

**As Reported by the Senate Judiciary--Civil Justice Committee**

**128th General Assembly**

**Regular Session**

**2009-2010**

**Am. S. B. No. 242**

**Senators Grendell, Gillmor**

**Cosponsors: Senators Buehrer, Schaffer, Husted, Seitz, Widener, Faber,  
Schuring**

**—**

**A BILL**

To amend section 2919.121 of the Revised Code to 1  
revise the procedures governing a hearing by which 2  
a court may permit a pregnant minor to consent to 3  
an abortion or by which a court may give judicial 4  
consent for a pregnant minor to have an abortion 5  
and to require a court to make its findings with 6  
respect to such a hearing by clear and convincing 7  
evidence. 8

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That section 2919.121 of the Revised Code be 9  
amended to read as follows: 10

**Sec. 2919.121.** (A) For the purpose of this section, a minor 11  
shall be considered "emancipated" if the minor has married, 12  
entered the armed services of the United States, become employed 13  
and self-subsisting, or has otherwise become independent from the 14  
care and control of her parent, guardian, or custodian. 15

(B) No person shall knowingly perform or induce an abortion 16  
upon a pregnant minor unless one of the following is the case: 17

(1) The attending physician has secured the informed written 18

consent of the minor and one parent, guardian, or custodian; 19

(2) The minor is emancipated and the attending physician has 20  
received her written informed consent; 21

(3) The minor has been authorized to consent to the abortion 22  
by a court order issued pursuant to division (C) of this section, 23  
and the attending physician has received her informed written 24  
consent; 25

(4) The court has given its consent in accordance with 26  
division (C) of this section and the minor is having the abortion 27  
willingly. 28

(C) The right of a minor to consent to an abortion under 29  
division (B)(3) of this section or judicial consent to obtain an 30  
abortion under division (B)(4) of this section may be granted by a 31  
court order pursuant to the following procedures: 32

(1) The minor or next friend shall make an application to the 33  
juvenile court of the county in which the minor has a residence or 34  
legal settlement, the juvenile court of any county that borders 35  
the county in which she has a residence or legal settlement, or 36  
the juvenile court of the county in which the facility in which 37  
the abortion would be performed or induced is located. The 38  
juvenile court shall assist the minor or next friend in preparing 39  
the petition and notices required by this section. The minor or 40  
next friend shall thereafter file a petition setting forth all of 41  
the following: the initials of the minor; her age; the names and 42  
addresses of each parent, guardian, custodian, or, if the minor's 43  
parents are deceased and no guardian has been appointed, any other 44  
person standing in loco parentis of the minor; that the minor has 45  
been fully informed of the risks and consequences of the abortion; 46  
that the minor is of sound mind and has sufficient intellectual 47  
capacity to consent to the abortion; that the minor has not 48  
previously filed a petition under this section concerning the same 49

pregnancy that was denied on the merits; that, if the court does 50  
not authorize the minor to consent to the abortion, the court 51  
should find that the abortion is in the best interests of the 52  
minor and give judicial consent to the abortion; that the court 53  
should appoint a guardian ad litem; and if the minor does not have 54  
private counsel, that the court should appoint counsel. The 55  
petition shall be signed by the minor or the next friend. 56

(2)(a) A hearing on the merits shall be held on the record as 57  
soon as possible within five days of filing the petition. If the 58  
minor has not retained counsel, the court shall appoint counsel at 59  
least twenty-four hours prior to the hearing. The court shall 60  
appoint a guardian ad litem to protect the interests of the minor 61  
at the hearing. If the guardian ad litem is an attorney admitted 62  
to the practice of law in this state, the court may appoint the 63  
guardian ad litem to serve as the minor's counsel. At the hearing, 64  
the court shall ~~hear~~ do all of the following: 65

