

311.732 Performance of abortion upon a minor -- Definitions -- Consent requirement -- Petition in District or Circuit Court -- 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 or his agent secured the informed written consent of the minor and one (1) parent or legal guardian;
 - (b) The minor is emancipated and the attending physician or his agent 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 or his agent 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 insure that the minor prepares or her next friend is given assistance in preparing and filing the petition and shall insure 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 insure 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 the emotional development, maturity, intellect, and understanding of the minor; the nature,

possible consequences, and alternatives to the abortion; and any other evidence that the court may find useful in determining whether the minor should be granted majority rights for the purpose of consenting to the abortion or whether the abortion is in the best interest of the minor.

- (4) The court shall enter a written order, making specific factual findings and legal conclusions supporting its decision as follows:
 - (a) Granting the petition for an abortion if the court finds that the minor is mature and well informed enough to make the abortion decision on her own;
 - (b) Granting consent to the abortion if the court finds that the performance of the abortion would be in the minor's best interest; or
 - (c) Deny the petition, if the court finds that the minor is immature and that performance of the abortion would not be in the minor's best interest.
- (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) No fees shall be required of any minor who declares she has no sufficient funds to pursue the procedures provided by this section.
- (7) 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.
- (8) 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, a medical emergency exists that so complicates the pregnancy as to require an immediate abortion. A physician who does not comply with subsection (2), (3), or (4) of this section due to the utilization of this exception shall certify in writing the medical indications upon which his judgment was based.
- (9) 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.
- (10) 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.

Effective: June 20, 2005

History: 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.