

IN THE SUPREME COURT OF TEXAS

=====
No. 00-0224
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IN RE JANE DOE

=====
APPEAL UNDER SECTION 33.004(F), FAMILY CODE
=====

JUSTICE ABBOTT, dissenting.

I dissent from the Court's judgment and opinion. I write separately to elaborate on the intended purpose of the Parental Notification Act.

To a large degree, the Court has played a guessing game in its struggle to apply the language of the Act. It has attempted to discern what the Legislature meant when it used certain terms. As it turns out, the Court has guessed wrong on certain issues. That is made clear by the two legislative sponsors of the Act. Those two sponsors, Senator Florence Shapiro and Representative Dianne White Delisi, filed an amicus brief in this cause that was joined by eight Senators and forty-six Representatives.¹ In that brief, the legislators clarify the intent behind the language used in the Act

¹ The Senators who joined the amicus brief include Ken Armbrister, Teel Bivins, Troy Fraser, Chris Harris, Tom Haywood, Mike Jackson, Eddie Lucio, and Drew Nixon. The Representatives who joined the brief include Ray Allen, Kip Averitt, Leo Berman, Betty Brown, Fred Brown, Warren Chisum, Wayne Christian, Ron Clark, Tom Craddick, John Davis, Mary Denny, Joe Driver, Al Edwards, Dan Ellis, Kenn George, Tony Goolsby, Rick Green, Rick Hardcastle, Talmadge Heflin, Harvey Hilderbran, Charlie Howard, Bob Hunter, Suzanna Gratia Hupp, Carl H. Isett, Terry Keel, Jim Keffer, Phil King, Mike Krusee, Jerry Madden, Kenny Marchant, Geanie Morrison, Anna Mowery, Joe Nixon, Dora Olivo, Sue Palmer, Jim Pitts, Elvira Reyna, John Shields, Bill Siebert, John Smithee, Todd Staples, David Swinford,

and reference several of the ways the Court has departed from that intent. Because the brief provides meaningful insight into the appropriate way to interpret the Act, I feel it important to *quote* from the brief at length – the hope being that judges who must interpret and apply the Act in the future will be aided by the clarity provided by the Act’s sponsors. The legislators begin by explaining the need for clarity. They state:²

The provisions of this Chapter went into effect on January 1 of this year. In the three months the Act has been in effect, this Court has been called upon to interpret the judicial bypass provisions of Chapter 33 numerous times. Within the last month, this Court issued five rulings in four cases by way of sixteen separate opinions, with three opinions yet to be released. Amici are unaware of any other Texas statute that has generated nineteen opinions in the first four cases construing it, and there is reason to believe that this Court will continue to be called upon to provide guidance regarding the proper interpretation and application of this Act.

In arriving at the varied interpretations offered in the Court’s numerous opinions, members of this Court have relied upon inferences regarding legislative intent. *Amici file this brief in order to assist the Court in more accurately discerning the intended purpose, scope, and application of the Act.* [footnotes omitted]

(Emphasis added).

The legislators summarize their argument as follows:

In passing the Texas Parental Notification Act the Legislature intended to restore parents’ natural authority to act as chief advisors to their minor daughters who become pregnant, and seek abortions. . . .

The operative assumption of the Act is that a parent will receive notice and react responsibly. Nonetheless, the Legislature recognized that there are exceptional circumstances in which parental notification is not in the minor’s best interest. While convinced that such cases are rare, they are sufficiently important to require some

Robert Talton, Vicki Truitt, Buddy West, and Arlene Wohlgemuth.

² Unless indicated otherwise, all footnotes in the legislative amici’s argument are included, and have been renumbered here.

means of addressing them. The judicial bypass was the means selected by the Legislature.

In establishing the procedure for judicially bypassing parental notification, the Legislature intended courts to exercise their traditional function of assessing and weighing the evidence before rendering judgment. The evidence is to be weighed against the long-standing presumption that minors lack the experience, perspective, and judgment critical to making sound decisions, and the presumption that parents should be involved in all medical decisions for their children. . . . To avoid potential overreaching by those who are advising the girl, courts should require a showing that she has received information from a variety of sources, or that the information she has received is from a neutral, reliable, and informed source. Only when the minor is truly competent and well informed, or when the court is convinced that the minor's best interest is served by allowing her to consent to a secret abortion, should the court authorize the minor to consent to an abortion without notice being given to her parent.

