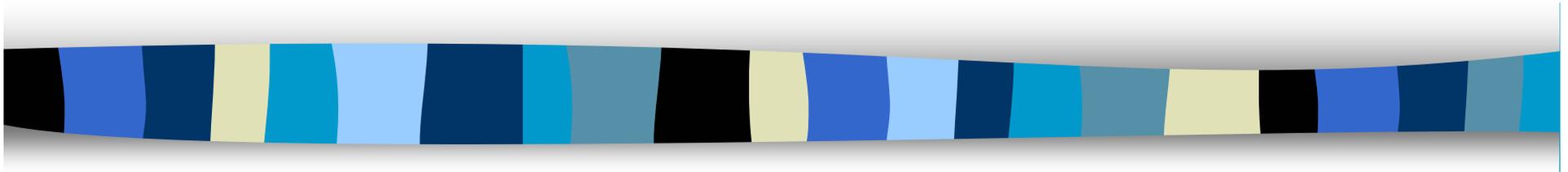


# “MATURE MINOR” POLICY DISCUSSION



Child Welfare Legislative Oversight  
Committee

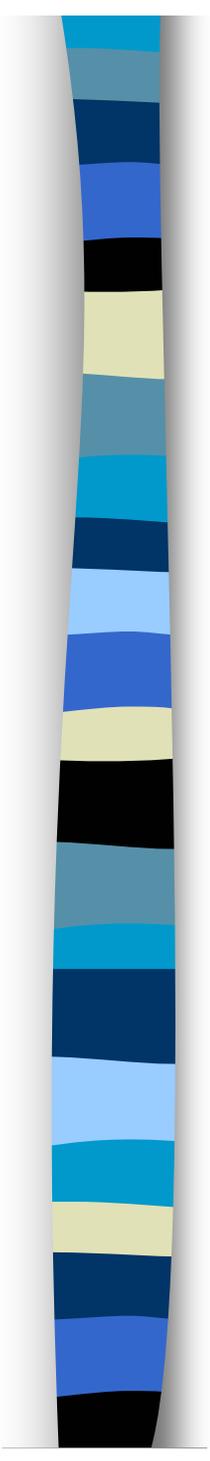
September 23, 2004



## What did HB 140 provide?

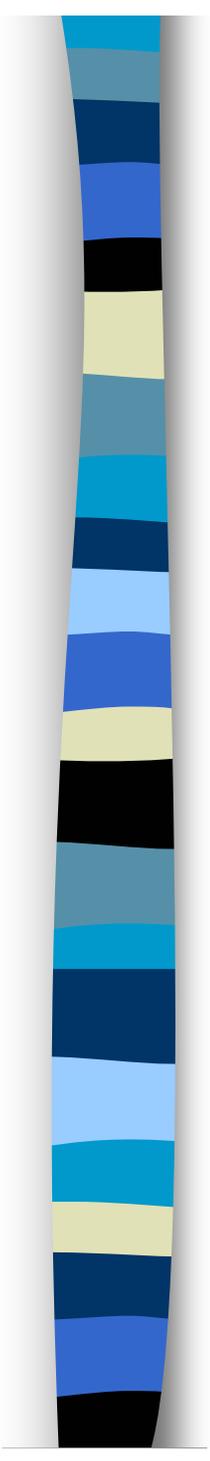
### **Amended both 62A-4a-101 and 78-3a-103 by:**

- Adding a new definition: “Mature minor” means a person less than 18 years of age whom the court determines is of an age and maturity and who reasonably demonstrates the capacity to make reasonable health care decisions on the minor’s own behalf.”
- Provided an exception to the finding of civil child neglect – “A parent or guardian may not be found guilty of neglect for the medical decisions made by a mature minor.”



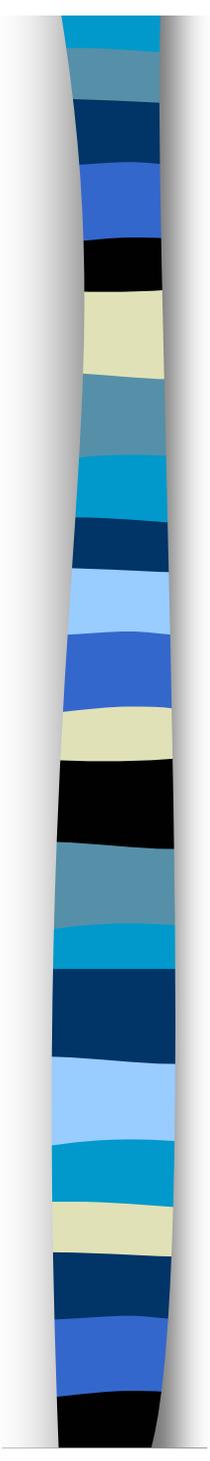
## What did Governor's Veto statement provide?