(i) Hear evidence relating to the emotional development, 66  
maturity, intellect, and understanding of the minor; the nature, 67  
possible consequences, and alternatives to the abortion; and any 68  
other evidence that the court may find useful in determining 69  
whether the minor should be granted the right to consent to the 70  
abortion or whether the abortion is in the best interests of the 71  
minor; 72

(ii) Specifically inquire about the minor's understanding of 73  
the possible physical and emotional complications of abortion and 74  
how the minor would respond if the minor experienced those 75  
complications after the abortion; 76

(iii) Specifically inquire about the extent to which anyone 77  
has instructed the minor on how to answer questions and on what 78  
testimony to give at the hearing. 79

~~If~~ (b) If the minor or her counsel fail to appear for a 80

scheduled hearing, jurisdiction shall remain with the judge who 81  
would have presided at the hearing. 82

(3) If the court finds by clear and convincing evidence that 83  
the minor is sufficiently mature and well enough informed to 84  
decide intelligently whether to have an abortion, the court shall 85  
grant the petition and permit the minor to consent to the 86  
abortion. 87

If the court finds by clear and convincing evidence that the 88  
abortion is in the best interests of the minor, the court shall 89  
give judicial consent to the abortion, setting forth the grounds 90  
for its finding. 91

If the court does not make either of the findings specified 92  
in division (C)(3) of this section, the court shall deny the 93  
petition, setting forth the grounds on which the petition is 94  
denied. 95

The court shall issue its order not later than twenty-four 96  
hours after the end of the hearing. 97

(4) No juvenile court shall have jurisdiction to rehear a 98  
petition concerning the same pregnancy once a juvenile court has 99  
granted or denied the petition. 100

(5) If the petition is granted, the informed consent of the 101  
minor, pursuant to a court order authorizing the minor to consent 102  
to the abortion, or judicial consent to the abortion, shall bar an 103  
action by the parents, guardian, or custodian of the minor for 104  
battery of the minor against any person performing or inducing the 105  
abortion. The immunity granted shall only extend to the 106  
performance or inducement of the abortion in accordance with this 107  
section and to any accompanying services that are performed in a 108  
competent manner. 109

(6) An appeal from an order issued under this section may be 110  
taken to the court of appeals by the minor. The record on appeal 111

shall be completed and the appeal perfected within four days from 112  
the filing of the notice of appeal. Because the abortion may need 113  
to be performed in a timely manner, the supreme court shall, by 114  
rule, provide for expedited appellate review of cases appealed 115  
under this section. 116

(7) All proceedings under this section shall be conducted in 117  
a confidential manner and shall be given such precedence over 118  
other pending matters as will ensure that the court will reach a 119  
decision promptly and without delay. 120

The petition and all other papers and records that pertain to 121  
an action commenced under this section shall be kept confidential 122  
and are not public records under section 149.43 of the Revised 123  
Code. 124

(8) No filing fee shall be required of or court costs 125  
assessed against a person filing a petition under this section or 126  
appealing an order issued under this section. 127

(9) Nothing in division (C) of this section shall constitute 128  
a waiver of any testimonial privilege provided under the Revised 129  
Code or at common law. 130

(D) It is an affirmative defense to any civil, criminal, or 131  
professional disciplinary claim brought under this section that 132  
compliance with the requirements of this section was not possible 133  
because an immediate threat of serious risk to the life or 134  
physical health of the minor from the continuation of her 135  
pregnancy created an emergency necessitating the immediate 136  
performance or inducement of an abortion. 137

(E) Whoever violates division (B) of this section is guilty 138  
of unlawful abortion, a misdemeanor of the first degree. If the 139  
offender previously has been convicted of or pleaded guilty to a 140  
violation of this section, unlawful abortion is a felony of the 141  
fourth degree. 142

(F) Whoever violates division (B) of this section is liable 143  
to the pregnant minor and her parents, guardian, or custodian for 144  
civil, compensatory, and exemplary damages. 145

**Section 2.** That existing section 2919.121 of the Revised Code 146  
is hereby repealed. 147