

SENATE SUBSTITUTE FOR
HOUSE BILL NO. 4478

A bill to amend 1990 PA 211, entitled
"The parental rights restoration act,"
by amending sections 3 and 4 (MCL 722.903 and 722.904).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 3. (1) Except as otherwise provided in this act, a
2 person shall not perform an abortion on a minor without first
3 obtaining the written consent of the minor and 1 of the parents
4 or the legal guardian of the minor.

5 (2) If a parent or the legal guardian is not available or
6 refuses to give his or her consent, or if the minor elects not to
7 seek consent of a parent or the legal guardian, the minor may
8 petition the ~~probate~~ **family division of circuit** court ~~pursuant~~
9 ~~to~~ **as provided in** section 4 for a waiver of the parental consent
10 requirement of this section.

11 Section 4. (1) The ~~probate~~ **family division of circuit**

1 court has jurisdiction ~~of~~ **over** proceedings related to a minor's
2 petition for a waiver of parental consent.

3 (2) Proceedings held ~~pursuant to~~ **under** this act shall be
4 completed with confidentiality and sufficient expedition to
5 provide an effective opportunity for the minor to provide
6 self-consent to an abortion, in accordance with all of the
7 following:

8 (a) The ~~probate~~ **family division of circuit** court shall,
9 upon its first contact with a minor seeking a waiver of parental
10 consent under this act, provide the minor with notice **that the**
11 **minor may not seek a waiver of parental consent in that court if**
12 **the minor has been denied a waiver concerning the same pregnancy**
13 **by another family division of circuit court, and of the minor's**
14 right to all of the following:

15 (i) Confidentiality of the proceedings, including the right
16 to use initials in the petition.

17 (ii) Court appointment of an attorney or guardian ad litem.

18 (iii) Assistance with preparing and filing the petition.

19 (b) A minor may file a petition for waiver of parental
20 consent in the ~~probate~~ **family division of circuit** court ~~of~~ **in**
21 the county in which the minor resides. For purposes of this act,
22 the county in which the minor resides means the county in which
23 the minor's residence is located or the county in which the minor
24 is found. **A minor shall not file a petition for waiver of**
25 **parental consent in a family division of circuit court if the**
26 **minor has previously been denied a waiver of parental consent by**
27 **another family division of circuit court concerning the same**

1 pregnancy.

2 (c) Upon request of the minor, the ~~probate~~ **family division**
3 **of circuit** court shall provide the minor with assistance in
4 preparing and filing the petition for waiver of parental
5 consent.

6 (d) A minor may file a petition for waiver of parental
7 consent under this act on her own behalf or through a next
8 friend. The minor may use initials or some other means of
9 assuring confidentiality in the petition.

10 (e) Upon request of the minor, the ~~probate~~ **family division**
11 **of circuit** court shall appoint an attorney or guardian ad litem
12 within 24 hours to represent the minor in proceedings under this
13 section.

14 (f) A minor is not required to pay a fee for proceedings
15 under this section.

16 (g) A hearing on a petition for waiver of parental consent
17 under this act shall be held within 72 hours, excluding Sundays
18 and holidays, after the petition is filed and shall be closed to
19 the public. All records of proceedings related to the petition
20 for waiver of parental consent under this act are confidential.

21 (h) The ~~probate~~ **family division of circuit** court that hears
22 the petition for waiver of parental consent shall issue and make
23 a part of the confidential record its specific findings of fact
24 and conclusions of law in support of its ruling either on the
25 record or in a written opinion.

26 (i) A written order granting or denying a petition for waiver
27 of parental consent filed ~~pursuant to~~ **under** this act shall be

1 issued within 48 hours, excluding Sundays and holidays, after the
2 hearing on the petition is held.

3 (j) If a petition for waiver of parental consent is denied,
4 the family division of circuit court shall inform the minor of
5 all of the following:

6 (i) Her right to appeal the family division of circuit
7 court's decision to the court of appeals.

8 (ii) That she may not initiate proceedings concerning the
9 same pregnancy in another family division of circuit court.

10 (iii) That if there is an unanticipated change in the
11 circumstances of her pregnancy or family situation, she may
12 return to the family division of circuit court that denied the
13 waiver to request a rehearing of her petition.

14 (3) The ~~probate~~ family division of circuit court shall
15 grant a waiver of parental consent if it finds ~~either of the~~
16 ~~following:~~ ~~(a) The~~ that the minor is sufficiently mature and
17 well-enough informed to make the decision regarding abortion
18 independently of her parents or legal guardian. ~~(b) The waiver~~
19 ~~would be in the best interests of the minor.~~ In making a
20 determination under this subsection, the family division of
21 circuit court shall consider the rebuttable presumption that a
22 minor is not capable of providing informed consent for medical
23 treatment. A waiver of parental consent may only be granted
24 under this subsection if the family division of circuit court
25 finds that the minor demonstrates a level of maturity expected of
26 an individual who has reached the age of majority after taking
27 into consideration the evidence presented on each of the

1 following factors:

2 (a) Whether the minor is before the court voluntarily or
3 whether the minor has been subjected to duress or coercion by a
4 third party.

5 (b) The minor's age, ability to comprehend information, and
6 ability to express herself.

7 (c) The degree of the minor's dependence on her parent or
8 legal guardian and the degree of parental supervision in the
9 daily affairs of the minor, including housing arrangements,
10 financial support, independent work experience, and means of
11 transportation.

12 (d) The minor's school attendance, academic performance,
13 future education, or career goals.

14 (e) The circumstances of the minor's pregnancy, including
15 actions taken to maintain her personal health and prevent
16 pregnancy and any previous pregnancies she may have had.

