

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 326
99TH GENERAL ASSEMBLY

0087H.02C

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

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

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Section A. Section 188.028, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 188.028, to read as follows: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. **Except in the case of a medical emergency**, no person shall knowingly perform **or induce** 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, **and the consenting parent or guardian of the minor has notified any other custodial parent or guardian in writing prior to the securing of the informed written consent of the minor and one parent or guardian.** For purposes of this subdivision, "custodial parent" means any parent of a minor in a family in which the parents have not separated or dissolved their marriage, or any parent of a minor who has been awarded joint legal custody or joint physical custody of such minor by a court of competent jurisdiction. Notice shall not be required for any parent or guardian:

(a) **Who has been found guilty of any offense in violation of chapter 565, relating to offenses against the person; chapter 566, relating to sexual offenses; chapter 567, relating to prostitution; chapter 568, relating to offenses against the family; or chapter 573, related to pornography and related offenses, if a child was a victim;**

(b) **Who has been found guilty of any offense in any other state or foreign country, or under federal, tribal, or military jurisdiction if a child was a victim, which would be a violation of chapter 565, 566, 567, 568, or 573 if committed in this state;**

(c) **Who is listed on the sexual offender registry under sections 589.400 to 589.425;**

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.

19 **(d) Against whom an order of protection has been issued, including a foreign order**
20 **of protection given full faith and credit in this state under section 455.067;**

21 **(e) Whose custodial, parental, or guardianship rights have been terminated by a**
22 **court of competent jurisdiction; or**

23 **(f) Whose whereabouts are unknown after reasonable inquiry, who is a fugitive**
24 **from justice, who is habitually in an intoxicated or drugged condition, or who has been**
25 **declared mentally incompetent or incapacitated by a court of competent jurisdiction; or**

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

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

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

34 2. The right of a minor to self-consent to an abortion under subdivision (3) of subsection
35 1 of this section or court consent under subdivision (4) of subsection 1 of this section may be
36 granted by a court pursuant to the following procedures:

37 (1) The minor or next friend shall make an application to the juvenile court which shall
38 assist the minor or next friend in preparing the petition and notices required pursuant to this
39 section. The minor or the next friend of the minor shall thereafter file a petition setting forth the
40 initials of the minor; the age of the minor; the names and addresses of each parent, guardian, or,
41 if the minor's parents are deceased and no guardian has been appointed, any other person
42 standing in loco parentis of the minor; that the minor has been fully informed of the risks and
43 consequences of the abortion; that the minor is of sound mind and has sufficient intellectual
44 capacity to consent to the abortion; that, if the court does not grant the minor majority rights for
45 the purpose of consent to the abortion, the court should find that the abortion is in the best
46 interest of the minor and give judicial consent to the abortion; that the court should appoint a
47 guardian ad litem of the child; and if the minor does not have private counsel, that the court
48 should appoint counsel. The petition shall be signed by the minor or the next friend;

49 (2) A hearing on the merits of the petition, to be held on the record, shall be held as soon
50 as possible within five days of the filing of the petition. If any party is unable to afford counsel,
51 the court shall appoint counsel at least twenty-four hours before the time of the hearing. At the
52 hearing, the court shall hear evidence relating to the emotional development, maturity, intellect
53 and understanding of the minor; the nature, possible consequences, and alternatives to the
54 abortion; and any other evidence that the court may find useful in determining whether the minor

55 should be granted majority rights for the purpose of consenting to the abortion or whether the
56 abortion is in the best interests of the minor;

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

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

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

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

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

69 (5) An appeal from an order issued under the provisions of this section may be taken to
70 the court of appeals of this state by the minor or by a parent or guardian of the minor. The notice
71 of intent to appeal shall be given within twenty-four hours from the date of issuance of the order.
72 The record on appeal shall be completed and the appeal shall be perfected within five days from
73 the filing of notice to appeal. Because time may be of the essence regarding the performance **or**
74 **inducement** of the abortion, the supreme court of this state shall, by court rule, provide for
75 expedited appellate review of cases appealed under this section.

76 3. If a minor desires an abortion, then she shall be orally informed of and, if possible,
77 sign the written consent required ~~[by section 188.039]~~ **under this chapter** in the same manner
78 as an adult person. No abortion shall be performed **or induced** on any minor against her will,
79 except that an abortion may be performed **or induced** against the will of a minor pursuant to a
80 court order described in subdivision (4) of subsection 1 of this section that the abortion is
81 necessary to preserve the life of the minor.

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