

**STATE OF MICHIGAN
92ND LEGISLATURE
REGULAR SESSION OF 2004**

Introduced by Reps. O'Neil, Spade, Gleason, Milosch, Sak, Tabor, Palmer, Vander Veen, Newell, Hummel, Rivet, Sheen, Hoogendyk, Huizenga, Wenke, Kooiman, Brown, Rocca, Pappageorge, Rick Johnson, DeRossett, Richardville, Bisbee, Voorhees, Hager, Meyer, Julian, Howell, Ruth Johnson, Sheltroun, Bradstreet, Gaffney, Pastor, LaJoy, Acciavatti, DeRoche, Taub, Stakoe, Hune, Robertson, Shaffer, Nofs, Ward, Emmons, Steil, Van Regenmorter, Nitz, Stahl, Farhat, Moolenaar, Palsrok and Casperson

ENROLLED HOUSE BILL No. 4478

AN ACT to amend 1990 PA 211, entitled "An initiation of Legislation to require parental consent for abortions performed on unemancipated minors and to provide a judicial alternative to parental consent; to provide for certain rights, powers, and duties of departments, individuals, and courts; and to prescribe penalties," by amending sections 3 and 4 (MCL 722.903 and 722.904).

The People of the State of Michigan enact:

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

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

Section 4. (1) The family division of circuit court has jurisdiction over proceedings related to a minor's petition for a waiver of parental consent.

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

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

- (i) Confidentiality of the proceedings, including the right to use initials in the petition.
- (ii) Court appointment of an attorney or guardian ad litem.
- (iii) Assistance with preparing and filing the petition.

(b) A minor may file a petition for waiver of parental consent in the family division of circuit court in the county in which the minor resides. For purposes of this act, the county in which the minor resides means the county in which the minor's residence is located or the county in which the minor is found. A minor shall not file a petition for waiver of

parental consent in a family division of circuit court if the minor has previously been denied a waiver of parental consent by another family division of circuit court concerning the same pregnancy.

(c) Upon request of the minor, the family division of circuit court shall provide the minor with assistance in preparing and filing the petition for waiver of parental consent.

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

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

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

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

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

(i) A written order granting or denying a petition for waiver of parental consent filed under this act shall be issued within 48 hours, excluding Sundays and holidays, after the hearing on the petition is held.

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

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

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

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

(3) The family division of circuit court shall grant a waiver of parental consent if it finds that the minor is sufficiently mature and well-enough informed to make the decision regarding abortion independently of her parents or legal guardian. In making a determination under this subsection, the family division of circuit court shall consider the rebuttable presumption that a minor is not capable of providing informed consent for medical treatment. A waiver of parental consent may only be granted under this subsection if the family division of circuit court finds that the minor demonstrates a level of maturity expected of an individual who has reached the age of majority after taking into consideration the evidence presented on each of the following factors:

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

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

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

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

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

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

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

(4) If the family division of circuit court does not find that a minor is sufficiently mature and well-enough informed to make the decision regarding abortion independently of her parents or legal guardian as provided in subsection (3), the family division of circuit court shall grant a waiver of parental consent if it finds that the waiver would be in the best interest of the minor. In making a determination under this subsection, the family division of circuit court shall consider the rebuttable presumption that a minor's best interest is served by involvement of the minor's parents in medical decision making. A waiver of parental consent under this subsection shall only be granted if the court finds that both of the minor's parents or the legal guardian has defaulted in their duties to the minor that they have abdicated their right to the parental involvement provided by this act after consideration of the evidence presented on each of the following factors:

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

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

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

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

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

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

(6) The confidentiality requirements of this section do not prevent the family division of circuit court from reporting suspected child abuse under section 4 of the child protection law, 1975 PA 238, MCL 722.624.

(7) If a minor who is seeking a waiver of parental consent reveals to the family division of circuit court that she is the victim of sexual abuse, and that her pregnancy is, or may be, the result of sexual abuse, the family division of circuit court shall immediately do all of the following:

(a) Report the suspected sexual abuse to the family independence agency or a law enforcement agency as provided by the child protection law, 1975 PA 238, MCL 722.621 to 722.638.

(b) Inform the minor that there are laws designed to protect her, including all of the following provisions of chapter XIIA of the probate code, 1939 PA 288, MCL 712A.1 to 712A.32:

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

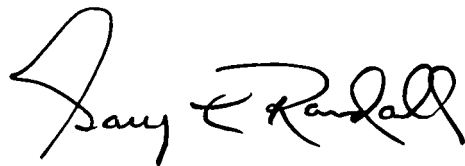
(ii) That the family division of circuit court may, upon learning of the suspected sexual abuse, immediately hold a preliminary inquiry to determine whether a petition for court jurisdiction should be filed or whether other action should be taken.

(iii) That the family division of circuit court shall appoint an attorney to represent the minor in protective proceedings.

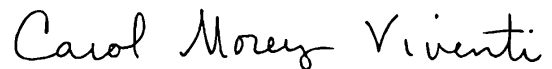
(iv) That after a petition has been filed, the family division of circuit court may order that the minor be placed with someone other than her parent or legal guardian pending trial or further court order if placement is necessary to avoid substantial risk to the minor's life, physical health, or mental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

(8) If a family division of circuit court finds that a minor has previously been denied a waiver of parental consent by another family division of circuit court concerning the same pregnancy, the family division of circuit court shall dismiss the pending petition for a waiver of parental consent.

(9) As used in this section, "child abuse" and "sexual abuse" mean those terms as defined in section 2 of the child protection law, 1975 PA 238, MCL 722.622.



Clerk of the House of Representatives



Secretary of the Senate

Approved _____

Governor