- “I am particularly concerned about the new provisions having to do with a ‘mature minor’. If this bill becomes law, it risks opening the door for minors, contrary to their parents’ wishes, to seek judicial approval for health care decisions such as access to abortion, contraceptives, or other treatments. Such a major policy change deserves full and thorough discussion in an open public hearing before being added to the laws of our state.”



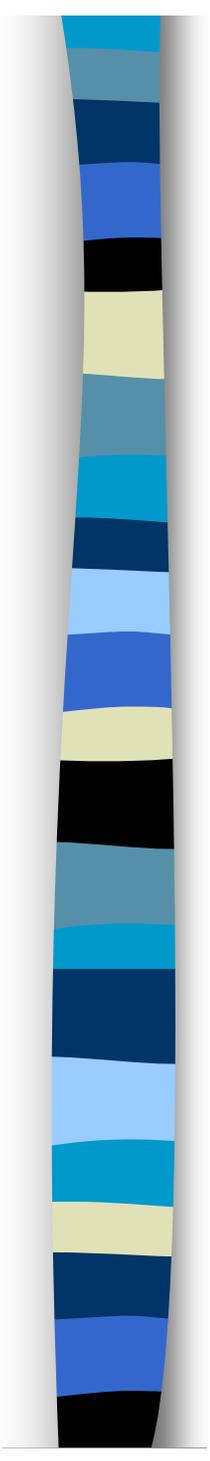
## What was not in HB 140?

- Age parameters other than less than 18
- Definition of “health care” or “health care decisions”
- Definition of “mature” or “capacity”
- Indication of whether declaration of “mature minor” was a one-time or permanent classification
- Direction on who is financially responsible



## Preliminary Question: Would HB 140 create additional rights for mature minors?

- Proponents do not believe it does – believe it creates an exception for parents but no right for minors
- Others contend that the right to direct medical care and make medical choices is implicit in the creation of a mature minor status. If the mature minor did not have the ability to make his own medical decisions and/or direct his own medical care, the proposed statute would not be necessary.



## BALANCING “RIGHTS” AND INTERESTS

- **Interests of the Child**
  - **Interests of the Parent(s)**
  - **Interests of State acting as “parens patriae”**
- How will proposed addition of “mature minor” affect each interest?
  - Which interests does the Legislature wish to protect?

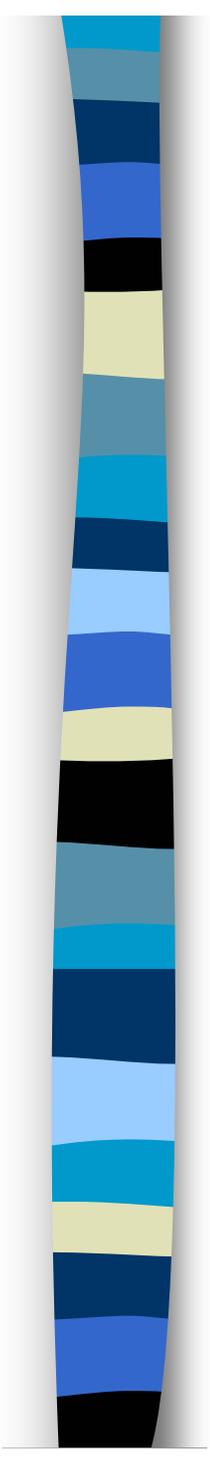


## ISSUES & QUESTIONS RE: MINOR CHILD

Proposed language shifts balance towards the rights of certain children and would diminish rights of the parents or guardians of those minors

### **Potential “Health Care” parameters:**

- Access to contraceptives?
- Access to abortion without parental notification and consent; creation of “judicial bypass”?
- Access to substance abuse treatment OR refusal of substance abuse treatment?
- Access to mental health treatment OR refusal of mental health treatment
- Ability to enter into health care directives to make end of life decisions
- Access OR refusal of any other medical treatment or intervention



## ISSUES & QUESTIONS RE: MINOR CHILD

Proposed language shifts balance towards the rights of certain children and would diminish rights of the parents or guardians of those minors

Once a minor is deemed  
“mature” –

- Do they have the right to sue or be sued?
- If they don't, can parents bring suit on their behalf?



