

HOUSE BILL No. 4478

March 27, 2003, Introduced by Reps. O'Neil, Spade, Gleason, Milosch, Sak, Tabor, Palmer, Vander Veen, Newell, Hummel, Rivet, Sheen, Hoogendyk, Huizenga, Wenke, Kooiman and Brown and referred to the Committee on Family and Children Services.

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

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

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

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

13 (f) If an attorney or guardian ad litem is appointed to
14 represent the minor, the family division of circuit court shall
15 appoint an attorney or guardian ad litem to represent the
16 interest of a parent or legal guardian in loco parentis.

17 (g) ~~-(f)-~~ A minor is not required to pay a fee for
18 proceedings under this section.

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

25 (i) ~~-(h)-~~ The ~~probate~~ **family division of circuit** court that
26 hears the petition for waiver of parental consent shall issue and
27 make a part of the confidential record its specific findings of

1 fact and conclusions of law in support of its ruling either on
2 the record or in a written opinion.

3 **(j) ~~-(i)-~~** A written order granting or denying a petition for
4 waiver of parental consent filed ~~pursuant to~~ **under** this act
5 shall be issued within 48 hours, excluding Sundays and holidays,
6 after the hearing on the petition is held.

7 **(k)** If a petition for waiver of parental consent is denied,
8 the family division of circuit court shall inform the minor of
9 her right to appeal the family division of circuit court's
10 decision to the court of appeals. The family division of circuit
11 court shall inform the minor that she may not initiate
12 proceedings concerning the same pregnancy in another family
13 division of circuit court.

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

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

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

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

14 (e) Other life experiences that demonstrate a pattern of
15 responsible, mature behavior.

16 (f) The minor's knowledge of her personal medical history,
17 awareness of the physical risks of abortion and of carrying her
18 pregnancy to term, and her assessment of the psychological and
19 emotional consequences of abortion, parenting, or placing a child
20 for adoption.

21 (g) The extent to which the minor has consulted with medical
22 and mental health professionals about alternatives to abortion.

23 (4) If the family division of circuit court does not find
24 that a minor is sufficiently mature and well-enough informed to
25 make the decision regarding abortion independently of her parents
26 or legal guardian as provided in subsection (3), the family
27 division of circuit court shall grant a waiver of parental

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

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

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

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

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

23 (5) ~~-(4)-~~ A minor who is denied a waiver under this section
24 may appeal the probate court's decision to the court of appeals.
25 Appeal proceedings shall be expedited and confidential. The
26 notice of appeal shall be filed within 24 hours of the issuance
27 of the order denying the petition. The appeal shall be perfected

1 within 72 hours, excluding Sundays and holidays, from the filing
 2 of the notice of appeal. **A minor who is denied a waiver under**
 3 **this section shall not initiate proceedings seeking a waiver of**
 4 **parental consent regarding the same pregnancy in another family**
 5 **division of circuit court.**

6 **(6) —(5)—** The confidentiality requirements of this section do
 7 not prevent the ~~probate~~ **family division of circuit** court from
 8 reporting suspected child abuse under section 4 of the child
 9 protection law, ~~Act No. 238 of the Public Acts of 1975, being~~
 10 ~~section 722.624 of the Michigan Compiled Laws—~~ **1975 PA 238, MCL**
 11 **722.624.**

12 **(7) —(6)—** If a minor who is seeking a waiver of parental
 13 consent reveals to the ~~probate~~ **family division of circuit** court
 14 that she is the victim of sexual abuse, and that her pregnancy
 15 is, or may be, the result of sexual abuse, the ~~probate~~ **family**
 16 **division of circuit** court shall immediately do all of the
 17 following:

18 (a) Report the suspected sexual abuse to the ~~department of~~
 19 ~~social services—~~ **family independence agency** or a law enforcement
 20 agency ~~pursuant to—~~ **as provided by** the child protection law,
 21 ~~Act No. 238 of the Public Acts of 1975, being sections 722.621~~
 22 ~~to 722.636 of the Michigan Compiled Laws—~~ **1975 PA 238, MCL**
 23 **722.621 to 722.638.**

24 (b) Inform the minor that there are laws designed to protect
 25 her, including all of the following provisions of chapter XIIIA of
 26 the probate code, ~~Act No. 288 of the Public Acts of 1939, being~~
 27 ~~sections 712A.1 to 712A.28 of the Michigan Compiled Laws—~~ **1939 PA**

1 288, MCL 712A.1 to 712A.32:

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

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

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

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

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

26 (9) ~~-(7)-~~ As used in this section, "child abuse" and "sexual
27 abuse" mean those terms as defined in section 2 of the child

1 protection law, ~~Act No. 238 of the Public Acts of 1975, being~~
2 ~~section 722.622 of the Michigan Compiled Laws~~ **1975 PA 238, MCL**
3 **722.622.**