

A009-0405

10 AN ACT CONCERNING

20 Public Health – Abortion – Parental Notification

30 FOR the purpose of prohibiting a physician from performing an abortion on an
40 unmarried minor unless the physician gives certain notice to a parent of the minor;
50 authorizing a physician to perform an abortion on a minor under certain circumstances;
60 authorizing a minor to file a petition with a certain court to waive the requirement for
70 parental notification; providing for the court to handle the petition in an expedited and
80 confidential manner; providing for the circumstances under which the court can waive the
90 requirement for parental notification; requiring the Department of Health and Mental
100 Hygiene to prepare and distribute a pamphlet to explain the notification requirements and
110 the option to petition for a waiver; providing that a minor may not be coerced to have an
120 abortion making it a misdemeanor to violate this Act; providing certain penalties;
130 defining certain terms; and generally relating to the requirement for parental notice when
140 an unmarried minor seeks an abortion.

150 BY repealing and reenacting, with amendments

160 Article – Health – General

170 Section 20-103

180 Annotated Code of Maryland

190 (2000 Replacement Volume and 2004 Supplement)

200 SECTION 1. BE IT ENACTED BY THE MARYLAND STUDENT LEGISLATURE,
210 That the Laws of Maryland read as follows:

220 Article – Health - General

230 20-103

240 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE
250 MEANINGS INDICATED.

260 (2) “ACTUAL NOTICE” MEANS A PARENT HAS ACCOMPANIED
270 THE MINOR TO A CONSULTATION WITH A PHYSICIAN DURING WHICH THE
280 ABORTION DECISION IS CONSIDERED AND NOTICE IS GIVEN DIRECTLY TO
290 THE PARENT FROM THE PHYSICIAN. THIS INCLUDES, BUT IS NOT LIMITED
300 TO, THE PARENT SIGNING A FORM SAYING THE PARENT HAS BEEN
310 NOTIFIED BY THE DOCTOR THAT THE MINOR INTENDS TO HAVE AN
320 ABORTION.

330 (3) “CONSTRUCTIVE NOTICE” MEANS A NOTICE HAS BEEN
340 SENT BY CERTIFIED MAIL TO THE LAST KNOWN ADDRESS OF A PARENT
350 WITH RETURN RECEIPT REQUESTED AND RESTRICTED DELIVERY TO THE
360 ADDRESSEE.

370 (4) “MEDICAL EMERGENCY” MEANS A CONDITION THAT, ON
380 THE BASIS OF THE PHYSICIAN’S GOOD FAITH CLINICAL JUDGEMENT, SO
390 COMPLICATED THE MEDICAL CONDITION OF A PREGNANT MINOR AS TO
400 NECESSITATE THE IMMEDIATE ABORTION OF HER PREGNANCY TO AVERT
410 HER DEATH OR FOR WHICH A DELAY WILL CREATE A SERIOUS RISK OF
420 SUBSTANTIAL AND IRREVERSIBLE IMPAIRMENT OF A MAJOR BODILY
430 FUNCTION.

440 (5) "PARENT" MEANS:

450 (I) A NATURAL OR ADOPTIVE PARENT WHOSE RIGHTS
460 HAVE NOT BEEN TERMINATED; OR

470 (II) A LEGAL GUARDIAN.

480 (B) (1) Except as provided in ~~subsection (b) and~~ SUBSECTION (c) of this
490 section, a physician may not perform an abortion on an unmarried minor unless:

500 (I) ~~the~~ THE physician ~~first gives~~ GAVE ACTUAL notice OF
510 THE PENDING PROCEDURE to a parent ~~or guardian~~ of the minor; OR

520 (II) 48 HOURS HAVE ELAPSED SINCE THE PHYSICIAN
530 GAVE CONSTRUCTIVE NOTICE OF THE PENDING PROCEDURE TO A PARENT
540 OF THE MINOR.

550 (2) THE 48 HOUR PREIOD REQUIRED UNDER PARAGRAPH (1) (II)
560 OF THIS SUBSECTION SHALL BEGIN AT NOON ON THE NEXT DAY THAT
570 REGULAR MAIL DELIVERY TAKES PLACE FOLLOWING THE DAY THAT THE
580 NOTICE IS POSTMARKED BY THE UNITED STATES POSTAL SERVICE.