## ISSUES & QUESTIONS RE: PARENT(S)

Proposed language would remove a parent's right to make health care decisions for "mature minors" yet they would still be responsible for the minor in all other respects.

### **Financial Responsibility:**

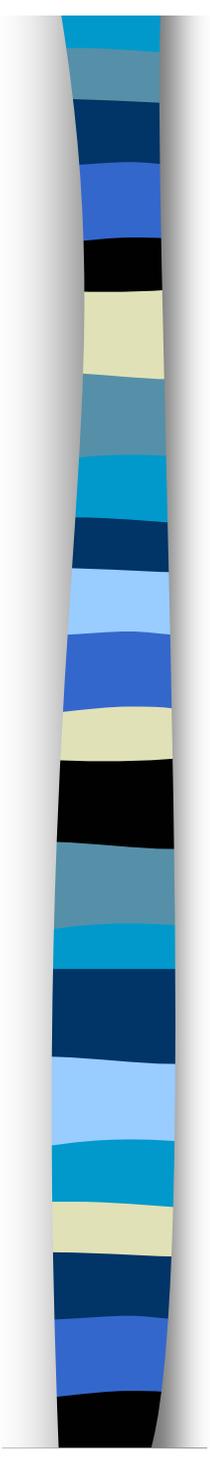
Will the parents remain responsible to pay for the care chosen by the mature minor?

Can they refuse?

Does refusal de facto negate the whole purpose?

If parents are not financially responsible, is the mature minor?

Does the state bear any responsibility to pay?



## ISSUES & QUESTIONS RE: PARENT(S)

Proposed language would remove a parent's right to make health care decisions for "mature minors" yet they would still be responsible for the minor in all other respects.

### ■ Standing:

Who has standing to petition for minor to be declared "mature" – Parents? Child?

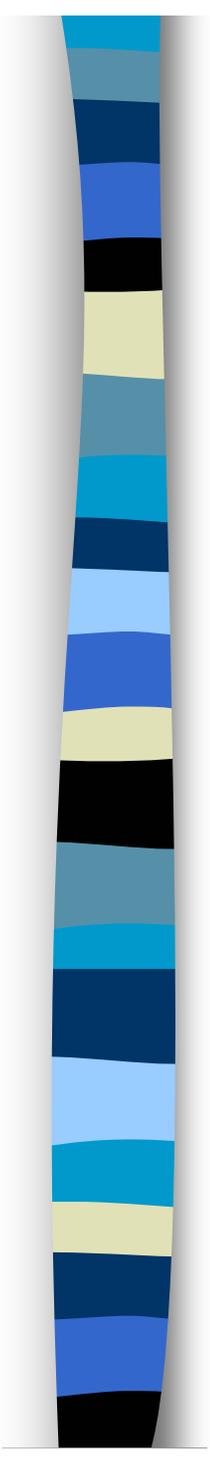
Who is entitled to notice?

Who can present evidence?

### ■ Payment for Care:

In addition to "who pays", does Court have obligation to make sure that parents honor the mature minor's decisions?

### ■ Potential for Misuse or Abuse and guarding against it



## ISSUES & QUESTIONS RE:

### “STATE” – Dept. of Human Services

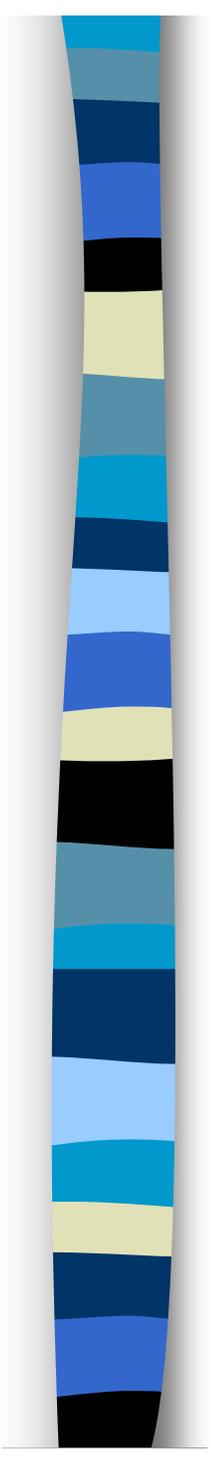
Impact of proposed language on Department as it relates to children and youth in its care and custody is unclear

