

## SUPERIOR COURT STANDING ORDER 5-81

### UNIFORM PROCEDURES REGARDING PETITIONS FOR ABORTION AUTHORIZATION UNDER G.L. c. 112, § 12S, INCLUDING SUGGESTED GUIDELINES ORIGINALLY SET FORTH IN PLANNED PARENTHOOD LEAGUE OF MASSACHUSETTS v. BELLOTTI, NO. 81-124 CIVIL (SUPREME JUDICIAL COURT FOR SUFFOLK COUNTY; LIACOS, J. SINGLE JUSTICE) (JUNE 16, 1981)

#### Applicable to All Counties

(1) Upon the filing of a petition under G.L. c. 112, § 12S, the Clerk of Courts or Clerk-Magistrate (clerk) shall immediately bring the matter to the attention of the judge in any session assigned to hear emergency civil matters, or to the Regional Administrative Justice or designee, who will either hear the petition or, through the clerk, assign it for a hearing in another session.

The matter shall be given priority over all other cases then pending so "that the court may reach a decision promptly and without delay so as to serve the best interests of the pregnant woman." G. L. c. 112, § 12S. In this regard, a judge should not decline to decide a case brought under § 12S because of any pleading omissions or other technical defects. The Administrative Office of the Superior Court shall provide a form petition and form affidavit, to be available on the Trial Court's public website and in all clerks' offices for easy access by petitioners and their counsel.

If the petition is filed in a county in which no session is being held, the clerk who received the petition shall immediately notify the Regional Administrative Justice or the Administrative Office of the Superior Court by telephone of the pending petition. The Regional Administrative Justice or the Administrative Office of the Superior Court shall then take such action as is necessary to assign the petition for prompt hearing in a location accessible to the petitioner, so as to serve the best interests of the pregnant woman.

(2) The court shall appoint counsel for any petitioner who appears without counsel and requests representation, and shall waive costs and fees upon request, as provided by St. 1980, c. 539.

The court may appoint a guardian ad litem to represent the minor or may make such other orders as necessary pursuant to Mass. R. Civ. P. 17(b), but shall take care to avoid any delay that may result from such orders, and to ensure prompt determination of the petition.

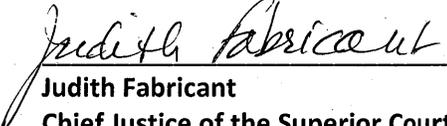
(3) As provided by § 12S, all proceedings shall be confidential. All papers, other than the affidavit referred to herein, shall be designated anonymously in the name of Mary Moe. An affidavit bearing the minor's true name and her signature shall accompany the petition, and shall be kept in a sealed envelope or other container, identifiable by the docket number of the petition. All papers, recordings, transcripts, and any other records of the proceeding shall be impounded.

Each clerk shall undertake to insure that the minor's contact with the clerk's office is confidential and expeditious to the fullest extent practicable. For example, assistance in filing a petition should be provided in a confidential setting, such as a private office. Similarly, one or more persons in the clerk's office should be available at all times to answer questions asked by a minor or her counsel, either in person or by phone, and to assist the minor or her counsel in expeditiously presenting her petition to the court. Each clerk shall designate one or more persons to receive and process § 12S petitions, and shall ensure that one such person is available to ensure prompt treatment.

(4) All proceedings under § 12S, shall be conducted in the judge's lobby or other private setting, and shall be recorded electronically by means of a portable electronic recording device. In accord with the statute, the judge shall make specific factual findings and legal conclusions supporting the decision in writing, and shall order that the record of the proceeding, including the judge's findings and conclusions, be maintained. The Administrative Office of the Superior Court shall provide a standard form for the making of such findings and order, which shall be available to all judges.

(5) Suggested guidelines, originally emanating from a memorandum of the Single Justice of the Supreme Judicial Court for Suffolk County in *Planned Parenthood League of Massachusetts v. Bellotti*, No. 81-124 Civil (Supreme Judicial Court for Suffolk County; Liacos, J. Single Justice) (June 16, 1981), are attached hereto.

Adopted July 31, 1981, effective August 1, 1981. Amended August 25, 1988, effective October 1, 1988.

