "adult family member" as a grandparent, aunt, uncle, sister or brother who is at least 25 years of age.

This bill eliminates the authority of an adult family member to consent to an unemancipated minor's abortion. The bill also requires the parent, guardian, legal custodian, foster parent or treatment foster parent who consents to the minor's abortion to sign and acknowledge, that is, declare that he or she has signed the consent document for the purpose stated in the consent document, before a notary public. The bill requires the notary public, in taking the acknowledgment, to determine, either from personal knowledge or satisfactory evidence, that the person appearing before the notary public and making the acknowledgment is the person whose signature is on the consent document, that the person is, in fact, the parent, guardian, legal custodian, foster parent or treatment foster parent of the minor and that the person does, in fact, have the authority to consent to medical services or treatment on behalf of the minor. The bill also requires the notary public to keep confidential any information acquired in taking the acknowledgment.

Exceptions to consent or judicial waiver requirement.

Under current law, the consent or judicial waiver requirement ~~also~~ does not apply if the person who intends to perform or induce the abortion believes, to the best of his or her medical judgment based on the facts of the case before him or her, that a medical emergency exists that complicates the pregnancy so as to require an immediate abortion. This bill provides that the consent or judicial waiver requirement does not apply if a medical emergency, as defined in the law, requiring voluntary and informed consent to an abortion (informed consent law) exists. The informed consent law defines a "medical emergency" as a condition that, in a physician's reasonable medical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death or for which a 24-hour delay in the performance or inducement of the abortion will create a serious risk of substantial and irreversible impairment of one or more of the woman's major bodily functions.

In addition, under current law, the consent or judicial waiver requirement does not apply if a psychiatrist or psychologist states in writing that he or she believes that the minor is likely to commit suicide rather than seek consent or a judicial waiver. This bill eliminates that exception.

BILL***Civil liability for violation of consent or judicial waiver requirement.***

Under current law, a person who intentionally performs or induces an abortion on or for a minor without prior consent or waiver of the consent requirement by a court is liable to the minor and to the minor's parent, guardian and legal custodian for damages arising out of the performance or inducement of the abortion. This bill eliminates the requirement that the violation of the consent or judicial waiver requirement be intentional.

Judicial waiver procedures.

Under current law, a minor who is seeking an abortion, or a member of the clergy on behalf of the minor, may petition a circuit court for a waiver of the consent requirement. If the minor files a petition on her own behalf, the minor must be present at an initial appearance at which the court appoints counsel for the minor and sets a date for a hearing to determine whether the minor is mature and well-informed enough to make the abortion decision on her own or whether the performance or inducement of an abortion is in the minor's best interests. If a member of the clergy files a petition on behalf of the minor, the member of the clergy may be present at the initial appearance instead of the minor and the court need not appoint counsel for the minor or set a date for a hearing on the petition. Instead, the member of the clergy must file with the petition an affidavit stating that the member of the clergy has explored with the minor alternative choices for managing the minor's pregnancy, including keeping the baby or placing the baby for adoption, and has discussed with the minor the possibility of obtaining consent for the abortion and whether or not obtaining that consent would be in the minor's best interests. The court may grant the petition, without hearing, based on the member of the clergy's affidavit.

This bill eliminates the option of permitting a member of the clergy to file a petition and affidavit on behalf of the minor. Under the bill, the minor must file her own petition and be present at the initial appearance, and the court must appoint counsel for the minor and hold a hearing on the petition.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

- 1 **SECTION 1.** 46.24 of the statutes is amended to read:
- 2 **46.24 Assistance to minors concerning parental consent for abortion.**
- 3 If a minor who is contemplating an abortion requests assistance from a county
- 4 department under s. 46.215, 46.22 or 46.23 in seeking the consent of the minor's
- 5 parent, guardian or legal custodian, ~~or in seeking the consent of an adult family~~

BILL

1 ~~member, as defined in s. 48.375 (2) (b), for the contemplated abortion or in seeking~~
2 ~~a waiver from the circuit court, the county department shall provide assistance,~~
3 ~~including, if so requested, accompanying the minor as appropriate.~~

4 **SECTION 2.** 48.23 (1) (cm) of the statutes is amended to read:

5 48.23 (1) (cm) Any minor who is subject to the jurisdiction of the circuit court
6 under s. 48.16 ~~and who is required to appear in court~~ shall be represented by counsel.

