

SENATE BILL No. 135

February 10, 2011, Introduced by Senators ROBERTSON, COLBECK, GREEN, HILDENBRAND, CASWELL, BRANDENBURG, MARLEAU, PROOS, JANSEN, PAVLOV and MEEKHOF and referred to the Committee on Judiciary.

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~~**SEC.** 3. (1) Except as otherwise provided in this act,
2 a person shall not perform an abortion on a minor without first
3 obtaining the written consent of the minor and 1 of the parents or
4 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 to~~
9 **AS PROVIDED IN** section 4 for a waiver of the parental consent
10 requirement of this section.

1 ~~Section~~**SEC. 4.** (1) The ~~probate~~**FAMILY DIVISION OF CIRCUIT**
2 court has jurisdiction ~~of~~**OVER** proceedings related to a minor's
3 petition for a waiver of parental consent.

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

8 (a) The ~~probate~~**FAMILY DIVISION OF CIRCUIT** court shall, upon
9 its first contact with a minor seeking a waiver of parental consent
10 under this act, provide the minor with notice **THAT THE MINOR MAY**
11 **NOT SEEK A WAIVER OF PARENTAL CONSENT IN THAT COURT IF THE MINOR**
12 **HAS BEEN DENIED A WAIVER CONCERNING THE SAME PREGNANCY BY ANOTHER**
13 **FAMILY DIVISION OF CIRCUIT COURT, AND** of the minor's right to all
14 of the following:

15 (i) Confidentiality of the proceedings, including the right to
16 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 consent
20 in the ~~probate~~**FAMILY DIVISION OF CIRCUIT** court ~~of~~**IN** the county in
21 which the minor resides. For purposes of this act, the county in
22 which the minor resides means the county in which the minor's
23 residence is located or the county in which the minor is found. **A**
24 **MINOR SHALL NOT FILE A PETITION FOR WAIVER OF PARENTAL CONSENT IN A**
25 **FAMILY DIVISION OF CIRCUIT COURT IF THE MINOR HAS PREVIOUSLY BEEN**
26 **DENIED A WAIVER OF PARENTAL CONSENT BY ANOTHER FAMILY DIVISION OF**
27 **CIRCUIT COURT CONCERNING THE SAME PREGNANCY.**

1 (c) Upon request of the minor, the ~~probate~~**FAMILY DIVISION OF**
2 **CIRCUIT** court shall provide the minor with assistance in preparing
3 and filing the petition for waiver of parental consent.

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

8 (e) Upon request of the minor, the ~~probate~~**FAMILY DIVISION OF**
9 **CIRCUIT** court shall appoint an attorney or guardian ad litem within
10 24 hours to represent the minor in proceedings under this section.

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

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

18 (h) The ~~probate~~**FAMILY DIVISION OF CIRCUIT** court that hears
19 the petition for waiver of parental consent shall issue and make a
20 part of the confidential record its specific findings of fact and
21 conclusions of law in support of its ruling either on the record or
22 in a written opinion.

23 (i) A written order granting or denying a petition for waiver
24 of parental consent filed ~~pursuant to~~**UNDER** this act shall be
25 issued within 48 hours, excluding Sundays and holidays, after the
26 hearing on the petition is held.

27 **(J) IF A PETITION FOR WAIVER OF PARENTAL CONSENT IS DENIED,**

1 THE FAMILY DIVISION OF CIRCUIT COURT SHALL INFORM THE MINOR OF ALL
2 OF THE FOLLOWING:

3 (i) HER RIGHT TO APPEAL THE FAMILY DIVISION OF CIRCUIT COURT'S
4 DECISION TO THE COURT OF APPEALS.

5 (ii) THAT SHE MAY NOT INITIATE PROCEEDINGS CONCERNING THE SAME
6 PREGNANCY IN ANOTHER FAMILY DIVISION OF CIRCUIT COURT.

7 (iii) THAT IF THERE IS AN UNANTICIPATED CHANGE IN THE
8 CIRCUMSTANCES OF HER PREGNANCY OR FAMILY SITUATION, SHE MAY RETURN
9 TO THE FAMILY DIVISION OF CIRCUIT COURT THAT DENIED THE WAIVER TO
10 REQUEST A REHEARING OF HER PETITION.