- **Possible actions:**

Youth in DCFS or DJJS custody could petition for “mature minor” status as part of their desire to achieve independence

State/DHS could use law to create a cause of action on behalf of a child who wants care that parents are refusing

- Other areas of possible authority and legal confusion with existing responsibilities assigned to State/DHS



# ISSUES & QUESTIONS RE: THE COURT SYSTEM

Proposal gives the Court considerable additional  
responsibility

## ■ Pre-adjudication issues:

Who has standing to  
petition for mature  
minor status?

Who is entitled to notice?

What is the burden of  
proof?

Who can present  
evidence?

Is the minor entitled to  
representation?

What criteria should/must  
the Court consider  
before making a  
determination?



# ISSUES & QUESTIONS RE: THE COURT SYSTEM

Proposal gives the Court considerable additional  
responsibility

## ■ Post-adjudication issues:

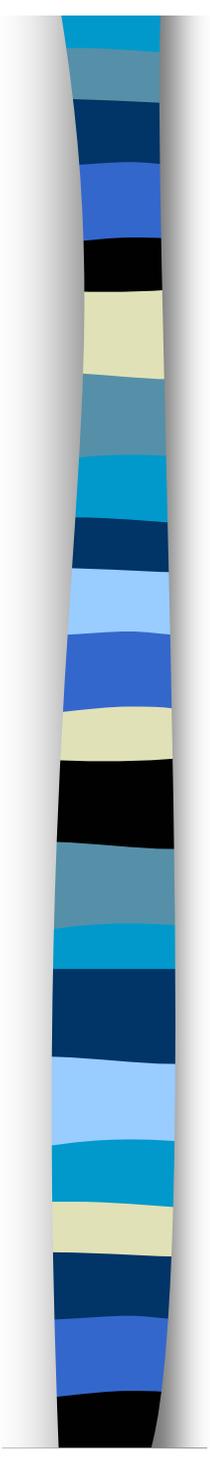
Is mature minor status for  
current health issue or  
all future ones as well?

Is status permanent or one  
that can be re-visited?

Would the Court have the  
duty to enforce the  
mature minor finding?

Could finding lead to other  
inquiries into the  
minor's emancipation?

Could finding lead to other  
consequences or  
potential liability for the  
minor?



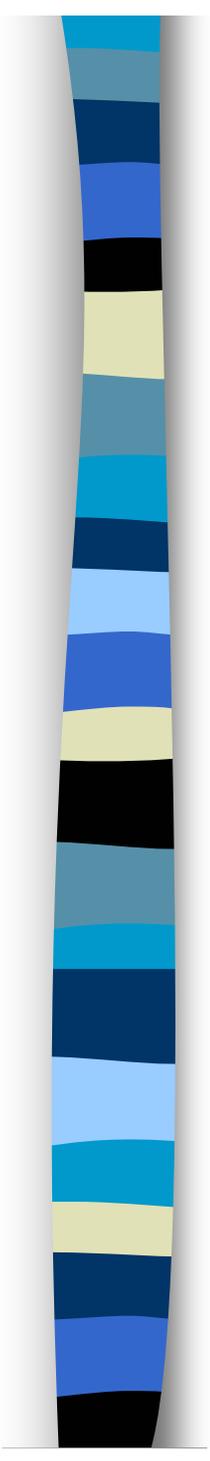
## ISSUES & QUESTIONS RE: OTHER STAKEHOLDERS

### ■ Medical Profession:

Do statutes related to medical profession need to also be amended to protect those who honor the wishes of a “mature minor”?

### ■ Insurance Providers:

Do statutes related to administration of insurance policies need to also be amended to protect both insurers and the insured?



## OTHER GENERAL CONCEPTS/ISSUES

- Correlation with existing state law protections for parents who refuse medical treatment based on religious beliefs
- Interrelationship with concept of emancipation
- Case law in other states regarding civil neglect and mature minors