

SECOND REGULAR SESSION

HOUSE BILL NO. 1968

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE ANDERSON.

5046H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal section 188.028, RSMo, and to enact in lieu thereof one new section relating to consent for abortion for a minor.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 188.028, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 188.028, to read as follows:

188.028. 1. No person shall knowingly perform an abortion upon a pregnant woman under the age of eighteen years unless:

(1) The attending physician has secured the informed written consent of the minor and one parent or guardian; or

(2) The minor is emancipated and the attending physician has received the informed written consent of the minor; or

(3) The minor has been granted the right to self-consent to the abortion by court order pursuant to subsection 2 of this section, and the attending physician has received the informed written consent of the minor; or

(4) The minor has been granted consent to the abortion by court order, and the court has given its informed written consent in accordance with subsection 2 of this section, and the minor is having the abortion willingly, in compliance with subsection 3 of this section.

2. The right of a minor to self-consent to an abortion under subdivision (3) of subsection 1 of this section or court consent under subdivision (4) of subsection 1 of this section may be granted by a court pursuant to the following procedures:

(1) The minor or next friend shall make an application to the juvenile court which shall assist the minor or next friend in preparing the petition and notices required pursuant to this

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

18 section. The minor or the next friend of the minor shall thereafter file a petition setting forth the
19 initials of the minor; the age of the minor; the names and addresses of each parent, guardian, or,
20 if the minor's parents are deceased and no guardian has been appointed, any other person
21 standing in loco parentis of the minor; that the minor has been fully informed of the risks and
22 consequences of the abortion; that the minor is of sound mind and has sufficient intellectual
23 capacity to consent to the abortion; that, if the court does not grant the minor majority rights for
24 the purpose of consent to the abortion, the court should find that the abortion is in the best
25 interest of the minor and give judicial consent to the abortion; that the court should appoint a
26 guardian ad litem of the child; and if the minor does not have private counsel, that the court
27 should appoint counsel. The petition shall be signed by the minor or the next friend;

28 (2) A hearing on the merits of the petition, to be held on the record, shall be held as soon
29 as possible within five days of the filing of the petition. If any party is unable to afford counsel,
30 the court shall appoint counsel at least twenty-four hours before the time of the hearing. At the
31 hearing, the court shall hear evidence relating to the emotional development, maturity, intellect
32 and understanding of the minor; the nature, possible consequences, and alternatives to the
33 abortion; and any other evidence that the court may find useful in determining whether the minor
34 should be granted majority rights for the purpose of consenting to the abortion or whether the
35 abortion is in the best interests of the minor;

36 (3) In the decree, the court shall for good cause:

37 (a) Grant the petition for majority rights for the purpose of consenting to the abortion;
38 or

39 (b) Find the abortion to be in the best interests of the minor and give judicial consent to
40 the abortion, setting forth the grounds for so finding; or

41 (c) Deny the petition, setting forth the grounds on which the petition is denied;

42 (4) If the petition is allowed, the informed consent of the minor, pursuant to a court grant
43 of majority rights, or the judicial consent, shall bar an action by the parents or guardian of the
44 minor on the grounds of battery of the minor by those performing the abortion. The immunity
45 granted shall only extend to the performance of the abortion in accordance herewith and any
46 necessary accompanying services which are performed in a competent manner. The costs of the
47 action shall be borne by the parties;

48 (5) An appeal from an order issued under the provisions of this section may be taken to
49 the court of appeals of this state by the minor or by a parent or guardian of the minor. The notice
50 of intent to appeal shall be given within twenty-four hours from the date of issuance of the order.
51 The record on appeal shall be completed and the appeal shall be perfected within five days from
52 the filing of notice to appeal. Because time may be of the essence regarding the performance of

53 the abortion, the supreme court of this state shall, by court rule, provide for expedited appellate
54 review of cases appealed under this section.

55 3. If a minor desires an abortion, then she shall be orally informed of and, if possible,
56 sign the written consent required by section 188.039 in the same manner as an adult person. No
57 abortion shall be performed on any minor against her will, except that an abortion may be
58 performed against the will of a minor pursuant to a court order described in subdivision (4) of
59 subsection 1 of this section that the abortion is necessary to preserve the life of the minor.

60 4. (1) Except in the case of a medical emergency and in addition to any other
61 requirements under this chapter, no physician shall perform an abortion upon a minor
62 unless such physician first obtains the notarized written consent of both the minor and one
63 of her parents or her legal guardian.

64 (2) The physician shall keep the notarized written consent of the parent or legal
65 guardian in the medical file of the minor for five years past the age of majority of the
66 minor, but in no event less than seven years.

67 5. (1) The physician shall obtain from the parent or legal guardian entitled to
68 consent:

69 (a) Government-issued proof of identity of the parent or legal guardian; and

70 (b) Written documentation that establishes that the parent or legal guardian is the
71 lawful parent or legal guardian of the minor.