11 (3) The ~~probate~~ FAMILY DIVISION OF CIRCUIT court shall grant a
12 waiver of parental consent if it finds either of the following: ~~(a)~~
13 ~~The~~ THAT THE minor is sufficiently mature and well-enough informed
14 to make the decision regarding abortion independently of her
15 parents or legal guardian. ~~(b) The waiver would be in the best~~
16 ~~interests of the minor.~~ IN MAKING A DETERMINATION UNDER THIS
17 SUBSECTION, THE FAMILY DIVISION OF CIRCUIT COURT SHALL CONSIDER
18 WHETHER THE COMMON LAW STANDARD THAT A MINOR IS NOT CAPABLE OF
19 PROVIDING INFORMED CONSENT FOR MEDICAL TREATMENT SHOULD BE
20 CONTRAVENED. A WAIVER OF PARENTAL CONSENT SHALL BE GRANTED UNDER
21 THIS SUBSECTION IF THE FAMILY DIVISION OF CIRCUIT COURT FINDS THAT
22 THE MINOR DEMONSTRATES A CAPACITY SIMILAR TO THAT OF AN INDIVIDUAL
23 WHO HAS REACHED THE AGE OF MAJORITY TO MAKE A REASONED AND
24 RESPONSIBLE DECISION IN LIGHT OF ALL OF THE FOLLOWING FACTORS:

25 (A) WHETHER THE MINOR IS BEFORE THE COURT VOLUNTARILY OR
26 WHETHER THE MINOR HAS BEEN SUBJECTED TO DURESS OR COERCION BY A
27 THIRD PARTY.

1 (B) THE MINOR'S AGE, ABILITY TO COMPREHEND INFORMATION, AND
2 ABILITY TO EXPRESS HERSELF.

3 (C) THE DEGREE OF THE MINOR'S DEPENDENCE ON HER PARENT OR
4 LEGAL GUARDIAN AND THE DEGREE OF PARENTAL SUPERVISION IN THE DAILY
5 AFFAIRS OF THE MINOR, INCLUDING HOUSING ARRANGEMENTS, FINANCIAL
6 SUPPORT, INDEPENDENT WORK EXPERIENCE, AND MEANS OF TRANSPORTATION.

7 (D) THE MINOR'S SCHOOL ATTENDANCE, ACADEMIC PERFORMANCE,
8 FUTURE EDUCATION, OR CAREER GOALS.

9 (E) THE CIRCUMSTANCES OF THE MINOR'S PREGNANCY, INCLUDING
10 ACTIONS TAKEN TO MAINTAIN HER PERSONAL HEALTH AND PREVENT PREGNANCY
11 AND ANY PREVIOUS PREGNANCIES SHE MAY HAVE HAD.

12 (F) OTHER LIFE EXPERIENCES THAT DEMONSTRATE A PATTERN OF
13 RESPONSIBLE, MATURE BEHAVIOR.

14 (G) THE MINOR'S KNOWLEDGE OF HER PERSONAL MEDICAL HISTORY;
15 AWARENESS OF THE PHYSICAL RISKS OF ABORTION AND OF CARRYING HER
16 PREGNANCY TO TERM, INCLUDING WHETHER THE MINOR HAS CONSULTED WITH
17 MEDICAL OR MENTAL HEALTH PROFESSIONALS ABOUT ALTERNATIVES TO
18 ABORTION; AND HER ASSESSMENT OF THE PSYCHOLOGICAL AND EMOTIONAL
19 CONSEQUENCES OF ABORTION, PARENTING, OR PLACING A CHILD FOR
20 ADOPTION.

21 (4) IF THE FAMILY DIVISION OF CIRCUIT COURT DOES NOT FIND THAT
22 A MINOR IS SUFFICIENTLY MATURE AND WELL-ENOUGH INFORMED TO MAKE THE
23 DECISION REGARDING ABORTION INDEPENDENTLY OF HER PARENTS OR LEGAL
24 GUARDIAN AS PROVIDED IN SUBSECTION (3), THE FAMILY DIVISION OF
25 CIRCUIT COURT SHALL GRANT A WAIVER OF PARENTAL CONSENT IF IT FINDS
26 THAT THE WAIVER WOULD BE IN THE BEST INTEREST OF THE MINOR. IN
27 MAKING A DETERMINATION UNDER THIS SUBSECTION, THE FAMILY DIVISION

1 OF CIRCUIT COURT SHALL CONSIDER WHETHER THE COMMON LAW STANDARD
2 THAT A MINOR'S BEST INTEREST IS SERVED BY INVOLVEMENT OF THE
3 MINOR'S PARENTS IN MEDICAL DECISION MAKING SHOULD BE CONTRAVENED. A
4 WAIVER OF PARENTAL CONSENT UNDER THIS SUBSECTION SHALL BE GRANTED
5 IF THE FAMILY DIVISION OF CIRCUIT COURT FINDS THAT BOTH OF THE
6 MINOR'S PARENTS OR THE LEGAL GUARDIAN HAS DEMONSTRATED THROUGH
7 NEGLECT OR ABUSE A LACK OF CONCERN OR COMPETENCE IN SERVING THE
8 MINOR'S BEST INTERESTS, AFTER CONSIDERING THE EVIDENCE PRESENTED ON
9 EACH OF THE FOLLOWING FACTORS:

10 (A) THE NATURE OF THE MINOR'S RELATIONSHIP WITH HER PARENTS OR
11 LEGAL GUARDIAN, INCLUDING PATTERNS OF CARE, SUPPORT, AND
12 INVOLVEMENT OR OF NEGLECT, HOSTILITY, OR PHYSICAL, SEXUAL, OR
13 EMOTIONAL ABUSE.

