

311.732 Performance of abortion upon a minor -- Definitions -- Notice -- Consent requirement -- Petition in District or Circuit Court -- Hearing -- Report -- Medical emergencies.

- (1) For purposes of this section the following definitions shall apply:
 - (a) "Minor" means any person under the age of eighteen (18);
 - (b) "Emancipated minor" means any minor who is or has been married or has by court order or otherwise been freed from the care, custody, and control of her parents; and
 - (c) "Abortion" means the use of any instrument, medicine, drug, or any other substance or device with intent to terminate the pregnancy of a woman known to be pregnant with intent other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead fetus.
- (2) No person shall perform an abortion upon a minor unless:
 - (a) The attending physician has secured the informed written consent of the minor and one (1) parent or legal guardian with joint or physical custody and the consenting parent or legal guardian of the minor has made a reasonable attempt to notify any other parent with joint or physical custody at least forty-eight (48) hours prior to providing the informed written consent.
 1. Notice shall not be required to be provided to any parent who has:
 - a. Previously been enjoined by a domestic violence order or interpersonal protective order, regardless of whether or not the person to be protected by the order was the minor; or
 - b. Been convicted of, or entered into a diversion program for, a criminal offense against a victim who is a minor as defined in KRS 17.500 or for a violent or sexual criminal offense under KRS Chapter 506, 507, 507A, 508, 509, 510, 529, 530, or 531.
 2. The informed written consent shall include:
 - a. A copy of the minor's government-issued identification, a copy of the consenting parent's or legal guardian's government-issued identification, and written documentation including but not limited to a birth certificate, court-ordered custodial paperwork, or tax return, establishing that he or she is the lawful parent or legal guardian; and
 - b. The parent's or legal guardian's certification that he or she consents to the abortion. The certification shall be in a signed, dated, and notarized document that has been initialed on each page and that contains the following statement, which shall precede the signature of the parent or legal guardian: "I, (insert name of parent or legal guardian), am the (select "parent" or "legal guardian") of (insert name of minor) and give consent for (insert name of attending physician) to perform an abortion on her. Under penalties of perjury, I declare that I have read the foregoing statement and that the facts stated in it are true."

3. The attending physician shall keep a copy of the informed written consent in the medical file of the minor for five (5) years after the minor reaches eighteen (18) years of age or for seven (7) years, whichever is longer.
 4. The attending physician securing the informed written consent from a parent or legal guardian under this subsection shall execute for inclusion in the medical record of the minor an affidavit stating: "I, (insert name of attending physician), certify that, according to my best information and belief, a reasonable person under similar circumstances would rely on the information presented by both the minor and her parent or legal guardian as sufficient evidence of identity.";
- (b) The minor is emancipated and the attending physician has received the informed written consent of the minor; or
 - (c) The minor elects to petition any Circuit or District Court of the Commonwealth pursuant to subsection (3) of this section and obtain an order pursuant to subsection (4) of this section granting consent to the abortion and the attending physician has received the informed written consent of the minor.
- (3) Every minor shall have the right to petition any Circuit or District Court of the Commonwealth for an order granting the right to self-consent to an abortion pursuant to the following procedures:
- (a) The minor or her next friend may prepare and file a petition setting forth the request of the minor for an order of consent to an abortion;
 - (b) The court shall ensure that the minor prepares or her next friend is given assistance in preparing and filing the petition and shall ensure that the minor's identity is kept anonymous;
 - (c) The minor may participate in proceedings in the court on her own behalf or through her next friend and the court shall appoint a guardian ad litem for her. The court shall advise her that she has a right to court-appointed counsel and shall provide her with such counsel upon her request;
 - (d) All proceedings under this section shall be anonymous and shall be given preference over other matters to ensure that the court may reach a decision promptly, but in no case shall the court fail to rule within seventy-two (72) hours of the time of application, provided that the seventy-two (72) hour limitation may be extended at the request of the minor; and
 - (e) The court shall hold a hearing on the merits of the petition before reaching a decision. The court shall hear evidence at the hearing relating to:
 1. The minor's:
 - a. Age;
 - b. Emotional development and stability;
 - c. Maturity;
 - d. Intellect;