In cases involving allegations of abuse, it is important to distinguish the real from the hypothetical. Few minors should anticipate an indifferent or pleased response by their parents when they first learn of her unplanned pregnancy. Many girls can honestly testify to having heard statements like "don't bother to come home if you get pregnant," or "I'll kill you if you do that to me." Yet despite such hyperbole, the vast majority of parents mean just the opposite – "come home immediately if you're in trouble," or "I'd give my own life for you because you are my child." In order to distinguish realistic threats from rhetorical overstatement, and unsafe situations from uncomfortable ones, courts need clear and objective definitions of abuse. Section 261.001 [of the Family Code] provides exactly that and should be used by courts in making the difficult decision whether to intervene in the parent-child relationship at this painful time in the minor's life.

The legislators contend that "the legislative record establishes that judicial bypass of parental notification should only be granted in cases where a minor overcomes the strong presumption in favor of parental involvement by a preponderance of the evidence." In support of that contention, they argue:

Justice Enoch, in his concurrence in *In re Jane Doe*,³ made the following observation regarding the evidentiary standard in the Parental Notification Act:

Because of the nature of this proceeding, then, all the evidence in the record will be undisputed. But the standard the Legislature chose for trial courts to apply in determining whether a minor is “mature and sufficiently well informed” – preponderance of the evidence – is typically associated with weighing conflicting evidence after an adversarial proceeding. Thus, we have an anomalous situation – the Legislature directs that the minor must demonstrate by a preponderance of the evidence (which generally means more likely than not) that she is mature and sufficiently well-informed, yet because the minor is the only party presenting evidence on these elements, there is no other evidence against which to weigh it to see if it is more likely than not.⁴

Essentially Justice Enoch expresses concern that in weighing the evidence presented in a parental notification bypass case, the trial court has nothing to place in the balance against the untested statements of the minor and those who appear to support her decision.

This concern, however, proves unfounded after review of the legislative record. It was never the intention of the Legislature to place *ex parte* statements of the girl and other interested witnesses on an empty scale. The testimony presented at legislative hearings and the recorded statements of legislators⁵ make clear that the evidence produced in support of an application to bypass parental notification is to be carefully weighed against the legal disability of minority, resulting from society’s recognition of minors’ lack of judgment and understanding, [footnote omitted] and the strong presumption running through all Texas law that minors benefit from the

³ [__ S.W.3d __ (Tex. 2000).]

⁴ [*Id.* at __.]

⁵ Senator Florence Shapiro, Hearing before the Senate Human Services Committee, March 10, 1999, tape 1, at 18 (“Members we are asking for parental involvement in every area of our children’s lives except one, an abortion. Currently, Senate Bill 30 is in keeping with the broad and sweeping intent of the whole of Texas law.”)[;] Representative Dianne White Delisi, Hearing before the House State Affairs Committee, April 19, 1999, tape 1, side A[;] Representative Leo Alvarado, Jr., Hearing before the House State Affairs Committee, April 19, 1999, tape 3, side A (expressing concern that bypass under any parental involvement bill be limited to cases where there is adequate evidence “If a girl goes ‘My father is going to beat me up’ even though he has probably never beat her up in her life, is that going to determine that it is not in her best interest to tell her father?”); David Scott Miller, M.D., Hearing before the House State Affairs Committee, April 19, 1999, tape 6, side B (opposing Senate Bill 30, acknowledging that he requires parental involvement in every other non-emergency procedure).

involvement of their parents.

