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## FISCAL IMPACT REPORT



SPONSOR: Gorham DATE TYPED: 02/07/02 HB

SHORT TITLE: Parental Notification Act SB 32/aSPAC/aSFL#1

ANALYST: Wilson

### APPROPRIATION

| Appropriation Contained |         | Estimated Additional Impact |      | Recurring or Non-Rec | Fund Affected |
|-------------------------|---------|-----------------------------|------|----------------------|---------------|
| FY02                    | FY03    | FY02                        | FY03 |                      |               |
|                         | \$350.0 |                             |      | Recurring            | General Fund  |

### SOURCES OF INFORMATION

Administrative Office of the Courts (AOC)  
LFC files

#### Synopsis of SFL #1 Amendment

Senate Floor Amendment #1 deletes the Senate Public Affairs Committee amendment in its entirety.

#### Synopsis of SPAC Amendment

The Senate Public Affairs Committee amendment appropriates \$300.0 from the General Fund to the AOC for expenditure in FY2003 for costs of implementing the Parental Notification Act statewide. Any unexpended or unencumbered balance remaining at the end of FY2003 shall revert to the General Fund.

The amendment also appropriates \$50.0 to the Department of Health (DOH) from the General Fund for expenditure in FY2003 to implement the the DOH's reporting provisions of the Parental Notification Act. Any unexpended or unencumbered balance remaining at the end of FY2003 shall revert to the General Fund.

The amendment removes all references and duties of a conservator. It restricts the guardians responsibilities to making medical decisions and changes the notification process from the mailing of a certified letter to requiring that "the parent shall be invited to meet personally with the di-

rector or clinic staff where notification will occur”.

## **Senate Bill 32/aSPAC/aSFI#1 – Page 2**

If the court provides a pregnant female with counsel, the fees will be paid by the court.

The amendment removes the severability clause, and inserts the powers and duties of a guardian ad litem.

### **SUMMARY**

#### Synopsis of Original Bill

SB 32 enacts the Parental Notification Act that requires parental or guardian notification at least 48 hours before an abortion is performed on a minor that is not emancipated or a female of any age who has been declared incompetent and has had a guardian or conservator appointed. The only exception is when the procedure is necessary to save the life of the patient. SB 32 contains a judicial bypass procedure, which allows a court to direct that notification is not required upon a finding that the minor or incompetent woman is mature enough to make the decision, or that an abortion is in the patient’s best interests. This bypass must be confidential and expedited, but no time limits are set. The bill also contains reporting requirements, both on the doctor who performs the procedure and on the department of health to publish statistics on an annual basis. SB 32 also makes the performance of an abortion in knowing or reckless violation of the Act a crime (misdemeanor). Finally, it creates a civil cause of action that allows a parent or guardian wrongfully denied notice to sue a physician who performs an abortion without the requisite notice, and awards attorney fees to the prevailing party in certain circumstances

#### Significant Issues

Courts already take reasonable action to see that cases are adjudicated in the most expedited manner possible. This bill requires that the court assign some level of additional priority to this type of case to assure that a decision is reached as quickly as possible. Would adding an additional level of priority for these cases jeopardize the six-month rule for cases already on the court’s docket?

SB 32 will add new hearings and require the district courts and the Court of Appeals to be accessible 24 hours a day, seven days a week.

The judiciary has concerns with unemancipated minors and incapacitated persons entering into court hearings without representation by legal counsel.

### **FISCAL IMPLICATIONS**

The AOC has provided the following:

- Giving an additional level of priority to specific types of cases in an effort to reach an expedited adjudication will have a fiscal impact on the court’s operation since other cases, perhaps of equal importance and severity of criminal charges, may be delayed resulting in an increase in caseloads in the courts, thus requiring additional resources to handle the

increase.

### **Senate Bill 32/aSPAC/aSFI#1 – Page 3**

- Further, the administrative office of the courts has eight different reports that it must provide to the department of health under the Act. The information is presently not being collected and would require that a data system be established in order to provide the information to the department of health on an annual basis.
- In addition, there will be a minimal administrative cost for statewide update, distribution, and documentation of statutory changes. Any additional fiscal impact on the Judiciary would be proportional to the enforcement of this law and commenced prosecutions. New laws, amendments to existing laws, and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.
- In order to provide 24-hour access, the Court of Appeals would have to set up an emergency telephone number and a workable procedure for contacting three judges (for a three-judge panel) on short notice. This procedure may require
- acquisition and maintenance of pagers and/or mobile telephones for the judges and appropriate staff. It would also require staff time to monitor the emergency telephones and possible overtime compensation for clerical and legal staff if they were required to open the court and its offices for filings or emergency hearings. The fiscal impact on the district courts would be similar but would only involve one judge and a court monitor.
- Additional fiscal impact would be incurred by the Administrative Office of the Courts, which would pay for court appointed guardians ad litem in cases where the pregnant female chose not to consent to the notification of her parent or guardian and she petitioned the district court for an order for an abortion without notification.