7 **SECTION 3.** 48.257 (1) (h) of the statutes is amended to read:

8 48.257 (1) (h) If the minor is not represented by counsel, the place where and
9 the manner in which the minor wishes to be notified of proceedings under s. 48.375
10 (7) until appointment of counsel under s. 48.375 (7) (a) 1. ~~If the petition is filed by~~
11 ~~a member of the clergy on behalf of the minor, the place where and manner in which~~
12 ~~the member of the clergy wishes to be notified of proceedings under s. 48.375 (7).~~

13 **SECTION 4.** 48.257 (4) of the statutes is amended to read:

14 48.257 (4) The clerk of circuit court shall give a copy of the petition to the minor
15 ~~or to the member of the clergy who files a petition on behalf of the minor, if any.~~

16 **SECTION 5.** 48.27 (9) of the statutes is amended to read:

17 48.27 (9) Subsections (1) to (8) do not apply in any proceeding under s. 48.375
18 (7). For proceedings under s. 48.375 (7), the circuit court shall provide notice only
19 to the minor, her counsel, ~~if any, the member of the clergy who filed the petition on~~
20 ~~behalf of the minor, if any,~~ and her guardian ad litem, if any. The notice shall contain
21 the title and case number of the proceeding, and the nature, location, date and time
22 of the hearing or other proceeding. Notice to the minor ~~or to the member of the clergy,~~
23 ~~if any,~~ shall be provided as requested under s. 48.257 (1) (h) and, after appointment
24 of the minor's counsel, ~~if any,~~ by her counsel.

25 **SECTION 6.** 48.273 (4) (b) of the statutes is amended to read:

BILL

1 48.273 (4) (b) Personal service is required for notice of all proceedings under
2 s. 48.375 (7), except that, if the minor is not represented by counsel, notice to the
3 minor shall be in the manner and at the place designated by the minor in the petition
4 under s. 48.257 (1) until appointment of the minor’s counsel, ~~if any~~, under s. 48.375
5 (7) (a) 1. Notice shall be served immediately for any proceeding under s. 48.375 (7)
6 unless the minor waives the immediate notice. If the minor waives the immediate
7 notice, the notice shall be served at least 24 hours before the time of the hearing
8 under s. 48.375 (7) (b) or any other proceeding under s. 48.375 (7). A minor may, in
9 acknowledging receipt of service of the notice, sign the name “Jane Doe” in lieu of
10 providing the minor’s full signature.

11 **SECTION 7.** 48.375 (2) (b) of the statutes is repealed.

12 **SECTION 8.** 48.375 (2) (c) of the statutes is amended to read:

13 48.375 (2) (c) “Counselor” means a physician including a physician specializing
14 in psychiatry, a licensed psychologist, as defined in s. 455.01 (4), or an ordained
15 member of the clergy, as defined in s. 765.002 (1). “Counselor” does not include any
16 person who is employed by or otherwise affiliated with a reproductive health care
17 facility, a family planning clinic or a family planning agency; any person affiliated
18 with the performance of abortions, except abortions performed to save the life of the
19 mother; or any person who may profit from giving advice to seek an abortion.

20 **SECTION 9.** 48.375 (2) (em) of the statutes is repealed.