*Legislators were unanimous in their characterization of the bypass as “rare” or exceptional.*⁶ The examples of cases involving use of the judicial bypass given by legislators during committee hearings or floor debate involved young girls facing dire circumstances. Senator Gallegos expressed repeated concern about girls who would be hospitalized or die due to abuse by parents who became outraged at the news of their daughter’s pregnancy.⁷ Members of the House State Affairs Committee discussed use of the bypass in the context of the incest victim’s needs.⁸ Representative Gray, in laying out House Bill 5 in committee, provided an even more detailed example of cases where bypass should be granted by discussing a hypothetical ten-year-old victim of incest.⁹ On the second reading of the Committee Substitute for Senate Bill 30 in the House of Representatives, Representative Gray offered a further example of bypass being appropriate in cases where “one parent may be in prison [and] another one may be on the streets with their own health problems”.¹⁰ In the House floor debate Representative Giddings gave the example of a mother who had agreed to require her daughter to have sex with the mother’s

⁶ Senator David Bernsen, Hearing before the Senate Human Services Committee, March 10, 1999, tape 3, at 4 (“those small exceptions” suitable for a bypass procedure); Representative Dianne White Delisi, Hearing before the House State Affairs Committee, April 19, 1999, tape 1, side A (“And you are certainly right, in rare cases when it is not appropriate to tell the girl’s parent, then the judge of that court of law is appropriate because they are duly sworn to uphold, and duly sworn to upheld [sic] the best interest of that child.”); Representative Patricia Gray, Hearing before the House State Affairs Committee, April 19, 1999, tape 3, side B (referring to only “exceptional” cases as those to be dealt with through a bypass process); Representative Phil King, Hearing before the House State Affairs Committee, April 19, 1999, tape 3, side B (characterizing cases to be dealt with through a bypass as “rare” and parental involvement required in the “vast, vast, vast majority of cases”).

⁷ Senator Mario Gallegos, Jr., Hearing before the Senate Human Services Committee, March 10, 1999, tape 1, at 22 (“I’d like to take you [Senator Shapiro] to Ben Taub Hospital and, you know, like I spent five years there.”); tape 2, at 14 (exploring opinion of Dr. Dave Kittrell that minors would be physically injured or “thrown out on the street”); tape 2, at 25 (exploring opinion of Kae McLaughlin that girls will die due to illegal abortions).

⁸ Hearing before the House State Affairs Committee, April 19, 1999, tape 2, side A (discussion between Representatives John Amos Longoria, Debra Danburg, and Dianne White Delisi regarding the merits of bypass as an opportunity for the victim to seek protection against continuing abuse), and tape 3, side A (discussion between Representatives David Counts and Dianne White Delisi regarding the confidentiality for incest victims in rural counties)[.]

⁹ Representative Patricia Gray, Hearing before the House State Affairs Committee, April 19, 1999, tape 3, side B.

¹⁰ Representative Patricia Gray, CSSB 30 - Statement of Legislative Intent. House Journal, May 21, 1999, 79th Day, at 2753. See also Representative Ron Clark, House Debate on Senate Bill 30, May 21, 1999, tape 158, side B (“[T]here’s a fair number where perhaps the father is off in prison somewhere, and the mom’s disappeared[.]”).

new husband.¹¹ At the third, and final reading, of Senate Bill 30, Representative Delisi voiced a continuing concern that victims of incest, [sic] or physical abuse receive protection, and her belief that SB 30 advanced that goal.¹² Each of these examples involve [sic] extraordinary circumstances presenting a real and present danger that a minor will be grievously harmed if a parent learns she is pregnant.

Certainly there is nothing in the legislative record that supports permitting a bypass based only on the untested statement of a minor that her mother was ill, and she did not want her father notified because he had a temper, and, although he did not “beat” her, he had slapped her on some occasion.¹³ Nor is there anything in the legislative record to suggest that a bypass was contemplated in a case where the only evidence is a girl’s testimony that she could tell her mother, but her mother would share the information with her father, who is an alcoholic and “takes things out of proportion” and subsequently “take[s] it out on my mom.”¹⁴ In short, the Legislature contemplated much stronger evidence that parental notification would not be in a minor’s best interest or that it may lead to physical, emotional, or sexual abuse than this Court has required to date.

(Emphasis added). The preceding paragraphs — particularly the last two — clearly demonstrate the Court’s unjustifiable departure from the Legislature’s intent.