14 (B) THE MINOR'S REASONS FOR SEEKING AN ABORTION, INCLUDING HER
15 PERSONAL DESIRES, THE AGE AND INVOLVEMENT OF THE BIOLOGICAL FATHER,
16 AND THE POTENTIAL INFLUENCE OF OTHER PARTIES.

17 (C) THE MINOR'S SPECIFIC REASONS FOR EXCLUDING A PARENT OR
18 LEGAL GUARDIAN FROM THE ABORTION DECISION.

19 (D) WHETHER THE PARENTS OR LEGAL GUARDIAN HAS PREVIOUS
20 KNOWLEDGE OF THE MINOR'S SEXUAL ACTIVITY OR INVOLVEMENT IN
21 DECISIONS REGARDING THE MINOR'S SEXUAL ACTIVITY.

22 (E) THE DEGREE TO WHICH THE PARENT OR LEGAL GUARDIAN IS
23 INVOLVED IN THE MINOR'S SCHOOL AND COMMUNITY ACTIVITIES.

24 (5) ~~(4)~~—A minor who is denied a waiver under this section may
25 appeal the ~~probate~~ **FAMILY DIVISION OF CIRCUIT** court's decision to
26 the court of appeals. Appeal proceedings shall be expedited and
27 confidential. The notice of appeal shall be filed within 24 hours

1 of the issuance of the order denying the petition. The appeal shall
2 be perfected within 72 hours, excluding Sundays and holidays, from
3 the filing of the notice of appeal. **A MINOR WHO IS DENIED A WAIVER**
4 **UNDER THIS SECTION SHALL NOT INITIATE PROCEEDINGS SEEKING A WAIVER**
5 **OF PARENTAL CONSENT REGARDING THE SAME PREGNANCY IN ANOTHER FAMILY**
6 **DIVISION OF CIRCUIT COURT.**

7 (6) ~~(5)~~—The confidentiality requirements of this section do
8 not prevent the ~~probate~~ **FAMILY DIVISION OF CIRCUIT** court from
9 reporting suspected child abuse under section 4 of the child
10 protection law, ~~Act No. 238 of the Public Acts of 1975, being~~
11 ~~section 722.624 of the Michigan Compiled Laws 1975 PA 238, MCL~~
12 ~~722.624.~~

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

18 (a) Report the suspected sexual abuse to the department of
19 ~~social~~ **HUMAN** services or a law enforcement agency pursuant to ~~AS~~
20 **PROVIDED BY** the child protection law, ~~Act No. 238 of the Public~~
21 ~~Acts of 1975, being sections 722.621 to 722.636 of the Michigan~~
22 ~~Compiled Laws 1975 PA 238, MCL 722.621 TO 722.638.~~

23 (b) Inform the minor that there are laws designed to protect
24 her, including all of the following provisions of chapter XIIA of
25 the probate code **OF 1939**, ~~Act No. 288 of the Public Acts of 1939,~~
26 ~~being sections 712A.1 to 712A.28 of the Michigan Compiled Laws 1939~~
27 **PA 288, MCL 712A.1 TO 712A.32:**

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

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

11 (iii) That the ~~juvenile~~**FAMILY DIVISION OF CIRCUIT** court shall
12 appoint an attorney to represent the minor in protective
13 proceedings.

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

20 (8) **IF A FAMILY DIVISION OF CIRCUIT COURT FINDS THAT A MINOR**
21 **HAS PREVIOUSLY BEEN DENIED A WAIVER OF PARENTAL CONSENT BY ANOTHER**
22 **FAMILY DIVISION OF CIRCUIT COURT CONCERNING THE SAME PREGNANCY, THE**
23 **FAMILY DIVISION OF CIRCUIT COURT SHALL DISMISS THE PENDING PETITION**
24 **FOR A WAIVER OF PARENTAL CONSENT.**

25 (9) ~~(7)~~As used in this section, "child abuse" and "sexual
26 abuse" mean those terms as defined in section 2 of the child
27 protection law, ~~Act No. 238 of the Public Acts of 1975, being~~

1 ~~section 722.622 of the Michigan Compiled Laws 1975 PA 238, MCL~~
2 722.622.