21 **SECTION 10.** 48.375 (4) (a) 1. of the statutes is amended to read:

22 48.375 (4) (a) 1. The person or the person’s agent has, either directly or through
23 a referring physician or his or her agent, received and made part of the minor’s
24 medical record, under the requirements of s. 253.10, the voluntary and informed
25 written consent of the minor and the voluntary and informed written consent of one

BILL

1 of her parents; or of the minor's guardian or legal custodian, if one has been
2 appointed; ~~or of an adult family member of the minor;~~ or of one of the minor's foster
3 parents or treatment foster parents, if the minor has been placed in a foster home
4 or treatment foster home and the minor's parent has signed a waiver granting the
5 department, a county department, the foster parent or the treatment foster parent
6 the authority to consent to medical services or treatment on behalf of the minor. The
7 minor's parent, guardian, legal custodian, foster parent or treatment foster parent
8 shall sign and acknowledge the consent document before a notary public. In taking
9 the acknowledgement, the notary public shall determine, either from personal
10 knowledge or from satisfactory evidence consisting of one or more forms of
11 identification containing the name, address, signature and photograph of the person,
12 that the person appearing before the notary public and making the acknowledgment
13 is the person whose true signature is on the consent document. The notary public
14 shall also determine, either from personal knowledge or from satisfactory evidence,
15 that the person appearing before the notary public and making the
16 acknowledgement is, in fact, the parent, guardian, legal custodian, foster parent or
17 treatment foster parent of the minor and does, in fact, have the authority to consent
18 to medical services or treatment on behalf of the minor. A notary public who takes
19 an acknowledgment under this subdivision shall keep confidential any information
20 acquired in taking the acknowledgment.

21 **SECTION 11.** 48.375 (4) (b) 1. of the statutes is amended to read:

22 48.375 (4) (b) 1. ~~The person who intends to perform or induce the abortion~~
23 ~~believes, to the best of his or her medical judgment based on the facts of the case~~
24 ~~before him or her, that a A medical emergency, as defined in s. 253.10 (2) (d), exists~~
25 ~~that complicates the pregnancy so as to require an immediate abortion.~~

BILL

1 **SECTION 12.** 48.375 (4) (b) 1m. of the statutes is repealed.

2 **SECTION 13.** 48.375 (4) (b) 3. of the statutes is amended to read:

3 48.375 (4) (b) 3. The minor provides the person who intends to perform or
4 induce the abortion with a written statement, signed and dated by the minor, that
5 a parent who has legal custody of the minor, or the minor's guardian or legal
6 custodian, if one has been appointed, ~~or an adult family member of the minor,~~ or a
7 foster parent or treatment foster parent, if the minor has been placed in a foster home
8 or treatment foster home and the minor's parent has signed a waiver granting the
9 department, a county department, ~~the foster parent or the treatment foster parent~~
10 the authority to consent to medical services or treatment on behalf of the minor, has
11 inflicted abuse on the minor. The person who intends to perform or induce the
12 abortion shall place the statement in the minor's medical record. The person who
13 intends to perform or induce the abortion shall report the abuse as required under
14 s. 48.981 (2).

15 **SECTION 14.** 48.375 (6) of the statutes is amended to read:

16 48.375 (6) **RIGHT TO PETITION COURT FOR WAIVER.** Any pregnant minor who is
17 seeking an abortion in this state, ~~and any member of the clergy on the minor's behalf,~~
18 may file a petition specified under s. 48.257 with any court for a waiver of the
19 parental consent requirement under sub. (4) (a) 1.

20 **SECTION 15.** 48.375 (7) (a) (intro.) of the statutes is amended to read:

21 48.375 (7) (a) *Receipt of petition; initial appearance.* (intro.) On the date that
22 a petition under s. 48.257 is filed, or if it is impossible to do so on that day, on the next
23 calendar day, the court shall hold an initial appearance in chambers at which the
24 minor ~~or the member of the clergy who filed the petition on behalf of the minor, if any,~~
25 is present and shall do all of the following:

BILL

1 **SECTION 16.** 48.375 (7) (a) 4. of the statutes is amended to read:

2 48.375 (7) (a) 4. Notify the minor, the minor's counsel, ~~if any, the member of the~~
3 ~~clergy who filed the petition on behalf of the minor, if any,~~ and the minor's guardian
4 ad litem, if any, of the time, date and place of the hearing.