72 (2) The physician shall keep a copy of the proof of identification of the parent or
73 legal guardian and the written documentation that establishes the relationship of the
74 parent or legal guardian to the minor in the medical file of the minor for five years past the
75 age of majority of the minor, but in no event less than seven years.

76 (3) Any physician receiving parental consent under this section shall execute for
77 inclusion in the medical record of the minor an affidavit stating: "I, (insert name of
78 physician), certify that according to my best information and belief, a reasonable person
79 under similar circumstances would rely on the information presented by both the minor
80 and her parent or legal guardian as sufficient evidence of identity and relationship."

81 6. (1) Consent shall not be required if the attending physician certifies in the
82 minor's medical record that a medical emergency, as defined in section 188.039, exists, and
83 there is insufficient time to obtain the required consent; except that, the attending
84 physician shall, within twenty-four hours after completion of the abortion, notify one of
85 the parents or the legal guardian of the minor in the manner provided in this section that
86 a medical emergency abortion was performed on the minor and of the circumstances that
87 warranted invocation of this section.

88 (2) Unless the minor gives notice of her intent to seek a judicial waiver under
89 subsection 2 of this section, the attending physician shall orally inform the parent or legal
90 guardian of the minor within twenty-four hours after the performance of a medical
91 emergency abortion that an abortion was performed on the minor. The attending
92 physician shall also inform the parent or legal guardian of the basis for the certification of
93 the physician required under subdivision (1) of this subsection and provide details
94 regarding any additional risks to the minor. The attending physician shall also send a
95 written notice of the performed abortion by certified mail, restricted delivery, return
96 receipt requested, to the last known address of the parent or legal guardian.

97 (3) If the minor gives notice to the attending physician of her intent to seek a
98 judicial waiver under subsection 2 of this section, the physician shall file a notice with any
99 judge of a court of competent jurisdiction that the minor has given such notice and shall
100 provide the information the physician would have been required to provide to the parent
101 or legal guardian under subdivision (2) of this subsection if the minor had not given notice
102 of her intent to seek a judicial waiver.

103 (4) The court shall expeditiously schedule a confidential conference with notice to
104 the minor and the physician. If the minor is unable to participate in the proceedings, the
105 court shall advise the minor that she has the right to court-appointed counsel and shall,
106 upon her request, provide the minor with such counsel. If the minor is unable to
107 participate, the court shall appoint counsel on behalf of the minor.

108 (5) After an appropriate hearing, the court, taking into account the medical
109 condition of the minor, shall set a deadline by which the minor shall file a petition or
110 motion under subsection 2 of this section. The court may subsequently extend the deadline
111 in light of the medical condition of the minor or other equitable considerations. If the
112 minor does not file a petition or motion by the deadline in such court or another court of
113 competent jurisdiction with a copy filed in that court, the court shall direct that the clerk
114 of the court provide the notice to a parent or legal guardian.

115 7. The minor shall petition a court in the county in which the pregnant minor
116 resides for a waiver of the consent requirement.

117 8. If the court finds, by clear and convincing evidence, that the minor is:

118 (1) Both sufficiently mature and well-informed to decide whether to have an
119 abortion, the court shall issue an order authorizing the minor to consent to the
120 performance or inducement of an abortion without the consent of a parent or guardian,
121 and the court shall execute the required forms. If the court does not make the finding
122 specified in this subdivision, the court shall dismiss the petition; or

(2) The victim of physical or sexual abuse by one or both of her parents or her legal guardian, or that obtaining the consent of a parent or legal guardian is not in the best interest of the minor, the court shall issue an order authorizing the minor to consent to the performance or inducement of an abortion without the consent of a parent or legal guardian. If the court does not make the finding specified in this subdivision, the court shall dismiss the petition.

9. (1) Prior to any court proceedings addressing a petition for judicial waiver, the court in its discretion may require the minor to participate in an evaluation and counseling session with a mental health professional from the department of mental health. Such evaluation shall be confidential and scheduled expeditiously.

(2) The evaluation and counseling session shall be for the purpose of developing trustworthy and reliable expert opinion concerning the minor's sufficiency of knowledge, insight, judgment, and maturity with regard to her abortion decision in order to aid the court in its decision and to make the state's resources available to the court for such purpose. Persons conducting such sessions may employ the information and printed materials in section 188.027 in examining how well the minor is informed about pregnancy, fetal development, abortion risks and consequences, and abortion alternatives and shall also endeavor to verify that the minor is seeking an abortion of her own free will and is not acting under coercion, intimidation, threats, abuse, undue pressure, or extortion by any other persons.

(3) The results of such evaluation and counseling shall be reported to the court by the most expeditious means, commensurate with security and confidentiality, to assure receipt by the court prior to a hearing on the minor's petition.