With regard to the trial court’s obligation to weigh and consider the evidence – including the minor’s testimony – the Legislature has made clear that it is incorrect for the Supreme Court of Texas to base a judicial bypass “on the flimsiest of testimony,¹⁵ or even perhaps, in the absence of

¹¹ Representative Helen Giddings, House Debate on Committee Substitute Senate Bill 30, May 19, 1999, tape 147 side A (statement reproduced in text infra). See also Representative Ron Clark, House Debate on Committee Substitute Senate Bill 30, May 21, 1999, tape 158, side B (giving the example “Look the parent is abusive, the parent, in Ms. Giddings’ case is selling the child, we need a judicial bypass.”).

¹² Representative Dianne White Delisi, CSSB 30 - Statement of Legislative Intent. House Journal, May 22, 1999, 80th Day, at 2912.

¹³ *In re Jane Doe 2*, [__ S.W.3d __, __ (Tex. 2000)](Enoch, J.).

¹⁴ *In re Jane Doe 3*, [__ S.W.3d __, __ (Tex. 2000)] (Hecht, J. dissenting).

¹⁵ See *In re Jane Doe 4*, [__ S.W.3d __, __] (Tex. 2000) (Phillips, C.J.) (characterizing evidence as “monosyllabic answers to leading questions” of a girl’s court-appointed lawyer).

relevant evidence, on the basis of statements by the minor’s attorney.¹⁶ This was not the intent of the Legislature, and Texas parents deserve better.” Additionally, the legislators state in their brief:

Nowhere [in the legislative record] is it suggested that courts must unquestioningly accept any testimony that a minor offers, or a lawyer evokes. The record, instead, is replete with references to the importance and value of parental involvement, [footnote omitted] the rarity of circumstances that would support judicial bypass of that involvement, [footnote omitted] and the great care and consideration expected of judges prior to authorizing any minor to obtain a secret abortion. [footnote omitted]

. . . The Legislature expected trial judges to hear the evidence presented by the minor, weigh it against the strong presumptions in Texas law that parental involvement is advantageous, and minors are ill-equipped to make grave and irreversible decisions, and arrive at a reasoned conclusion on the question of whether the minor has established her case. *Requiring trial courts to blindly accept a minor’s mere assertion (or that of her lawyer in the form of leading questions or even mere argument to the court) that she is entitled to bypass parental notification by retitling the assertion “a prima facie case” [would be incorrect].* [footnote omitted]

(Emphasis added).

The legislators also contend that they “sought to insure pregnant minors obtained advice from those whose only interest is the best interest of the girl.” In support, they state:

Legislators heard many descriptions of the confusion and panic an unplanned pregnancy may cause.¹⁷ Witnesses provided compelling stories of misplaced trust

¹⁶ Cf. *In re Jane Doe 3*, [__ S.W.3d __, __ (Tex. 2000)] (Gonzales, J. concurring).

¹⁷ Natalie Wolk, Hearing before the Senate Human Services Committee, March 10, 1999, at 2 at 8 (“The teenagers I see [as a counselor at Planned Parenthood of Houston] are very, very scared.”); Dave Kittrell, [M.D.], Hearing before the Senate Human Services Committee, March 10, 1999, at 2 at 11 (“I also know that if they [pregnant teens] perceive that they’re going to be embarrassed or have difficulty obtaining parental consent, for whatever their reasons are, these people are in distress, they’re in crisis and I, I personally, as a physician, certainly want them to inform their parents.”); Margot Clarke, Hearing before the Senate Human Services Committee, March 10, 1999, at 2 at 18 (“[T]hey [pregnant teens] struggle with a sense of being cornered, or hope desperately that it will just go away[.]”).

and self-interested advisors.¹⁸ While no legislation can eliminate the confusion of the minor, or insure that all counselors place her interests above their own, *the requirement that mature minors be “sufficiently well informed” limits the minor’s reliance upon those who profit only if she decides to obtain an abortion.*

It should go without saying that a minor who consults only with her sexual partner regarding her options in dealing with the pregnancy is not “sufficiently well informed.”¹⁹