5 **SECTION 17.** 48.375 (7) (b) (intro.) of the statutes is amended to read:

6 48.375 (7) (b) *Hearing; evidence.* (intro.) The court shall hold a confidential
7 hearing on a the petition ~~that is filed by a minor.~~ The hearing shall be held in
8 chambers, unless a public fact-finding hearing is demanded by the minor through
9 her counsel. At the hearing, the court shall consider the report of the guardian ad
10 litem, if any, and hear evidence relating to all of the following:

11 **SECTION 18.** 48.375 (7) (bm) of the statutes is repealed.

12 **SECTION 19.** 48.375 (7) (d) of the statutes is amended to read:

13 48.375 (7) (d) *Time limit.* 1. The court shall make the determination under par.
14 (c) and issue an order within 3 calendar days after the initial appearance unless the
15 minor and her counsel, ~~or the member of the clergy who filed the petition on behalf~~
16 ~~of the minor, if any,~~ consent to an extension of the time period. The order shall be
17 effective immediately. The court shall prepare and file with the clerk of court
18 findings of fact, conclusions of law and a final order granting or denying the petition
19 within 24 hours after making the determination and order. If the court grants the
20 petition, the court shall immediately so notify the minor by personal service on her
21 counsel, ~~or the member of the clergy who filed the petition on behalf of the minor, if~~
22 ~~any,~~ of a certified copy of the court's order granting the petition. If the court denies
23 the petition, the court shall immediately so notify the minor by personal service on
24 her counsel, ~~or the member of the clergy who filed the petition on behalf of the minor,~~
25 ~~if any,~~ of a copy of the court's order denying the petition and shall also notify the minor

BILL

1 by her counsel, ~~or the member of the clergy who filed the petition on behalf of the~~
2 ~~minor, if any,~~ that she has a right to initiate an appeal under s. 809.105.

3 1m. Except as provided under s. 48.315 (1) (b), (c) and (f), if the court fails to
4 comply with the time limits specified under subd. 1. without the prior consent of the
5 minor and the minor's counsel, ~~if any, or the member of the clergy who filed the~~
6 ~~petition on behalf of the minor, if any,~~ the minor and the minor's counsel, ~~if any, or~~
7 ~~the member of the clergy, if any,~~ shall select a temporary reserve judge, as defined
8 in s. 753.075 (1) (b), to make the determination under par. (c) and issue an order
9 granting or denying the petition and the chief judge of the judicial administrative
10 district in which the court is located shall assign the temporary reserve judge
11 selected by the minor and the minor's counsel, ~~if any, or the member of the clergy, if~~
12 ~~any,~~ to make the determination and issue the order. A temporary reserve judge
13 assigned under this subdivision to make a determination under par. (c) and issue an
14 order granting or denying a petition shall make the determination and issue the
15 order within 2 calendar days after the assignment, unless the minor and her counsel,
16 ~~if any, or the member of the clergy who filed the petition on behalf of the minor, if any,~~
17 consent to an extension of that time period. The order shall be effective immediately.
18 The court shall prepare and file with the clerk of court findings of fact, conclusions
19 of law and a final order granting or denying the petition, and shall notify the minor
20 of the court's order, as provided under subd. 1.

21 2. Counsel for the minor, ~~or the member of the clergy who filed the petition on~~
22 ~~behalf of the minor, if any,~~ shall immediately, upon notification under subd. 1. or 1m.
23 that the court has granted or denied the petition, notify the minor. If the court has
24 granted the petition, counsel for the minor, ~~or the member of the clergy who filed the~~
25 ~~petition on behalf of the minor, if any,~~ shall hand deliver a certified copy of the court

