

MAR 12 2021

SENATE CONCURRENT RESOLUTION

REQUESTING PHYSICIANS AND SURGEONS IN THE STATE TO DECLINE TO
PERFORM ABORTIONS ON UNBORN CHILDREN CAPABLE OF FEELING
PAIN AND TO DECLINE TO PERFORM ABORTIONS BY DISMEMBERMENT,
UNLESS EXCEPTIONAL CIRCUMSTANCES ARE PRESENT.

1 WHEREAS, pain receptors, or nociceptors, are present
2 throughout an unborn child's entire body, and nerves link these
3 receptors to the brain's thalamus and subcortical plate by no
4 later than twenty weeks after fertilization; and

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6 WHEREAS, by eight weeks after fertilization, the unborn
7 child reacts to touch; and

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9 WHEREAS, after twenty weeks, the unborn child reacts to
10 stimuli that would be recognized as painful if applied to an
11 adult human, for example, by recoiling; and

12
13 WHEREAS, there is substantial medical evidence that an
14 unborn child is capable of experiencing pain twenty weeks after
15 fertilization, if not earlier; and

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17 WHEREAS, there is a compelling governmental interest in
18 protecting the lives of unborn children that reach the stage of
19 development at which substantial medical evidence indicates they
20 are capable of feeling pain; now, therefore,

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22 BE IT RESOLVED by the Senate of the Thirty-first
23 Legislature of the State of Hawaii, Regular Session of 2021, the
24 House of Representatives concurring, that all licensed
25 physicians and surgeons, including licensed osteopathic
26 physicians and surgeons, in this State are requested:

27
28 (1) Before performing or attempting an abortion:
29



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(A) To first determine the probable post-fertilization age of the unborn child or reasonably rely upon a determination made by another physician or surgeon; and

(B) In making the foregoing determination, to make inquiries of the pregnant woman and perform or cause to be performed medical examinations and tests that a reasonably prudent physician or surgeon, knowledgeable about the case and the medical conditions involved, would consider necessary to make an accurate determination of post-fertilization age;

(2) If the probable post-fertilization age of the unborn child is at least twenty weeks, to consider the unborn child as capable of feeling pain; and

(3) To decline to perform the abortion of any unborn child that is capable of feeling pain, unless one or more exceptional circumstances are present; and

BE IT FURTHER RESOLVED that the exceptional circumstances referenced in the foregoing clause include the following:

(1) In the physician or surgeon's reasonable medical judgment, an abortion is necessary to save the life of a pregnant woman whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself, but not including psychological or emotional conditions;

(2) The pregnancy is the result of rape against an adult woman who, at least forty-eight hours before the abortion, has obtained counseling for the rape or medical treatment for the rape or for an injury related to the rape, other than counseling or medical treatment provided by a facility that performs abortions; provided that, before the abortion, the



1 physician or surgeon places in the patient's medical
2 file documentation from a:

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4 (A) Hospital licensed by the State or operated under
5 authority of a federal agency;

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7 (B) Medical clinic licensed by the State or operated
8 under authority of a federal agency;

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10 (C) Personal physician licensed by the State;

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12 (D) Counselor licensed by the State; or

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14 (E) Victim's rights advocate provided by a law
15 enforcement agency,

16
17 that the adult woman seeking the abortion obtained
18 medical treatment or counseling for the rape or for an
19 injury related to the rape;

20
21 (3) The pregnancy is the result of rape against an adult
22 woman and the rape has been reported at any time
23 before the abortion to a law enforcement agency;
24 provided that, before the abortion, the physician or
25 surgeon places in the patient's medical file
26 documentation from the law enforcement agency to which
27 the rape was reported; or

28
29 (4) The pregnancy is a result of rape against a minor or
30 incest against a minor, and the rape or incest has
31 been reported at any time before the abortion to any
32 law enforcement agency or government agency authorized
33 to act on reports of child abuse; provided that,
34 before the abortion, the physician or surgeon places
35 in the patient's medical file documentation from the
36 government agency or law enforcement agency to which
37 the rape or incest of the minor was reported; and

38
39 BE IT FURTHER RESOLVED that a physician or surgeon
40 terminating or attempting to terminate a pregnancy under one or
41 more of the exceptional circumstances described above is
42 requested:



- 1 (1) Before commencing the abortion procedure, to provide
2 the woman seeking the abortion a disclosure form that:
3
4 (A) Indicates the probable post-fertilization age of
5 the unborn child;
6
7 (B) States that, due to the unborn child's stage of
8 development at that post-fertilization age, the
9 child may be capable of experiencing pain;
10
11 (C) Requires the woman seeking the abortion to
12 indicate by her signature whether or not she
13 understands the form; and
14
15 (D) Requires the physician or surgeon performing the
16 abortion and a second witness to sign the form;
17
18 (2) To decline to commence the abortion if the woman
19 seeking the abortion does not understand the contents
20 of the foregoing disclosure form, unless in the
21 physician or surgeon's reasonable medical judgment,
22 declining to perform the abortion would pose a greater
23 risk of:
24
25 (A) The death of the pregnant woman; or
26
27 (B) The substantial and irreversible physical
28 impairment of a major bodily function, not
29 including psychological or emotional conditions,
30 of the pregnant woman;
31
32 (3) To perform the abortion in a manner that, in the
33 physician or surgeon's reasonable medical judgment,
34 provides the best opportunity for the unborn child to
35 survive, unless the circumstances in the foregoing
36 paragraph are present;
37
38 (4) To sedate or abort the unborn child before any
39 dismemberment of the child's body is made; and
40
41 (5) To submit to the Department of Health not later than
42 sixty days after the end of each calendar year an



1 annual summary, without personally identifiable
2 patient information, of the number of abortions
3 performed or attempted by the physician or surgeon
4 within the previous calendar year on an unborn child
5 who had a post-fertilization age of twenty weeks or
6 more; provided that each annual summary is requested
7 to include:

- 8
9 (A) The probable post-fertilization age of the unborn
10 child;
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12 (B) The method used to carry out the abortion;
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14 (C) The location where the abortion was conducted;
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16 (D) The exceptional circumstance under which the
17 abortion was conducted; and
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19 (E) Any incident of live birth that occurred in spite
20 of an attempted abortion; and
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22 BE IT FURTHER RESOLVED that the Department of Health is
23 requested to submit to the Legislature no later than twenty days
24 prior to the convening of each Regular Session a publicly-
25 available annual report with statistics compiled from all of the
26 foregoing annual summaries made to the Department; provided that
27 the report does not include any information that could
28 reasonably lead to the identification of any pregnant woman upon
29 whom an abortion was performed or attempted; and
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31 BE IT FURTHER RESOLVED that all licensed physicians and
32 surgeons, including licensed osteopathic physicians and
33 surgeons, in the State are requested to decline to perform any
34 abortion by dismemberment of an unborn child unless the
35 dismemberment is necessary to save the life of a pregnant woman
36 whose life is endangered by a physical disorder, physical
37 illness, or physical injury, including a life-endangering
38 physical condition caused by or arising from the pregnancy
39 itself, but not including psychological or emotional conditions;
40 and
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1 BE IT FURTHER RESOLVED that certified copies of this
2 Concurrent Resolution be transmitted to the Director of Health
3 and Chairperson of the Hawaii Medical Board, the latter of whom
4 is requested to transmit copies of this measure to each
5 physician, surgeon, osteopathic physician, and osteopathic
6 surgeon who is licensed to practice in this State pursuant to
7 Chapter 453, Hawaii Revised Statutes.

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10 OFFERED BY: Kurt Ferella