590 ~~(b)~~ (C) ~~The~~ A physician may perform ~~the~~ AN abortion ON A MINOR without
600 GIVING notice to a parent ~~or guardian~~ if:

610 ~~(1) The minor does not live with a parent or guardian; and~~

620 ~~(2) A reasonable effort to give notice to a parent of guardian is~~
630 ~~unsuccessful.~~

640 (1) THE PHYSICIAN RECEIVES A WRITTEN STATEMENT FROM
650 THE PARENT THAT WAS NOTARIZED WITHIN THE LAST 30 DAYS STATING
660 THAT THE PARENT IS AWARE OF THE PENDING PROCEDURE.

670 (2) THE PHYSICIAN CERTIFIES IN THE MINOR'S MEDICAL
680 RECORD THAT A MEDICAL EMERGENCY EXISTS AND THERE IS
690 INSUFFICIENT TIME TO PROVIDE THE NOTICE REQUIRED; OR

700 (3) NOTICE IS WAIVED UNDER SUBSECTION (E) OR (F) OF THIS
710 SECTION.

720 (D) (1) A MINOR MAY FILE A PETITION WITH THE CIRCUIT COURT
730 FOR THE COUNTY WHERE THE MINOR RESIDES OR WHERE THE
740 PHYSICIANS'S OFFICE IS LOCATED TO SEEK A WAIVER OF THE PARENTAL
750 NOTIFICATION REQUIRED UNDER SUBSECTION (B) OF THIS SECTION.

760 (2) THE PETITION SHALL INCLUDE A STATEMENT THAT THE
770 MINOR IS PREGNANT AND UNMARRIED.

780 (3) A PETITION FILED IN A COURT THAT HAS A FAMILY
790 DIVISION SHALL BE ASSIGNED TO THE FAMILY DIVISION.

800 (4) (I) THE COURT SHALL ADVISE THE MINOR OF THE
810 MINOR'S RIGHT TO COURT APPOINTED COUNSEL AND SHALL, ON THE
820 MINOR'S REQUEST, APPOINT COUNSEL.

830 (II) THE COURT MAY PERMIT THE MINOR TO
840 REPRESENT HERSELF.

850 (5) THE COURT MAY NOT IMPOSE A FILING FEE OR COSTS ON A
860 MINOR WHO FILES A PETITION FOR WAIVER OF PARENTAL NOTIFICATION
870 UNDER THIS SUBSECTION.

880 (6) COURT PROCEEDINGS UNDER THIS SECTION SHALL:

890 (I) BE CONFIDENTIAL;

900 (II) ENSURE THE ANONYMITY OF THE MINOR; AND

910 (III) BE GIVEN PRECEDENCE OVER OTHER PENDING
920 MATTERS SO THAT THE COURT MAY REACH A PROMPT DECISION TO
930 SERVE THE BEST INTEREST OF THE MINOR.

940 (E) (1) THE COURT SHALL ISSUE A DECISION INCLUDING WRITTEN
950 FACTUAL FINDINGS AND LEGAL CONCLUSIONS IN A PROCEEDING UNDER
960 THIS SECTION WITHIN 48 HOURS - NOT INCLUDING WEEKENDS AND
970 HOLIDAYS - FOLLOWING THE FILING OF THE PETITION UNDER
980 SUBSECTION (D) OF THIS SECTION UNLESS THIS TIME PERIOD IS
990 EXTENDED AT THE REQUEST OF THE MINOR.

1000 (2) (I) IF THE COURT FAILS TO RULE WITHIN 48 HOURS
1010 NOT INCLUDING WEEKENDS AND HOLIDAYS AND THE TIME IS NOT
1020 EXTENDED, THE PETITION IS GRANTED AND THE NOTICE REQUIREMENT
1030 SHALL BE WAIVED.