17 (f) Other life experiences that demonstrate a pattern of
18 responsible, mature behavior.

19 (g) The minor's knowledge of her personal medical history;
20 awareness of the physical risks of abortion and of carrying her
21 pregnancy to term, including whether the minor has consulted with
22 medical or mental health professionals about alternatives to
23 abortion; and her assessment of the psychological and emotional
24 consequences of abortion, parenting, or placing a child for
25 adoption.

26 (4) If the family division of circuit court does not find
27 that a minor is sufficiently mature and well-enough informed to

1 make the decision regarding abortion independently of her parents
2 or legal guardian as provided in subsection (3), the family
3 division of circuit court shall grant a waiver of parental
4 consent if it finds that the waiver would be in the best interest
5 of the minor. In making a determination under this subsection,
6 the family division of circuit court shall consider the
7 rebuttable presumption that a minor's best interest is served by
8 involvement of the minor's parents in medical decision making. A
9 waiver of parental consent under this subsection shall only be
10 granted if the court finds that both of the minor's parents or
11 the legal guardian has defaulted in their duties to the minor
12 that they have abdicated their right to the parental involvement
13 provided by this act after consideration of the evidence
14 presented on each of the following factors:

15 (a) The nature of the minor's relationship with her parents
16 or legal guardian, including patterns of care, support, and
17 involvement or of neglect, hostility, or abuse.

18 (b) The minor's reasons for seeking an abortion, including
19 her personal desires, the age and involvement of the biological
20 father, and the potential influence of other parties.

21 (c) The minor's specific reasons for excluding a parent or
22 legal guardian from the abortion decision.

23 (d) Whether the parents or legal guardian has previous
24 knowledge of the minor's sexual activity or involvement in
25 decisions regarding the minor's sexual activity.

26 (e) The degree to which the parent or legal guardian is
27 involved in the minor's school and community activities.

1 (5) ~~—(4)—~~ A minor who is denied a waiver under this section
2 may appeal the ~~probate~~ **family division of circuit** court's
3 decision to the court of appeals. Appeal proceedings shall be
4 expedited and confidential. The notice of appeal shall be filed
5 within 24 hours of the issuance of the order denying the
6 petition. The appeal shall be perfected within 72 hours,
7 excluding Sundays and holidays, from the filing of the notice of
8 appeal. **A minor who is denied a waiver under this section shall**
9 **not initiate proceedings seeking a waiver of parental consent**
10 **regarding the same pregnancy in another family division of**
11 **circuit court.**

12 (6) ~~—(5)—~~ The confidentiality requirements of this section do
13 not prevent the ~~probate~~ **family division of circuit** court from
14 reporting suspected child abuse under section 4 of the child
15 protection law, ~~Act No. 238 of the Public Acts of 1975, being~~
16 ~~section 722.624 of the Michigan Compiled Laws—~~ **1975 PA 238, MCL**
17 **722.624.**

18 (7) ~~—(6)—~~ If a minor who is seeking a waiver of parental
19 consent reveals to the ~~probate~~ **family division of circuit** court
20 that she is the victim of sexual abuse, and that her pregnancy
21 is, or may be, the result of sexual abuse, the ~~probate~~ **family**
22 **division of circuit** court shall immediately do all of the
23 following:

24 (a) Report the suspected sexual abuse to the ~~department of~~
25 ~~social services—~~ **family independence agency** or a law enforcement
26 agency ~~pursuant to~~ **as provided by** the child protection law,
27 ~~Act No. 238 of the Public Acts of 1975, being sections 722.621~~

1 ~~to 722.636 of the Michigan Compiled Laws 1975 PA 238, MCL~~
2 ~~722.621 to 722.638.~~

3 (b) Inform the minor that there are laws designed to protect
4 her, including all of the following provisions of chapter XIIA of
5 the probate code, ~~Act No. 288 of the Public Acts of 1939, being~~
6 ~~sections 712A.1 to 712A.28 of the Michigan Compiled Laws 1939 PA~~
7 **288, MCL 712A.1 to 712A.32:**

8 (i) That a law enforcement officer may without court order
9 take the minor into temporary protective custody if, after
10 investigation, the officer has reasonable grounds to conclude
11 that the minor's health, safety, or welfare would be endangered
12 by leaving her in the custody of her parent or legal guardian.

13 (ii) That the ~~juvenile~~ **family** division of ~~the probate~~
14 **circuit** court may, upon learning of the suspected sexual abuse,
15 immediately hold a preliminary inquiry to determine whether a
16 petition for court jurisdiction should be filed or whether other
17 action should be taken.

18 (iii) That the ~~juvenile~~ **family division of circuit** court
19 shall appoint an attorney to represent the minor in protective
20 proceedings.

21 (iv) That after a petition has been filed, the ~~juvenile~~
22 **family division of circuit** court may order that the minor be
23 placed with someone other than her parent or legal guardian
24 pending trial or further court order if ~~such~~ placement is
25 necessary to avoid substantial risk to the minor's life, physical
26 health, or mental well-being.

27 **(8) If a family division of circuit court finds that a minor**

1 has previously been denied a waiver of parental consent by
2 another family division of circuit court concerning the same
3 pregnancy, the family division of circuit court shall dismiss the
4 pending petition for a waiver of parental consent.

5 (9) ~~(7)~~ As used in this section, "child abuse" and "sexual
6 abuse" mean those terms as defined in section 2 of the child
7 protection law, ~~Act No. 238 of the Public Acts of 1975, being~~
8 ~~section 722.622 of the Michigan Compiled Laws~~ 1975 PA 238, MCL
9 722.622.