BILL

1 order to the person who intends to perform or induce the abortion. If with reasonable
2 diligence the person who intends to perform or induce the abortion cannot be located
3 for delivery, then counsel for the minor, ~~or the member of the clergy who filed the~~
4 ~~petition on behalf of the minor, if any,~~ shall leave a certified copy of the order with
5 the person's agent at the person's principal place of business. If a clinic or medical
6 facility is specified in the petition as the corporation, limited liability company,
7 partnership or other unincorporated association that employs the person who
8 intends to perform or induce the abortion, then counsel for the minor, ~~or the member~~
9 ~~of the clergy who filed the petition on behalf of the minor, if any,~~ shall hand deliver
10 a certified copy of the order to an agent of the corporation, limited liability company,
11 partnership or other unincorporated association at its principal place of business.
12 There may be no service by mail or publication. The person or agent who receives
13 the certified copy of the order under this subdivision shall place the copy in the
14 minor's medical record.

15 **SECTION 20.** 48.375 (7) (f) of the statutes is amended to read:

16 48.375 (7) (f) *Certain persons barred from proceedings.* No parent, or guardian
17 or legal custodian, if one has been appointed, or foster parent or treatment foster
18 parent, if the minor has been placed in a foster home or treatment foster home and
19 the minor's parent has signed a waiver granting the department, a county
20 department, the foster parent or the treatment foster parent the authority to consent
21 to medical services or treatment on behalf of the minor, ~~or adult family member,~~ of
22 any minor who is seeking a court determination under this subsection may attend,
23 intervene or give evidence in any proceeding under this subsection.

24 **SECTION 21.** 69.186 (1) (j) of the statutes is amended to read:

BILL

1 69.186 (1) (j) If the patient is a minor, whether consent was provided under s.
2 48.375 (4) (a) 1. for the abortion and, if so, the relationship of the individual providing
3 consent to the minor; or, if consent under s. 48.375 (4) (a) 1. was not provided, on
4 which of the bases under s. 48.375 (4) (a) 2. or (b) 1., 1g., ~~1m.~~, 2. or 3. the abortion was
5 performed.

6 **SECTION 22.** 809.105 (2) of the statutes is amended to read:

7 809.105 (2) **INITIATING AN APPEAL.** Only a minor may initiate an appeal under
8 this section. The minor shall initiate the appeal by filing, ~~or by a member of the clergy~~
9 ~~filing on the minor's behalf~~, a notice of appeal with the clerk of the trial court in which
10 the order appealed from was entered and shall specify in the notice of appeal the
11 order appealed from. At the same time, the minor ~~or member of the clergy~~ shall notify
12 the court of appeals of the filing of the appeal by sending a copy of the notice of appeal
13 to the clerk of the court of appeals. The clerk of the trial court shall assist the minor
14 ~~or member of the clergy~~ in sending a copy of the notice of appeal to the clerk of the
15 court of appeals. The minor may use the name "Jane Doe" instead of her name on
16 the notice of appeal and all other papers filed with the court of appeals.

17 **SECTION 23.** 809.105 (3) (a) of the statutes is amended to read:

18 809.105 (3) (a) *Fee.* No fee for filing an appeal in the court of appeals under this
19 section may be required of a minor ~~or of a member of the clergy who files an appeal~~
20 ~~under this section on behalf of the minor.~~

21 **SECTION 24.** 809.105 (3) (d) of the statutes is amended to read:

22 809.105 (3) (d) *Statement on transcript.* A minor ~~or member of the clergy~~ may
23 not be required to file a statement on transcript in an appeal under this section.

24 **SECTION 25.** 809.105 (5) of the statutes is amended to read:

BILL

1 809.105 (5) TRANSCRIPT OF REPORTER'S NOTES. At the time that a minor or
2 ~~member of the clergy~~ files a notice of appeal, the minor or ~~member of the clergy~~ shall
3 make arrangements with the reporter for the preparation of a transcript of the
4 reporter's notes of the proceedings under s. 48.375 (7). The reporter shall file the
5 transcript with the trial court within 2 calendar days after the notice of appeal is
6 filed. The county of the court that held the proceeding under s. 48.375 (7) shall pay
7 the expense of transcript preparation under this subsection.