  
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Judith Fabricant  
Chief Justice of the Superior Court

Amended: January 6, 2020  
Effective: February 1, 2020

## SUGGESTED GUIDELINES

The following guidelines for handling § 12S petitions ("petitions") are suggested to the Superior Court. These guidelines are intended to supplement amended Superior Court Standing Order No. 5-81 and not to replace it.

1. Petitions should ordinarily be heard on any day the court is in session.
2. Petitions should be heard as expeditiously as possible upon filing with the Clerk/Magistrate's office, and on the same day if practical.
3. All technical defects in the proceedings and in the pleadings and papers should ordinarily be disregarded by the Court and by the Clerk/Magistrate.
4. Hearings must be confidential and should be held in the judge's lobby except where physically impossible. The petitioner ('minor') should be permitted to have present any person she desires (social worker, counselor, parent, friend), but the judge should exclude all unnecessary court personnel or others. The minor should be free to choose whether to go forward without counsel.
5. The minor should not be required to state her true name. After explaining the impoundment procedures used to ensure confidentiality, the judge may wish to ask the minor her true first name in order to address her by it during the hearing. The transcript should not contain the minor's full true name since she will have previously stated her identity on a sealed affidavit held by the Clerk/Magistrate pursuant to Superior Court Standing Order 12-80.
6. It is contemplated that the judge will conduct the hearing on a 'two-tier' basis with 'maturity' determined first, and 'best interest' addressed only if maturity is not found.
7. As to the 'maturity' finding, inquiry may be appropriate in such areas as the minor's age and school and work experience, any history of mental illness or other treatment relating to mental competence, and whether the abortion decision is a personal decision and not one forced upon the minor by another and whether the minor has discussed her decision with other persons. In any inquiry as to the minor's maturity and her understanding of the nature, consequences and significance of her abortion choice, or in any inquiry as to her best interests, it is suggested that the judge should avoid the creation of the appearance of seeking to promote a particular set of moral values by inquiring into the minor's or her parents' views as to the morality of abortion; or into whether the minor considers a fetus to be an 'unborn child,' as to whether the minor believes she is in some way taking or destroying life.
8. Where the court finds a minor is not mature, it must make a determination of whether the abortion or childbirth alternative is in her 'best interest'. The court may be guided in making such a determination by the substantially coextensive doctrine of substituted judgment. That doctrine essentially requires a court to determine what an incompetent person would choose were she fully competent, while bearing in mind her expressed choice and partial competency. Various considerations may be relevant to a 'best interest' determination. As to this finding, the court may inquire into the minor's reasons for not seeking her parents' consent. Where the minor is accompanied by one parent who supports her petition, that support should be given great if not dispositive weight.

9. Where the court preliminarily concludes that the minor is mature, appointment of a guardian ad litem should ordinarily be unnecessary. Where the court preliminarily concludes that the minor is not fully mature, it should consider whether such an appointment is necessary to assure protection of the minor's best interest or whether it would lead to unnecessary delay, particularly if the minor is represented by counsel, or has been counseled by competent professionals, or is accompanied by a parent or other adult.

10. In view of the statutory mandate for expeditious decisions, petitions may be decided in chambers and should, in any event, be decided as promptly as possible, and ordinarily within twenty-four hours or less. The Clerk/Magistrate should inform the minor of the decision as soon as possible and in the manner which the minor requests.

11. The Judge or Clerk/Magistrate should give the minor a copy of an order under § 12S bearing the court's docket number, and a copy of her sealed affidavit bearing the same docket number. Where the decision can be made immediately, the Judge may choose to have the minor wait, deliver the order and a copy of the affidavit to her, and seal the original affidavit in her presence.

12. A petition should not be denied or a hearing delayed solely because the minor has not selected a particular clinic, hospital or doctor for performance of the abortion. If the judge authorizes an abortion for an immature minor on the 'best interest' basis, he may inquire into her contemplated plans in order to assure himself that the particular course of medical treatment she intends to follow will be in her best interests.

13. Appointed counsel in § 12S proceedings should be paid for in the same fashion as in criminal cases or in such other fashion as the Chief Administrative Justice of the Trial Court finds is best suited for such proceedings.