Another possible source of advice, where self interest may override concern for the minor, are facilities which profit only if the girl seeks an abortion. According to the Texas Department of Health, the vast majority of induced abortions are performed in abortion clinics. [footnote omitted] Unlike many private physician’s offices, these providers offer only one option in responding to an unplanned pregnancy – abortion. In an ongoing federal lawsuit regarding recent changes in Texas licensing requirements, physicians who provide abortions as part of their general obstetrical practice described abortion clinics as insensitive to the emotional needs of their patients,²⁰ prone to becoming profit-motivated,²¹ and subject to “the cattle herd mentality.”²² The Texas Parental Notification Act was intended, in part, to protect minors from impulsive decisions unduly influenced by those who advocate only one response to unplanned pregnancies – that response being abortion.

. . . .

. . . [B]y requiring that the mature minor be sufficiently well-informed to forego [sic] parental notification, the Legislature intended the courts to assure that the

¹⁸ Dee Dee Alonzo, Hearing before the Senate Human Services Committee, March 10, 1999, tape 2 at 4-5 (describing continuing sexual assault by high school teacher); Terry Moore, M.D., Hearing before the Senate Human Services Committee, March 10, 1999, at 2 at 17 (“By not enacting this legislation, we are dooming some of these young girls to continued sexual abuse with the perpetrator getting away and providing the abortions for these young girls[.]”).

¹⁹ Amici applaud the conclusion of Justice[] Gonzales, [joined by Chief Justice] Phillips, [and Justices] Owen, Hecht, and Abbott in *In re Jane Doe 3* that consultation with only the minor’s boyfriend was insufficient to establish that she was mature and sufficiently well informed. [__ S.W.3d __, __ (Tex. 2000)] (Gonzales, J. joined by Phillips, C.J.); id. at [__] (Hecht, J. joined by Abbott); id. at [__] (Owen, J.).

²⁰ *Women’s Med. Ctr. of N.W. Houston v. Archer*, Civil No. H-99-3639, Order and Memorandum (Dec. 29, 1999) at 13 (court’s summary of testimony by Dr. Fred Hansen)

²¹ Id. at 16.

²² Id. at 20 (court’s summary of testimony of Dr. Tad Davis).

minor receive balanced and complete information. *In order to achieve this legislative goal, it is important that a minor be required to show that she has either received information from a disinterested and reliable healthcare provider who is not involved in abortion advocacy and does not stand to profit from any particular choice of the minor, or that she has received information from multiple sources, at least one of which expresses a preference for childbirth over abortion.*

. . . Abortion facilities that do not provide prenatal care or adoption services, [sic] would not qualify to be the sole source of a minor's healthcare information. *Under the test proposed, the minor obtaining information from such a facility would be required to show that she has also obtained information from a source which expressed a preference for childbirth over abortion. Examples of such sources include but are not limited to crisis pregnancy centers, prenatal care clinics that do not provide abortions, or adoption agencies that provide medical services.*

The intention of the Legislature was to insure that mature minors are sufficiently well informed of their options in dealing with an unplanned pregnancy. As part of achieving that objective, the sponsors articulated their desire to insure that minors were advised by those seeking the minor's best interest, free from the taint of any personal gain. By establishing standards that insure trial courts protect minors from relying exclusively upon the advice of those who stand to gain from the minor's choice of abortion, this Court upholds the clear intent of the Act, and remains well within the constitutional standards articulated by the United States Supreme Court in *Planned Parenthood v. Casey*.²³

(Emphasis added). Despite its protestations about struggling to apply legislative intent, the Court continues to depart from these clearly articulated standards concerning what must be established to ensure that the minor is well informed.