8 **SECTION 26.** 809.105 (8) of the statutes is amended to read:

9 809.105 (8) ASSIGNMENT AND ADVANCEMENT OF CASES. The court of appeals shall
10 take cases appealed under this section in an order that ensures that a judgment is
11 made within 4 calendar days after the appeal has been filed in the court of appeals.
12 The time limit under this subsection may be extended with the consent of the minor
13 and her counsel, if any, ~~or the member of the clergy who initiated the appeal under~~
14 ~~this section, if any.~~

15 **SECTION 27.** 809.105 (8m) of the statutes is amended to read:

16 809.105 (8m) ORAL ARGUMENT. If the court of appeals determines that a case
17 appealed under this section is to be submitted with oral argument, the oral argument
18 shall be held in chambers or, on motion of the minor through her counsel ~~or through~~
19 ~~the member of the clergy who filed the appeal under this section, if any,~~ or on the
20 court of appeals' own motion, by telephone, unless the minor through her counsel ~~or~~
21 ~~the member of the clergy~~ demands that the oral argument be held in open court.

22 **SECTION 28.** 809.105 (9) of the statutes is amended to read:

23 809.105 (9) COSTS. The court of appeals may not assess costs against a minor
24 ~~or member of the clergy~~ in an appeal under this section.

25 **SECTION 29.** 809.105 (10) of the statutes is amended to read:

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1 809.105 (10) REMITTITUR. (a) A judgment by the court of appeals under this
2 section is effective immediately, without transmittal to the trial court, as an order
3 either granting or denying the petition. If the court of appeals reverses a trial court
4 order denying a petition under s. 48.375 (7), the court of appeals shall immediately
5 so notify the minor by personal service on her counsel ~~or the member of the clergy~~
6 ~~who initiated the appeal under this section, if any,~~ of a certified copy of the order of
7 the court of appeals granting the minor's petition. If the court of appeals affirms the
8 trial court order, it shall immediately so notify the minor by personal service on her
9 counsel ~~or the member of the clergy who initiated the appeal under this section, if~~
10 ~~any,~~ of a copy of the order of the court of appeals denying the petition and shall also
11 notify the minor by her counsel ~~or the member of the clergy who initiated the appeal~~
12 ~~under this section on behalf of the minor, if any,~~ that she may, under sub. (11), file
13 a petition for review with the supreme court under s. 809.62. The court of appeals
14 shall pay the expenses of service of notice under this subsection. The clerk of the
15 court of appeals shall transmit to the trial court the judgment and opinion of the court
16 of appeals and the record in the case filed under sub. (4), within 31 days after the date
17 that the judgment and opinion of the court of appeals are filed. If a petition for review
18 is filed under sub. (11), the transmittal shall be made within 31 days after the date
19 that the supreme court rules on the petition for review.

20 (b) Counsel for the minor, ~~if any, or the member of the clergy who initiated the~~
21 ~~appeal under this section, if any,~~ shall immediately, upon notification under par. (a)
22 that the court of appeals has granted or denied the petition, notify the minor. If the
23 court of appeals has granted the petition, counsel for the minor, ~~if any, or the member~~
24 ~~of the clergy who initiated the appeal under this section, if any,~~ shall hand deliver
25 a certified copy of the order of the court of appeals to the person who intends to

BILL

1 perform or induce the abortion. If with reasonable diligence the person who intends
2 to perform or induce the abortion cannot be located for delivery, then counsel for the
3 minor, ~~if any, or the member of the clergy who initiated the appeal under this section,~~
4 ~~if any,~~ shall leave a certified copy of the order with the person's agent at the person's
5 principal place of business. If a clinic or medical facility is specified in the petition
6 as the corporation, limited liability company, partnership or other unincorporated
7 association that employs the person who intends to perform or induce the abortion,
8 then counsel for the minor, ~~if any, or the member of the clergy who initiated the~~
9 ~~appeal under this section, if any,~~ shall hand deliver a certified copy of the order to an
10 agent of the corporation, limited liability company, partnership or other
11 unincorporated association at its principal place of business. There may be no
12 service by mail or publication. The person or agent who receives the certified copy
13 of the order under this paragraph shall place the copy in the minor's medical record.