- e. Credibility and demeanor as a witness;
 - f. Ability to accept responsibility;
 - g. Ability to assess both the current and future life-impacting consequences of, and alternatives to, the abortion; and
 - h. Ability to understand and explain the medical risks of the abortion and to apply that understanding to her decision; and
 2. Whether there may be any undue influence by another on the minor's decision to have an abortion.
 - (4) (a) If the court finds by:
 1. Clear and convincing evidence that the minor is sufficiently mature to decide whether to have an abortion;
 2. Clear and convincing evidence that the requirements of this section are not in the best interest of the minor; or
 3. A preponderance of the evidence that the minor is the victim of child abuse or sexual abuse inflicted by one (1) or both of her parents or her legal guardian;

the court shall enter a written order, making specific factual findings and legal conclusions supporting its decision to grant the petition for an abortion.
 - (b) If the court does not make any of the findings specified in paragraph (a) of this subsection, the court shall deny the petition.
 - (c) As used in this subsection, "best interest of the minor" shall not include financial best interest, financial considerations, or the potential financial impact on the minor or the minor's family if the minor does not have an abortion.
- (5) Any minor shall have the right of anonymous and expedited appeal to the Court of Appeals, and that court shall give precedence over other pending matters.
- (6) All hearings under this section, including appeals, shall remain confidential and closed to the public. The hearings shall be held in chambers or in a similarly private and informal setting within the courthouse.
- (7) No fees shall be required of any minor who declares she has no sufficient funds to pursue the procedures provided by this section.
- (8) (a) The Supreme Court is respectfully requested to promulgate any rules and regulations it feels are necessary to ensure that proceedings under this section are handled in an expeditious and anonymous manner.
- (b) The Supreme Court, through the Administrative Office of the Courts, shall report by February 1 of each year to the Legislative Research Commission and the cabinet on the number of petitions filed under subsection (3) of this section for the preceding year, and the timing and manner of disposal of the petition by each court. For each approved petition granting an abortion filed under subsection (3) of this section, the specific court finding in subsection (4) of this section shall be included in the report.
- (9) (a) The requirements of subsections (2), (3), and (4) of this section shall not

apply when, in the best medical judgment of the physician based on the facts of the case before him or her, a medical emergency exists that so complicates the pregnancy as to require an immediate abortion.

- (b) If a medical emergency exists, the physician shall make reasonable attempts, whenever possible, and without endangering the minor, to contact the parent or legal guardian of the minor, and may proceed, but must document reasons for the medical necessity in the minor's medical records.
 - (c) The physician shall inform the parent or legal guardian, in person or by telephone, within twenty-four (24) hours of the abortion, including details of the medical emergency that necessitated the abortion without the parent's or legal guardian's consent. The physician shall also provide this information in writing to the parent or legal guardian at his or her last known address by first-class mail or by certified mail, return receipt requested, with delivery restricted to the parent or legal guardian.
- (10) A report indicating the basis for any medical judgment that warrants failure to obtain consent pursuant to this section shall be filed with the Cabinet for Health and Family Services on a form supplied by the cabinet. This report shall be confidential.
 - (11) Failure to obtain consent pursuant to the requirements of this section is prima facie evidence of failure to obtain informed consent and of interference with family relations in appropriate civil actions. The law of this state shall not be construed to preclude the award of exemplary damages in any appropriate civil action relevant to violations of this section. Nothing in this section shall be construed to limit the common-law rights of parents.
 - (12) A minor upon whom an abortion is performed is not guilty of violating this section.

Effective: April 14, 2022

History: Amended 2022 Ky. Acts ch. 210, sec. 1, effective April 14, 2022. -- Amended 2005 Ky. Acts ch. 99, sec. 588, effective June 20, 2005. -- Amended 1998 Ky. Acts ch. 426, sec. 542, effective July 15, 1998. -- Amended 1994 Ky. Acts ch. 253, sec. 1, effective July 15, 1994. -- Amended 1986 Ky. Acts ch. 375, sec. 1, effective July 15, 1986. -- Amended 1984 Ky. Acts ch. 111, sec. 132, effective July 13, 1984. -- Created 1982 Ky. Acts ch. 342, sec. 6, effective July 15, 1982.

Legislative Research Commission Note (4/14/2022). This statute was amended by 2022 Ky. Acts ch. 210, sec. 1. Section 38 of that Act states, "Sections 1 to 31 of this Act may be cited as the Humanity in Healthcare Act of 2022."