10. (1) A form created by the department shall be used by physicians to obtain the consent required prior to performing an abortion on a minor who is not emancipated.

(2) Such form is not valid, and therefore consent is not sufficient, unless:

(a) A parent or legal guardian initials each page of the form, indicating that he or she has read and understands the information included on such page;

(b) A parent or legal guardian signs the last page of the form in front of a notary public;

(c) The minor initials each list of risks and hazards detailed in paragraph (d) of subdivision (3) of this subsection;

(d) The minor signs a consent statement described in subdivision (4) of this subsection; and

(e) The physician signs the declaration described in subdivision (5) of this subsection.

- 159 (3) The form shall include, but not be limited to, the following:
- 160 (a) A description of the minor's rights including her right to informed consent;
- 161 (b) A description of the parent's or legal guardian's rights under state law;
- 162 (c) A detailed description of the surgical or medical procedures that are planned
- 163 to be performed on the minor;
- 164 (d) A detailed list of the risks and hazards related to the surgical and medical
- 165 procedures planned for the minor including, but not limited to, the following:
- 166 a. Risks and hazards that may occur in connection with any surgical, medical, or
- 167 diagnostic procedure, such as potential for infection, blood clots in veins and lungs,
- 168 hemorrhage or heavy bleeding, allergic reactions, or death;
- 169 b. Risk and hazards that may occur with a surgical abortion, such as hemorrhage
- 170 or heavy bleeding, a hole in the uterus, uterine perforation, or other damage to the uterus,
- 171 sterility, injury to the bowel or bladder, a possible hysterectomy as a result of complication
- 172 or injury during the procedure, and failure to remove all products of conception that may
- 173 result in an additional procedure;
- 174 c. Risks and hazards that may occur with a medical nonsurgical abortion, such as
- 175 hemorrhage or heavy bleeding, failure to remove all products of conception that may result
- 176 in an additional procedure, sterility, and possible continuation of pregnancy; and
- 177 d. Risks and hazards of the particular procedure planned for the minor, such as
- 178 cramping of the uterus or pelvic pain, infection of the uterus, tubes, or ovaries, cervical
- 179 laceration, incompetent cervix, and emergency treatment for any such named
- 180 complications;
- 181 (e) A description of any additional information that shall be provided by the
- 182 physician to the minor under section 188.027.
- 183 (4) A consent statement shall be signed by the minor and shall include, but not be
- 184 limited to, the following that shall be individually initialed by the minor:
- 185 (a) That the minor understands that the physician is going to perform an abortion
- 186 on her that will end her pregnancy and will result in the death of her unborn child;
- 187 (b) That the minor is not being forced to have an abortion and that she has the
- 188 choice not to have the abortion and may withdraw consent prior to the abortion;
- 189 (c) That the minor gives permission for the procedure;
- 190 (d) That the minor understands that there are risks and hazards that could affect
- 191 the minor if she has the surgical or medical procedures planned for her;
- 192 (e) That the minor has been given the opportunity to ask questions about her
- 193 condition, alternative forms of treatment, risk of nontreatment, the procedures to be used,
- 194 and the risks and hazards involved;

(f) That the minor has been given information required under section 188.027; and
(g) That the minor has sufficient information to give informed consent.

(5) A physician declaration shall be signed by the physician stating that the physician or the physician's assistant has explained the procedure and the contents of this form to the minor and her parent or legal guardian, as required, and has answered all questions. In addition, to the best of the physician's knowledge, the minor and her parent or legal guardian have been adequately informed and have consented to the procedure.

(6) A parental consent statement shall be signed by the parent or legal guardian stating:

(a) The parent or legal guardian understands that the physician signing the physician's declaration is going to perform an abortion on the minor that will end her pregnancy and result in the death of her unborn child;

(b) That the parent or legal guardian has had the opportunity to read this form or have it read to him or her and has initialed each page;

(c) That the parent or legal guardian had the opportunity to ask questions to the physician or the physician's assistant about the information in this form and the surgical and medical procedures to be performed on the minor;

(d) That the parent or legal guardian believes that he or she has sufficient information to give informed consent; and

(e) That by the parent's or legal guardian's signature, the parent or legal guardian affirms that he or she is the minor's father, mother, or legal guardian.

(7) A page shall be required for the parent's or legal guardian's signature that shall be notarized by a notary public.

(8) Any additional information that shall be provided to a woman under the laws of Missouri in order for a physician to obtain her informed consent prior to performing an abortion shall apply to consent under this section.

11. Any provision of this section held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, shall be construed so as to give such provision the maximum effect permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which event such provision shall be deemed severable from this section and shall not affect the remainder of this section or the application of such provision to other persons not similarly situated or to other dissimilar circumstances.

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