

27 - Abortion Waiver

Introduction

In 1991, the Michigan Legislature passed a law that requires consent of parent or guardian for any minor seeking an abortion unless there is a medical emergency.

If a parent or guardian is not available or refuses to consent, or if the minor chooses not to ask her parent or guardian, the minor is entitled to petition the Family Division and request a waiver of parental rights.

What is a waiver of parental rights?

An un-emancipated minor (someone still legally controlled by their parent or guardian) must get the written consent of one of her parents or her guardian in order to obtain an abortion.

An un-emancipated minor can ask the Family Division for a waiver of parental consent. If granted, the minor will not need the permission of her parent or guardian and she can decide on her own to obtain an abortion.

Where do I pick up the waiver form?

Forms are available at the Family Division office.

Who can file for the waiver?

An un-emancipated minor whose legal guardian is not available or refuses to allow the child to obtain an abortion or an un-emancipated minor who chooses not to ask their parent's or guardian's permission

How much does it cost to file a waiver?

Nothing

Do I need a lawyer to file a waiver?

No. The Court will appoint a guardian ad litem whenever a petition is filed. The guardian ad litem will be a lawyer. If the minor requests a lawyer of her own, the Court will appoint one. Alternatively, the minor could retain her own lawyer.

Who will know about the parental waiver petition?

No one. These proceedings are confidential. A minor can use her initials on the petition if she doesn't want to sign her full name.

Does the minor seeking the abortion have to file the petition in person?

No, she can have her "next friend" sign and file the waiver request. A "next friend" must be a responsible adult.

A "next friend" **CANNOT** be:

- A doctor who performs abortions.
- A person who works for a doctor who performs abortions.

- A person who works for an agency that performs abortions, abortion counseling or abortion referrals.
- A volunteer who is a board member or volunteer with an agency performing abortions, abortion counseling or referrals.

What happens after a waiver petition is filed?

A hearing will be set within 72 hours, excepting Sundays and holidays.

What has to be proven to have a waiver granted?

At the hearing the minor must show:

That she is mature and well-informed enough to decide to have an abortion on her own.

OR

That the waiver of parental consent is in the minor's best interests.

The court will issue an order granting or denying the waiver request. IF the petition is granted, the minor may give the order to her doctor.

What if the Court rejects the waiver petition?

A minor whose petition is denied can appeal (challenge) the Court's denial to the Michigan Court of Appeals. If the minor appeals, an attorney will be provided for her at no cost.

What if the minor's pregnancy was caused by sexual abuse?

The Court must immediately report the incident to the Family Independence Agency (F.I.A.), or a law enforcement agency. The minor must also be informed of the actions that can be taken to protect her, including removing her from the home and placing her in temporary protective custody.

What if the abortion is necessary because of a medical emergency?

A parental waiver is not required.

REMEMBER: Even if a waiver request is granted, a minor cannot have an abortion which is otherwise against the law.