

IN THE COURT OF COMMON PLEAS, JUVENILE DIVISION, GEAUGA COUNTY, OHIO

Information Sheet  
Minor Abortion – Non-Parental Consent  
[R.C. 2919.121]

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**WARNING**

This Information Sheet is intended to provide you with an overview of the subject matter, effective as of the date noted in the upper left-hand corner. This Information Sheet is not intended to provide you with all legal information that may be necessary for you to decide upon a course of action, and the information provided may not be error-free, complete, or accurate. Moreover, this Information Sheet may not accurately describe the cited sections of the Ohio Revised Code or cited case law. Finally, this Information Sheet is not intended as a substitute for legal advice from a competent licensed attorney, who is familiar with all of the relevant facts of your case, and therefore the Help Center recommends that you seek legal advice from a competent licensed attorney that you select before taking any action. While the Help Center can provide you with a limited amount of general legal information, neither the Help Center staff nor any other Court employee can give you any legal advice.

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**Recommended Reading**

The Help Center recommends reading the following:

- Sup.R. 23.1, which is on the Supreme Court of Ohio’s website<sup>1</sup>
- R.C. 2921.121, which is on the Court’s website

**Background**

With few exceptions (e.g., a life-threatening emergency), a medical professional will not provide medical treatment or a medical procedure without the informed consent of the patient. However, if the patient is a minor, then the law presumes that the minor is legally incompetent to provide informed consent and thus the medical professional will seek the consent of the minor’s parent(s), legal custodian, or guardian. That principle applies to the medical procedure of abortion. Currently, Ohio law permits a medical professional to perform or induce an abortion for an adult pregnant woman provided that the pregnant woman gives her informed consent.<sup>2</sup> Historically, if the pregnant woman is a minor (i.e., under the age of 18), then Ohio law provides that the minor is legally incompetent to give an informed consent, and thus the medical professional would require informed consent of the minor’s parent,<sup>3</sup> legal custodian, or guardian. The failure to obtain such “parental” consent for an abortion would result in a criminal act.<sup>4</sup>

However, for a number of reasons, a pregnant minor may want an abortion without having to obtain her parent(s) consent and without her parent(s) being notified of the procedure. To meet that need, the Ohio

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<sup>1</sup> <https://www.supremecourt.ohio.gov/docs/LegalResources/Rules/superintendence/Superintendence.pdf>

<sup>2</sup> R.C. 2919.12(A).

<sup>3</sup> Although the minor may have two parents, the consent of one parent is sufficient.

<sup>4</sup> R.C. 2919(B).

legislature enacted R.C. 2919.121, which permits a pregnant minor to obtain an abortion without the parent(s) consent and without the parent(s) receiving any notice. In effect, that statute allows a juvenile court judge to either (i) permit the minor to consent if the judge determines that the minor is “sufficiently mature,” or (ii) consent to the abortion procedure on behalf of the minor based upon a finding that the abortion procedure is in the minor’s best interest, and thus in either case the medical professional performing or inducing the abortion may proceed without committing a criminal act.<sup>5</sup>

### **Jurisdiction and Venue**

R.C. 2919.121 provides that a juvenile court has jurisdiction (i.e., power) to permit a minor to obtain an abortion procedure without parental notice or consent. The minor invokes that jurisdiction (or power) by filing a petition with a juvenile court.<sup>6</sup> The minor may file the petition not only in the county where the minor resides or has a legal settlement, but also in any county that borders the minor’s county of residence.<sup>7</sup> For example, if a pregnant minor resides in Geauga County, that minor could file her petition in the Cuyahoga County juvenile court.

### **Filing the Petition**

The minor or a “next friend” may file the petition with a juvenile court.<sup>8</sup> Sup. R. 23.1 requires that the minor use the form titled “Form 23.1-A. Petition For Authorization To Consent To An Abortion Or For Judicial Consent To An Abortion,” which is posted on the Court’s website. There are several matters to be noted:

1. There is no need for the minor to file a petition and seek judicial consent if
  - a. the medical professional obtains the written consent of (i) the minor and (ii) at least one parent, legal custodian, or guardian, or
  - b. the minor meets the definition of emancipated, which is defined in R.C. 2919.121(A).<sup>9</sup>
2. There is no filing fee.<sup>10</sup>
3. The clerk of this Court shall provide the minor with prompt assistance to prepare and file the petition and related documents, including providing the minor with a copy of Instructions titled “Petition for Consent to an Abortion or for Judicial Consent for Abortion,” and including the notarization of documents as needed.<sup>11</sup> Moreover, the Court’s Help Center can provide information and assistance with document preparation.
4. The Court will not notify the minor’s parent(s), legal custodian, or guardian. All court proceedings must be confidential.<sup>12</sup> While the minor must provide the Court with the name(s) and address of the

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<sup>5</sup> It must be noted that Ohio has another process for a minor to obtain a judicial order allowing for the abortion procedure without notice to the parent – see R.C. 2151.85 and Sup.R. 23. A minor should consult with her attorney as to the appropriate process for the minor.