The Legislature makes clear that trial courts must carefully weigh the impact that an abortion may have on a minor:

At the same committee hearings involving Senate Bill 30, the legislative committees heard other bills that proposed requiring parental consent for minors, and informed consent for adult women. All of these bills were supported by testimony

²³ 505 U.S. 833 (1992).

regarding post-abortion complications and regret. [footnote omitted] Among the most poignant was the testimony of Ms. Linda Gartman before the Texas Senate Human Services Committee.²⁴ The long-term emotional and psychological harm testified to by Ms. Gartman and others counsels great caution in endorsing abortion as the solution to every unplanned pregnancy. Because no surgical procedure is entirely risk free, and because of the unique character of abortion, [footnote omitted] courts bear a heavy responsibility when exercising their *parens patriae* power to authorize an immature or ill-informed minor to consent to a secret abortion. To suggest that courts could authorize such action after only inquiring as to whether a parent should be notified is to suggest that courts are free to secretly intervene in the natural and constitutionally-protected relationship of parent and child, usurp the natural prerogative of the parent to make medical decisions for their child, and then irresponsibly abandon the immature minor to make a decision the court has already determined she is unequipped to competently make. This result is not required under a fair reading of the Parental Notification Act or federal constitutional law, and cannot be an accurate understanding of this Court's view of Texas law.

In *In re Jane Doe 2*, this Court articulated four factors that a trial court should consider in assessing a minor's claim that parental notification would not be in her best interest.²⁵ Yet, as Justice Owen notes in her concurring opinion, none of these factors go to the question of whether it is in the best interest of this particular minor to obtain an abortion.²⁶ There was every expectation by the Legislature that Texas courts would continue their traditional solicitude for the well being of immature minors, and consider not only whether parental notification was in the best interest of the minor, but also whether the decision to obtain an abortion was in her best interest. [footnote omitted].

The legislators further argue that "any bypass for abuse should be based upon evidence of conduct constituting abuse under section 261.001 of the Texas Family Code." In support of that contention, they argue that the:

legislative discussion of abuse involved extreme conduct which would constitute abuse under [section] 261.001 of the Texas Family Code. Statements during the

²⁴ Linda Gartman, Hearing before the Senate Human Services Committee, tape 3, at 4-5.

²⁵ *In re Jane Doe 2*, [__ S.W.3d __, __] (Tex. 2000).

²⁶ *See id.* at __ (Owen, J., concurring).]

House of Representatives debate regarding Senate Bill 30 provide insight into the legislative understanding of the circumstances that would justify bypassing parental involvement in a minor's decision to obtain an abortion. While there are multiple references to cases involving incest or physical beatings, [footnote omitted] there is only one direct reference to bypassing parental involvement on the basis "that notification may lead to physical, sexual, or emotional abuse of the minor."²⁷ In discussing a proposed amendment to the bill, Representative Giddings stated:

I know we have provisions in this bill for abused girls when abuse is suspected or detected to get help, but there are cases where the abuse is not known. I don't know how many of you might be aware that there are two high-profile cases in the Dallas area in the last year. One where a mother married and the young girl that was the daughter, 14 years old was forced to enter into a contract to have a daughter for her stepfather as a part of the marriage. Fortunately, that was discovered and that man is in prison and so is that mother. Additionally, we had a case where a mother had a Norplant put into the arm of her child so that the father could have sex with that child without fear of pregnancy.²⁸

Her examples were referred to several times and seems [sic] to be indicative of the general understanding of the type of circumstances that would result in judicial bypass of parental notification due to abuse.²⁹ *This Court's interpretation of what would constitute adequate evidence of potential "physical, sexual, or emotional abuse" sufficient to justify bypassing parental notification should be informed by the gravity of the situations discussed during the legislative process.*

The legal landscape existing at the time the Parental Notification Act was passed establishes that the Legislature intended abuse to be defined as it is in section 261.001 of the Texas Family Code. The Texas Parental Notification Act did not introduce the phrase "physical, sexual, and emotional abuse" into the lexicon of Texas lawyers. This phrase had a well-defined statutory meaning in section 261.001

²⁷ Tex. Fam. Code sec. 33.003(i).

²⁸ Representative Helen Giddings, House Debate on Committee Substitute Senate Bill 30, May 19, 1999, tape 147 side A.