1040 (II) THE COURT SHALL ORDER A RECORD OF THE
1050 EVIDENCE TO BE MAINTAINED, INCLUDING THE JUDGE'S WRITTEN
1060 FACTUAL FINDINGS AND LEGAL CONCLUSIONS SUPPORTING THE
1070 DECISION.

1080 ~~(e)~~ (F) (1) ~~The physician may perform the abortion, without notice to a~~
1090 ~~parent or guardian of a minor if, in the professional judgment of the physician~~ THE
1100 COURT SHALL AUTHORIZE A WAIVER OF PARENTAL NOTIFICATION IF THE
1110 COURT FINDS, BY CLEAR AND CONVINCING EVIDENCE, THAT:

1120 (i) Notice to the parent or guardian may lead to physical,
1130 SEXUAL, or emotional abuse of the minor;

1140 (ii) The minor is SUFFICIENTLY mature ~~and capable of giving~~
1150 ~~informed consent~~ to DECIDER WHETHER TO HAVE an abortion AND THE MINOR
1160 DEMONSTRATED IN COURT A BASIC UNDERSTANDING OF THE ABORTION
1170 PROCEDURE AND KNOWLEDGE OF THE POSSIBLE CONSEQUENCES TO THE
1180 MINOR'S HEALTH IF THE MINOR CHOOSES TO HAVE AN ABORTION; or

1190 (iii) Notification would not be in the best interest of the minor.

1200 (2) IF THE COURT DOES NOT MAKE A FINDING SPECIFIED
1210 UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE COURT SHALL DISMISS
1220 THE PETITION AND NOTICE SHALL BE REQUIRED IN ACCORDANCE WITH
1230 SUBSECTION (B) OF THIS SECTION.

1240 (G) AN EXPEDITED, CONFIDENTIAL APPEAL SHALL BE AVAILABLE TO

1250 A MINOR FOR WHOM THE COURT DENIES AN ORDER WAIVING PARENTAL
1260 NOTIFICATION, IN ACCORDANCE WITH THE MARYLAND RULES.

1270 (H) (1) THE DEPARTMENT SHALL PREPARE A FACT SHEET FOR
1280 DISTRIBUTION TO UNMARRIED PREGNANT MINORS WHO SEEK AN
1290 ABORTION.

1300 (2) THE FACT SHEET SHALL BE WRITTEN IN TERMS
1310 GENERALLY UNDERSTOOD BY A MINOR AND SHALL EXPLAIN THE
1320 PARENTAL NOTIFICATION REQUIREMENTS UNDER SUBSECTION (B) OF
1330 THIS SECTION.

1340 (3) THE FACT SHEET SHALL INCLUDE:

1350 (I) THAT A MINOR MAY SEEK A WAIVER OF PARENTAL
1360 NOTIFICATION FROM THE CIRCUIT COURT FOR THE COUNTY WHERE THE
1370 MINOR RESIDES OR WHERE THE PHYSICIAN'S OFFICE IS LOCATED;

1380 (II) THAT A MINOR MAY PARTICIPATE IN PROCEEDINGS
1390 IN COURT ON HER OWN BEHALF;

1400 (III) THAT A MINOR HAS A RIGHT TO COURT APPOINTED
1410 COUNSEL WHICH SHALL BE PROVIDED TO THE MINOR ON REQUEST;

1420 (IV) THE PROCEDURE FOR PETITIONING THE COURT;

1430 (V) THAT COURT PROCEEDINGS SHALL BE
1440 CONFIDENTIAL AND ENSURE THE ANONYMITY OF THE MINOR;

1450 (VI) THE EVIDENCE THE MINOR MUST PRESENT FOR THE
1460 COURT TO WAIVE THE PARENTAL NOTIFICATION REQUIREMENT; AND

1470 (VII) THAT THE COURT'S DECISION MUST BE REACHED
1480 WITHIN 48 HOURS - NOT INCLUDING WEEKENDS AND HOLIDAYS - OF THE
1490 TIME THE PETITION IS FILED UNLESS THE TIME PERIOD IS EXTENDED AT
1500 THE REQUEST OF THE MINOR.