<sup>6</sup> R.C. 2919.121(C)(1) and Sup. R. 23.1(B)

<sup>7</sup> R.C. 2919.121(C)(1)

<sup>8</sup> R.C. 2919.121(C)(1)

<sup>9</sup> R.C. 2919.121(A) provides that “. . . a minor shall be considered "emancipated" if the minor has married, entered the armed services of the United States, become employed and self-subsisting, or has otherwise become independent from the care and control of her parent, guardian, or custodian.”

<sup>10</sup> Sup.R. 23.1(D)

<sup>11</sup> Sup.R. 23.1(C)

<sup>12</sup> R.C. 2919.121(C)(7). Moreover, see R.C. 149.43 regarding confidentiality of public records.

parent(s), legal custodian, or guardian on page two of the petition, the Court will store that page in a confidential manner.<sup>13</sup>

5. On the petition the minor must indicate whether she has retained an attorney. If not, the court will appoint an attorney at least 24 hours before the hearing, at no cost to the minor, to represent the minor.<sup>14</sup> That attorney will assist the minor in preparing for the hearing and provide legal representation at the hearing.
6. The Court shall appoint a guardian ad litem, pursuant to Juv.R. 4, to protect the minor's interest at the hearing.<sup>15</sup> It is possible that the same person can act as both the attorney and guardian ad litem for the minor.<sup>16</sup>
7. The minor may have a "next friend" sign the petition on behalf of the minor.<sup>17</sup> Doing so provides additional confidentiality for the minor because the minor's signature is not on the petition, only the minor's initials. The phrase "next friend" means a person who is assisting the minor.<sup>18</sup>
8. The judge must hear the petition and render an order. The judge may not refer the matter to a magistrate.<sup>19</sup>
9. In order for the judge to issue an order of judicial consent on behalf of the minor to permit the abortion procedure, the judge must determine that (i) the minor is sufficiently mature and well enough informed to decide intelligently whether to have an abortion, or (ii) the abortion is in the best interest of the minor. The person signing the petition must indicate on the petition whether the minor meets the requirements of either or both of such grounds for judicial consent. The minor may choose both reasons for the judicial consent.

## **The Hearing**

The Court must hold a hearing on the merits of the petition as soon as possible but not more than five days after filing the petition.<sup>20</sup> At the hearing the Court must do the following:

- hear evidence relating to the emotional development, maturity, intellect, and understanding of the minor; the nature, possible consequences, and alternatives to the abortion; and any other evidence that the court may find useful in determining whether the minor should be granted the right to consent to the abortion or whether the abortion is in the best interest of the minor;
- specifically inquire about the minor's understanding of the possible physical and emotional complications of abortion and how the minor would respond if the minor experienced those complications after the abortion; and

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<sup>13</sup> Sup.R. 23.1(B)(2). The Clerk will provide the minor with a certified copy of page two of the petition.

<sup>14</sup> R.C. 2919.121(C)(2)(a) and Sup.R. 23.1(E)

<sup>15</sup> R.C. 2919.121(C)(2)(a) and Sup.R. 23.1(F)

<sup>16</sup> R.C. 2919.121(C)(2)(a)

<sup>17</sup> R.C. 2919.121(C)(1).

<sup>18</sup> See the Instructions titled "Petition for Consent to an Abortion or for Judicial Consent for Abortion," on the top of page 2.

<sup>19</sup> Sup.R. 23.1(G)

<sup>20</sup> R.C. 2919.121(C)(2)(a). Sup.R. 23.1(G) provides that the hearing should be set, if possible, within 24 hours after filing the petition and should accommodate school hours if possible.

- specifically inquire about the extent to which anyone has instructed the minor on how to answer questions and on what testimony to give at the hearing.<sup>21</sup>

The Court must use the “clear and convincing evidence” standard as it determines whether (i) the minor is sufficiently mature and well enough informed to decide intelligently whether to have an abortion, or (ii) the abortion is in the best interest of the minor.<sup>22</sup> The Supreme Court of Ohio has defined that standard as “*that measure or degree of proof which is more than a mere “preponderance of the evidence,” but not to the extent of such certainty as is required “beyond a reasonable doubt” in criminal cases, and which will produce in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established.*”<sup>23</sup>

If by applying that evidentiary standard the Court cannot determine that either (i) the minor is sufficiently mature and well enough to decide intelligently whether to have an abortion, or (ii) the abortion is in the best interest of the minor, then the Court must deny the petition. If the petition alleges both grounds for judicial consent, then the Court must first rule upon the “sufficient maturity” test, and if denied, then rule upon the “best interest” test.<sup>24</sup>

In any case, the Court must set forth in its judgment entry specific grounds supporting its decision to grant or deny the petition.<sup>25</sup> Moreover, the Court must issue its judgment or order not more than 24 hours after the conclusion of the hearing.<sup>26</sup>

Time is of the essence due to the nature of the minor’s medical condition. If either the Court or the Court of Appeals does not act in a timely manner, then R.C. 2919.12(B)(1)(a)(iv) should be considered. That provision of the Ohio Revised Code provides that an abortion may go forward without parental consent if:

*A juvenile court or a court of appeals, by its inaction, constructively has authorized the woman to consent to the abortion without notification of one of her parents, her guardian, or her custodian under division (B)(1) of section [2151.85](#) or division (A) of section [2505.073](#) of the Revised Code.*

In effect, the failure of the Court or Court of Appeals to act in a timely manner “constructively” authorizes the minor to give her consent and proceed with the abortion procedure.