²⁹ E.g. Representative Ron Clark, House Debate on Committee Substitute Senate Bill 30, May 21, 1999, tape 158, side B (giving the example "Look the parent is abusive, the parent, in Ms. Giddings' case is selling the child, we need a judicial bypass."); Representative Arlene Wohlgemuth, House Debate on Senate Bill 30, May 22, 1999, tape 166, side B (opposing clergy bypass because of inadequate protection for girls like the victims in Ms. Giddings [sic] examples).

of the Texas Family Code before the passage of Senate Bill 30, and had been used repeatedly in several Texas appellate opinions.³⁰ While the vast majority of Texas cases authorizing any interference with the parent-child relationship involve claims of both emotional abuse and physical or sexual abuse, there appeared to be little uncertainty of what each of these three claims meant.³¹ The phrase “emotional abuse” had been used without additional definition or internal reference in at least three other statutes dealing with minors in the Family Code,³² as well as in two additional statutes in the Human Resources Code.³³

Nonetheless, in *In re Jane Doe 3*, members of this Court offered not one, but two new definitions of the phrase “emotional abuse.” Justice Gonzales, joined by Chief Justice Phillips, looked to the definition of abuse governing elderly protective services, and offered a definition of emotional abuse as “unreasonable conduct causing serious emotional injury.”³⁴ The opinion does not explain why this definition, crafted as a measure of misconduct involving the interaction of adults, is superior to the definition designed specifically to be applied to the interaction of adults with minors.

Justice Enoch, joined by Justices Baker, Hankinson, and O’Neill, provides even less guidance in determining the parameters of “emotional abuse.” He rejects the clear definition contained in section 261.001 as inapplicable because the Parental Notification Act does not specifically refer to it in section 33.003(i), although he acknowledges the use of section 261.001 in section 33.008 of the Act regarding a physician’s duty to report abuse. In place of the relatively objective criteria found in the statutory definition (“injury to a child that results in an observable and material impairment in the child’s growth, development, or psychological functioning”),³⁵ Justice Enoch suggests “abuse is abuse; it is neither to be trifled with nor its severity

³⁰ E.g. *State Farm Gen. Ins. Co. v. White*, 955 S.W.2d 474 (Tex. App.–Austin, 1997 [no pet.]); *Rodriguez v. State*, 1997 WL 527843 (Tex. App.–Dallas, 1997), petition for discretionary review refused (1998).

³¹ *Id.*

³² Tex. Fam. Code sec. 32.004(a)(3), 107.052(c), and 162.005(c).

³³ Tex. Hum. Res. [Code] sec. 42.059(a), and 40.069(c).

³⁴ *In re Jane Doe 3*, [__ S.W.3d __, __ (Tex. 2000).]

³⁵ Tex. Fam. Code sec. 261.001.

to be second guessed.”³⁶ Amici fail to understand the superiority of this non-defining definition over the comparative clarity of the existing statutory definition of “emotional abuse.” *Certainly lower courts attempting to decide bypass cases in accordance with the law, rather than personal predilection, find more guidance in the statutory direction to consider “observable and material impairment” than in the mere adjectives “unreasonable” and “serious” found in the definition of Justice Gonzales, or in the refusal to provide any definition found in the opinion authored by Justice Enoch.*

The examples of abuse given throughout the legislative debate in the context of the then-existing Texas law, and the specific reference in the Act to the definitions contained in section 261.000 of the Family Code, provide clear evidence of the Legislature’s intent that the bypass provision, “notification may lead to physical, sexual, or emotional abuse,” was intended to incorporate the definitions of section 261.001. To reject the relative certainty of those definitions in favor of the amorphous interpretations offered by various members of this Court is to introduce a level of uncertainty into the Parental Notification Act that disserves the minors seeking judicial bypass, the trial courts required to rule on their applications, and the appellate courts that will ultimately be called to review those trial court rulings. It was not the intention of the Legislature to be vague or uncertain in its guidance on the criteria for judicial bypass, and Amici urges the court [sic] to reconsider the confusion created by searching for alternative definitions when the Texas Family Code already has a clear and functional definition of emotional abuse.