1510 (I) (1) THE DEPARTMENT SHALL DISTRIBUTE THE FACT SHEET, AT
1520 NO CHARGE, TO AMBULATORY CARE FACILITIES, HOSPITALS, PUBLIC AND
1530 PRIVATE AGENCIES, AND PHYSICIANS' OFFICES THAT PROVIDE FAMILY
1540 PLANNING SERVICES AND PRENATAL CARE.

1550 (2) THE PHYSICIAN WHO IS RESPONSIBLE FOR PROVIDING
1560 NOTICE UNDER SUBSECTION (B) OF THIS SECTION SHALL PROVIDE THE
1570 MINOR WITH A COPY OF THE FACT SHEET AT THE TIME THE MINOR
1580 INITIALLY REQUESTS AN ABORTION.

1590 (J) (1) A MINOR MAY NOT BE COERCED TO HAVE AN ABORTION.

1600 (2) IF A MINOR IS DENIED FINANCIAL SUPPORT BY THE
1610 THE MINOR'S PARENT DUE TO THE MINOR'S REFUSAL TO HAVE AN
1620 ABORTION, THE MINOR SHALL BE DEEMED EMANCIPATED FOR THE
1630 PURPOSES OF ELIGIBILITY FOR PUBLIC ASSISTANCE BENEFITS.

1640 (K) A PERSON WHO VIOLATES A PROVISION OF THIS SECTION IS
1650 GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE

1660 NOT EXCEEDING \$1,000.

1670 ~~(2)~~ (L) (I) ~~The~~ A physician ~~is~~ MAY not BE HELD liable for civil
1680 damages or subject to a criminal penalty for a decision ~~under this subsection~~ not to give
1690 notice UNDER SUBSECTION (B) OF THIS SECTION IF THE PHYSICIAN
1700 ESTABLISHES BY WRITTEN EVIDENCE THAT THE PHYSICIAN HAS MADE
1710 EVERY EFFORT, WITH REASONABLE DILIGENCE, TO DELIVER NOTICE, BUT
1720 HAS BEEN UNABLE TO DO SO.

1730 ~~(4)~~ (II) The postal receipt that shows an article of mail was sent by
1740 certified mail, return receipt requested, bearing a postmark from the United States Postal
1750 Service, to the last known address of a parent ~~or guardian~~ and that is attached to a copy of
1760 the notice letter that was sent in that article of mail shall be conclusive evidence of
1770 CONSTRUCTIVE notice ~~or a reasonable effort to give notice, as the case may be.~~

1780 (III) A SIGNED AND DATED STATEMENT FROM A PARENT
1790 DECLARING THE PARENT HAS BEEN NOTIFIED BY THE PHYSICIAN THAT
1800 THE MINOR INTENDS TO HAVE AN ABORTION SHALL BE CONCLUSIVE
1810 EVIDENCE OF ACTUAL NOTICE.

1820 ~~(e)~~ A physician may not provide notice to a parent or guardian
1830 if the minor decides not to have an abortion.

1840 SECTION 2. BE IT FURTHER ENACTED, That this Act shall take effect on October 1,
1850 2005.

1860 **MANDATES:** Governor Robert L. Ehrlich, Jr.
1870 Senate President Thomas V. "Mike" Miller
1880 Senate Minority Leader J. Lowell Stoltzfus
1890 Sen. Paula Hollinger, Chair of the Senate Education, Health, and
1900 Environmental Affairs Committee
1910 House Speaker Michael Bush
1920 House Minority Leader George C. Edwards
1930 Del. John Adams Hurson, Chair of the House Health and Governmental
1940 Operations Committee
1950 Del. Gail H. Bates

SPONSOR:

Kevin Rodkey, University of Maryland, College Park

COSPONSORS:

Alba Alvarez, DCP of Mount Saint Mary's
Dan Holler, Tory Caucus Leader, Washington College
Dan Bowen, Tory Caucus Whip, University of Maryland, College Park
Craig Reynolds, VDCP of AACC
Matthew Penick, University of Maryland, Baltimore County
Holly Brownley, Co-DCP of St. Mary's College
Rose Capozzi, University of Maryland, Baltimore County