### **ADMINISTRATIVE IMPLICATIONS**

The AOC also provided the following:

- Requiring the New Mexico Court of Appeals and the state district courts to be accessible 24 hours a day, seven days a week, would have a great administrative impact. Currently, the Court of Appeals accepts cases for filing from 8:00 a.m. to 12:00 noon and from 1:00 p.m. to 5:00 p.m. on normal work days, not including state holidays or weekends. The Court of Appeals now accepts filings in Santa Fe, Las Vegas, Las Cruces and Albuquerque. In order to provide 24-hour access, the court would have to set up an emergency telephone number and a workable procedure for contacting three judges (for a three-judge panel) on short notice. This procedure may require acquisition and maintenance of pagers and/or mobile telephones for the judges and appropriate staff. It would also require staff time to monitor the emergency telephones and possible overtime compensation for clerical and legal staff if they were required to open the court and its offices for filings or emergency hearings.
- The impact on the district courts would be similar to the Court of Appeals. If the unemancipated minor or incapacitated person chose not to consent to the notification of her

parent or guardian and she petitioned the district court for an order for an unnotified abortion, the district court would need to have a judge and court monitor available to process and hear the case.

- If proceedings identified in this bill shall be given precedence over other pending matters before the court so that the court may reach an expedited decision without delay, there would be an administrative impact on the courts as a result of additional case priority given to these cases and an increase in caseload and/or in the amount of time necessary to dispose of this case type.
- Further, the administrative office of the courts has eight different reports that it must provide to the department of health under the act. The information is presently not being collected and would require that a data system be established in order to provide the information to the department of health on an annual basis.

## DUPLICATION

Duplicates HB 93

## OTHER SUBSTANTIVE ISSUES

The Health Policy Commission provided the following statistics:

- New Mexico pregnancy rate among teens aged 15-19 declined by 14.7 percent between 1992 and 1996, it was the sixth highest among all 50 states in 1996.
- New Mexico's pre-*Roe* abortion law provides that a minor under 18 may not obtain an abortion unless both the minor and one parent request the procedure. The Attorney General has issued an opinion stating that the law does not provide a constitutionally required bypass procedure and is therefore unenforceable.
- According to DOH, in 1998, the following teen New Mexico residents reported legal induced abortions: <15 age group was .8 percent and 15-19 age group was 21.8 percent.
- Nationally, in 1995, 10 percent of all females aged 15-19 or 19 percent of sexually active females aged 15-19 became pregnant.

The AG has raised the following issues:

- Medical emergency exception. As drafted, the notification requirements do not apply upon a physician's certification that an immediate abortion is necessary to prevent the death of the unemancipated or incompetent. In 1973, the United States Supreme Court determined that statutes regulating abortions must allow, based on medical judgment, abortions not only when a woman's life is at risk, but also when her health is at risk. Minors as well as adults are entitled to the protections afforded by the constitution. The Act's limitation to life-threatening conditions renders it unconstitutional.

- Incompetents. The term “incompetent” in the bill is not defined. Under the New Mexico Probate Code, which contains the statutory mechanism for appointing conservators and
- Senate Bill 32/aSPAC/aSFI#1 – Page 5**

guardians for individuals who are determined to be incapacitated, such a person retains all legal and civil rights except those expressly limited by the court order or which are specifically granted to the guardian in a court order. Thus, to the extent this bill requires notification to a guardian or conservator in a situation where the “incompetent individual retains the right to make this decision, the bill conflicts with that statute and may also violate that person’s right under both the federal and state constitutions.

- Lack of deadlines re judicial proceedings. Although the bill requires cases brought by a minor who is not emancipated or incompetent seeking to bypass the notice requirements be “given precedence” at the trial court level, that the decision be issued “promptly and without delay”, and that an “expedited” appeal be available, the absence of any timetables or deadlines for trial court hearing, decision or appellate ruling has rendered similar provisions in other states unconstitutional.
- Independent State Grounds. In addition to the mandates of the federal constitution, the New Mexico constitution may afford greater protections. Our supreme court held that the Medicaid regulation restricting state funding of abortions for Medicaid-eligible women violated the Equal Rights Amendment of our state constitution. Although our courts have not been faced with analyzing the issues that arise in parental notice or consent statutes, courts in other states have. The Supreme Court of New Jersey recently found that the State’s interest in enforcing its parental notification statute, which is substantially similar to SB 32, failed to override the substantial intrusion it imposed on a young woman's fundamental right to abortion and was unconstitutional under the equal protection guarantee contained in its state constitution (because it imposed no corresponding limitation on a minor who seeks medical and surgical care otherwise related to her pregnancy). Other jurisdictions have recognized a minor’s right to privacy is fundamental, and because it is implicated in parental consent statutes, the state must be able to satisfy a strict scrutiny review by demonstrating a compelling state interest that imposes the least restrictive means available. Consent statutes containing provisions similar to the Act have not withstood judicial scrutiny of this nature. SB 32 may be similarly found unconstitutional under the right to privacy, equal protection, due process or equal rights guarantees contained in the New Mexico Constitution.

DW/prr:ar