14 **SECTION 30.** 809.105 (11) (a) (intro.) of the statutes is amended to read:

15 809.105 (11) (a) (intro.) Only a minor ~~or the member of the clergy who initiated~~
16 ~~the appeal under this section, if any,~~ may initiate a review of an appeal under this
17 section. The petition for review of an appeal in the supreme court shall contain:

18 **SECTION 31.** 809.105 (11) (a) 3. of the statutes is amended to read:

19 809.105 (11) (a) 3. The judgment and opinion of the court of appeals, and the
20 findings of fact, conclusions of law and final order of the trial court that were
21 furnished to the court of appeals. The court of appeals shall provide a copy of these
22 papers to the minor, ~~if any, the member of the clergy who initiated the appeal under~~
23 ~~this section, if any,~~ her counsel or her guardian ad litem, if any, immediately upon
24 request.

25 **SECTION 32.** 809.105 (11) (cm) of the statutes is amended to read:

BILL

1 809.105 (11) (cm) If the supreme court determines that a case reviewed under
2 this subsection is to be submitted with oral argument, the oral argument shall be
3 held in chambers or, on motion of the minor through her counsel ~~or through the~~
4 ~~member of the clergy who initiated the appeal under this section, if any,~~ or on the
5 supreme court's own motion, by telephone, unless the minor through her counsel ~~or~~
6 ~~the member of the clergy~~ demands that the oral argument be held in open court.

7 **SECTION 33.** 809.105 (11) (d) of the statutes is amended to read:

8 809.105 (11) (d) A judgment or decision by the supreme court under this section
9 is effective immediately, without transmittal to the trial court, as an order either
10 granting or denying the petition. If the supreme court reverses a court of appeals
11 order affirming a trial court order denying a petition under s. 48.375 (7), the supreme
12 court shall immediately so notify the minor by personal service on her counsel, ~~if any,~~
13 ~~or on the member of the clergy who initiated the appeal under this section, if any,~~ of
14 a certified copy of the order of the supreme court granting the minor's petition. If the
15 supreme court affirms the order of the court of appeals, it shall immediately so notify
16 the minor by her counsel ~~or by the member of the clergy who initiated the appeal~~
17 ~~under this section, if any.~~ The clerk of the supreme court shall transmit to the trial
18 court the judgment, or decision, and opinion of the supreme court and the complete
19 record in the case within 31 days after the date that the judgment, or decision, and
20 opinion of the supreme court are filed. The supreme court shall pay the expense of
21 service of notice under this subsection.

22 **SECTION 34.** 809.105 (11) (e) of the statutes is amended to read:

23 809.105 (11) (e) Counsel for the minor, ~~if any, or the member of the clergy who~~
24 ~~initiated the appeal under this section, if any,~~ shall immediately, upon notification
25 under par. (d) that the supreme court has granted or denied the petition, notify the

BILL

1 minor. If the supreme court has granted the petition, counsel for the minor, if any,
2 ~~or the member of the clergy who initiated the appeal under this section, if any,~~ shall
3 hand deliver a certified copy of the order of the supreme court to the person who
4 intends to perform or induce the abortion. If with reasonable diligence the person
5 who intends to perform or induce the abortion cannot be located for delivery, then
6 counsel for the minor, if any, ~~or the member of the clergy who initiated the appeal~~
7 ~~under this section, if any,~~ shall leave a certified copy of the order with the person's
8 agent at the person's principal place of business. If a clinic or medical facility is
9 specified in the petition as the corporation, limited liability company, partnership or
10 other unincorporated association that employs the person who intends to perform or
11 induce the abortion, then counsel for the minor, if any, ~~or the member of the clergy~~
12 ~~who initiated the appeal under this section, if any,~~ shall hand deliver a certified copy
13 of the order to an agent of the corporation, limited liability company, partnership or
14 other unincorporated association at its principal place of business. There may be no
15 service by mail or publication. The person or agent who receives the certified copy
16 of the order under this paragraph shall place the order in the minor's medical record.