The clear definition of abuse found in section 261.001 facilitates compliance with statutory reporting of abuse requirements. The law of Texas has long insisted on the protection of minors against abuse. Under current statutory protections any person having cause to believe that a minor has suffered harm as the result of abuse must report that belief to appropriate state officials for investigation.³⁷ The standard is even higher for licensed professionals, in that they must not only report reasonable belief of past abuse, but must also report any reasonable belief of future abuse.³⁸ The state’s concern to insure the protection of children is so strong that it even trumps the interests underlying testimonial privileges, including that of attorney-client. [footnote omitted]

³⁶ [__ S.W.3d __, __ (Tex. 2000).]

³⁷ Tex. Fam. Code sec. 261.101.

³⁸ Id.

Expression of this concern is continued in the Parental Notification Act by its reporting requirements regarding both past and future abuse.³⁹ The record is clear that the Texas Legislature intended to protect minors who may be endangered by revealing to a parent their pregnancy or intent to obtain an abortion. The mechanism chosen for this protection was the reminder to professionals involved in bypass cases of their reporting duties, with specific emphasis on the circumstances that appeared to be most common from the legislative testimony. There was substantial testimony concerning the large number of minors' pregnancies resulting from sexual assault by unrelated parties. [footnote omitted] Similarly there were repeated expressions of concern to protect the unique vulnerabilities of children who are the victims of incest. [footnote omitted] For these reasons, the Act contains specific provisions requiring the reporting of these patterns of conduct. The inclusion of these provisions does not change, nor was it intended to change, the general reporting obligations of professionals under section 261.101 of the Texas Family Code. To suggest otherwise is to abandon the most vulnerable members of our society to continuing degradation and harm. [footnote omitted]

In order to insure compliance with the general reporting duties placed upon the judges, lawyers, and other professionals involved in a judicial bypass case it is important to have clear and objective definitions of the various forms of "abuse." Section 261.001 of the Family Code provides such definitions. Without such clarity and objectivity, the general reporting requirement becomes an invitation to engage in witch hunts – an invitation that undermines the integrity of the family and would harm minors truly at risk of being abused, due to the resources of state officials charged with the protection of minors becoming overwhelmed with questionable or even specious reports.

The Parental Notification Act specifically refers to the definitions of abuse contained in section 261.001 of the Texas Family Code. The legislative record expresses unanimous support of the protection of minors who are the victims of abuse. It also expresses unanimous support for parental involvement in the vast majority of cases where a pregnant minor seeks an abortion. What is at issue is defining the circumstances where parental involvement should not occur, and the statute is clear on that issue. It should not occur in those rare circumstances where 1) the minor is mature and sufficiently well informed to make the decision to have an abortion without parental involvement, 2) parental notification is not in the best

³⁹ See Tex. Fam[.] Code sec. 33.008 (physician's duty to report and duty of Department of Protective and Regulatory Services to assist minor in applying for judicial bypass where appropriate due to evidence of abuse) and Tex. Fam. Code sec. 33.009 (duty of court, guardian ad litem, and attorney ad litem to report sexual crimes committed against the minor).

interest of the immature or ill informed minor and her best interest is served by obtaining an abortion, and 3) where parental notification may lead to physical, sexual, or emotional abuse of the minor. Certainly in the last two circumstances, where the court is exercising *parens patriae* power, the paramount concern must be the well being and protection of the minor. This is only served by clear definitions of abuse that insures [sic] both the immediate protection of the minor, and long-term intervention to assure her continuing safety. Section 261.001 of the Family Code provides such definitions and this section should be the standard whereby the courts of this state determine whether potential abuse exists which justifies bypassing parental notification of a minor's intention to obtain an abortion.

(Emphasis added).

In accord with the foregoing statements and analysis by the legislative amici, I urge the Court to abandon its interpretive hand-wringing and simply apply the true legislative intent that is so eloquently stated by the Act's sponsors. If the Court's true goal — or the goal of any judge attempting to decide a Parental Notification Act case — is to apply the Act consistent with its legislative intent, the Court need look no further than the Amici Curiae brief of Senator Florence Shapiro and Representative Dianne White Delisi. Because the Court's analysis and conclusions depart from the true intent of the Legislature, I dissent.

GREG ABBOTT
JUSTICE

OPINION DELIVERED: June 22, 2000