### **Right to Appeal**

Again, because of the need for prompt judicial action and for court-ordered consent on behalf of the minor, if the Court denies the petition, then Ohio law provides the minor with a relatively simple and prompt method to appeal the Court’s decision. If the Court denies the Petition at the hearing, then the Court must immediately inform the minor of her right to appeal to the applicable Court of Appeals (i.e., the Court of Appeals of Ohio, Eleventh Appellate District) and provide the minor and her attorney with a copy of the appropriate Notice of Appeal, which is the form titled “Form 23.1-C Notice of Appeal,” and is posted on the Court’s website.<sup>27</sup>

If the Court does not issue its judgment at the conclusion of the hearing and denies the petition, then the Court shall inform the minor and her attorney within 24 hours after the conclusion of the hearing and otherwise comply with the other requirements set forth in Sup.R. 23.1(H)(3), including providing the minor and her attorney with a copy of that Notice of Appeal.

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<sup>21</sup> R.C. 2919.121(C)(2)(a) and Sup.R. 23.1(H)(3)

<sup>22</sup> R.C. 2919.121(C)(3)

<sup>23</sup> *Cross v. Ledford*, 161 Ohio St. 469 (1954)

<sup>24</sup> Sup.R. 23.1(G)(2)

<sup>25</sup> R.C. 2919.121(C)(3). Sup.R. 23.1 requires that the Court use the form titled “Form 23.1-B Judgment.”

<sup>26</sup> R.C. 2919.121(C)(3)

<sup>27</sup> Sup.R. 23.1(H)(2)

If the minor desires to appeal the Court's decision, then the minor (or her attorney) should file that Notice of Appeal with the Clerk of this Court on the same day of the denial of the petition, and the Clerk must promptly file the Notice of Appeal with the clerk of the Court of Appeals. Thereafter, the Court and the Court of Appeals must comply with the requirements of Sup.R. 23.1(l).

It is important to note that Sup.R. 23.1(J) provides the following:

*(1) If a petitioner files a notice of appeal on the same day as the denial or dismissal of her petition, the entire court process, including the juvenile court hearing, appeal, and decision, shall be completed in sixteen calendar days from the time the petition was filed.*

*(2) If a petitioner files a notice of appeal after the day on which the court denies or dismisses her petition, the entire court process, including the juvenile court hearing, appeal, and decision, shall be completed in sixteen calendar days from the time the petition was filed, plus the number of calendar days that elapsed between the date on which the court's decision was issued and the date on which the notice of appeal was filed.*

The Court of Appeals must act promptly. For more information, please read Sup.R. 25 titled "Procedure on Appeal Pursuant to R.C. 2151.85, 2919.121, and 2505.73." Again, if the Court or the Court of Appeals does not act timely, then due to inactivity, the Court may have constructively provided its consent for the abortion procedure by reason of R.C. 2919.12(B)(1)(a)(iv).

The Court of Appeals will not overturn the judge's decision to dismiss the petition unless the Court of Appeals determines that the judge's decision was an "abuse of discretion."<sup>28</sup> The Supreme Court of Ohio defined that phrase as – "The term "abuse of discretion" connotes more than an error of law or of judgment; it implies that the court's attitude is unreasonable, arbitrary, or unconscionable."<sup>29</sup>

**LEGAL PRACTICE IN THE JUVENILE COURT IS RESTRICTED BY LAW TO ATTORNEYS WHO ARE LICENSED BY THE SUPREME COURT OF OHIO AND INDIVIDUALS WHO ARE HANDLING THEIR OWN LEGAL MATTERS. IF AN INDIVIDUAL WISHES TO HANDLE HIS OR HER OWN CASE, THAT PERSON MAY ATTEMPT TO DO SO, HOWEVER DUE TO THE COMPLEXITY OF THE LAW AND THE DESIRE TO AVOID COSTLY ERRORS, MANY PERSONS WHO HAVE MATTERS BEFORE THE COURT ARE REPRESENTED BY AN ATTORNEY.**

**IF YOU CHOOSE TO REPRESENT YOURSELF AND USE THE COURT'S FORMS, BE AWARE THAT STATE LAW PROHIBITS THE JUDGE, MAGISTRATE, AND EMPLOYEES OF THE GAUGA COUNTY JUVENILE COURT, INCLUDING THE HELP CENTER STAFF, FROM PROVIDING YOU WITH LEGAL ADVICE. IF YOU NEED LEGAL ADVICE, THEN YOU SHOULD CONTACT AN ATTORNEY OF YOUR CHOOSING.**

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<sup>28</sup> See *In re Jane Doe 1*, 57 Ohio St. 3d 135 (1991).

<sup>29</sup> See *State v. Adams*, 62 Ohio St. 2d 151 (Ohio 1980)