17 **SECTION 35.** 809.105 (13) of the statutes is amended to read:

18 809.105 (13) CERTAIN PERSONS BARRED FROM PROCEEDINGS. No parent, or
19 guardian or legal custodian, if one has been appointed, or foster parent or treatment
20 foster parent, if the minor has been placed in a foster home or treatment foster home,
21 and the minor's parent has signed a waiver granting the department of health and
22 family services, a county department under s. 46.215, 46.22 or 46.23, the foster
23 parent or the treatment foster parent the authority to consent to medical services or
24 treatment on behalf of the minor, ~~or adult family member, as defined in s. 48.375 (2)~~

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1 ~~(b)~~, of any minor who has initiated an appeal under this section may attend or
2 intervene in any proceeding under this section.

3 **SECTION 36.** 895.037 (3) (a) of the statutes is amended to read:

4 895.037 (3) (a) A person who ~~intentionally~~ violates s. 48.375 (4) is liable to the
5 minor on or for whom the abortion was performed or induced and to the minor's
6 parent, guardian and legal custodian for damages arising out of the performance or
7 inducement of the abortion including, but not limited to, damages for personal injury
8 and emotional and psychological distress.

9 **SECTION 37. Initial applicability.**

10 (1) **ABORTIONS PERFORMED OR INDUCED.** The treatment of sections 46.24, 48.375
11 (2) (b) and (4) (a) 1. and (b) 1., 1m. and 3., 69.186 (1) (j) and 895.037 (3) (a) of the
12 statutes first applies to abortions performed or induced on the effective date of this
13 subsection.

14 (2) **WAIVER PETITIONS FILED.** The treatment of sections 48.23 (1) (cm), 48.257 (1)
15 (h) and (4), 48.27 (9), 48.273 (4) (b), 48.375 (2) (c) and (em), (6) and (7) (a) (intro.) and
16 4., (b) (intro.), (bm), (d) and (f) and 809.105 (2), (3) (a) and (d), (5), (8), (8m), (9), (10),
17 (11) (a) (intro.) and 3., (cm), (d) and (e) and (13) of the statutes first applies to petitions
18 filed to initiate a proceeding under section 48.375 (7) of the statutes, as affected by
19 this act, on the effective date of this subsection.

20

(END)

**SUBMITTAL
FORM**

**LEGISLATIVE REFERENCE BUREAU
Legal Section Telephone: 266-3561
5th Floor, 100 N. Hamilton Street**

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and sign on the appropriate line(s) below.

Date: 2/3/99

To: Senator Welch

Relating to LRB drafting number: LRB-0505

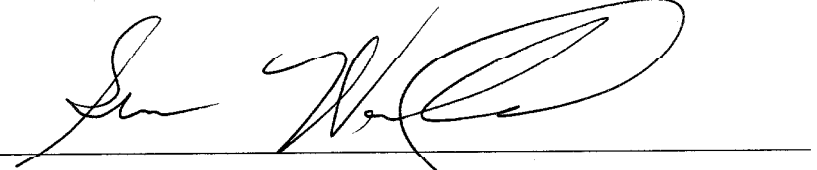
Topic

Parental consent for a minor's abortion

Subject(s)

Children - miscellaneous

1. **JACKET** the draft for introduction _____



in the **Senate** or the **Assembly** _____ (check only one). Only the requester under whose name the drafting request is entered in the LRB's drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. **REDRAFT.** See the changes indicated or attached _____.

A revised draft will be submitted for your approval with changes incorporated.

3. Obtain **FISCAL ESTIMATE NOW**, prior to introduction _____.

If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

Gordon M. Malaise, Senior Legislative Attorney
Telephone: (608) 266-9738