

MAR 12 2021

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# SENATE 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

5  
6 WHEREAS, by eight weeks after fertilization, the unborn  
7 child reacts to touch; and

8  
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

16  
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,

21  
22 BE IT RESOLVED by the Senate of the Thirty-first  
23 Legislature of the State of Hawaii, Regular Session of 2021,  
24 that all licensed physicians and surgeons, including licensed  
25 osteopathic physicians and surgeons, in this State are  
26 requested:

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

29  
30 (A) To first determine the probable post-  
31 fertilization age of the unborn child or



1 reasonably rely upon a determination made by  
2 another physician or surgeon; and  
3

4 (B) In making the foregoing determination, to make  
5 inquiries of the pregnant woman and perform or  
6 cause to be performed medical examinations and  
7 tests that a reasonably prudent physician or  
8 surgeon, knowledgeable about the case and the  
9 medical conditions involved, would consider  
10 necessary to make an accurate determination of  
11 post-fertilization age;  
12

13 (2) If the probable post-fertilization age of the unborn  
14 child is at least twenty weeks, to consider the unborn  
15 child as capable of feeling pain; and  
16

17 (3) To decline to perform the abortion of any unborn child  
18 that is capable of feeling pain, unless one or more  
19 exceptional circumstances are present; and  
20

21 BE IT FURTHER RESOLVED that the exceptional circumstances  
22 referenced in the foregoing clause include the following:  
23

24 (1) In the physician or surgeon's reasonable medical  
25 judgment, an abortion is necessary to save the life of  
26 a pregnant woman whose life is endangered by a  
27 physical disorder, physical illness, or physical  
28 injury, including a life-endangering physical  
29 condition caused by or arising from the pregnancy  
30 itself, but not including psychological or emotional  
31 conditions;  
32

33 (2) The pregnancy is the result of rape against an adult  
34 woman who, at least forty-eight hours before the  
35 abortion, has obtained counseling for the rape or  
36 medical treatment for the rape or for an injury  
37 related to the rape, other than counseling or medical  
38 treatment provided by a facility that performs  
39 abortions; provided that, before the abortion, the  
40 physician or surgeon places in the patient's medical  
41 file documentation from a:  
42



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- 1 (A) Hospital licensed by the State or operated under
- 2 authority of a federal agency;
- 3
- 4 (B) Medical clinic licensed by the State or operated
- 5 under authority of a federal agency;
- 6
- 7 (C) Personal physician licensed by the State;
- 8
- 9 (D) Counselor licensed by the State; or
- 10
- 11 (E) Victim's rights advocate provided by a law
- 12 enforcement agency,
- 13

14 that the adult woman seeking the abortion obtained  
 15 medical treatment or counseling for the rape or for an  
 16 injury related to the rape;

- 17
- 18 (3) The pregnancy is the result of rape against an adult
- 19 woman and the rape has been reported at any time
- 20 before the abortion to a law enforcement agency;
- 21 provided that, before the abortion, the physician or
- 22 surgeon places in the patient's medical file
- 23 documentation from the law enforcement agency to which
- 24 the rape was reported; or
- 25
- 26 (4) The pregnancy is a result of rape against a minor or
- 27 incest against a minor, and the rape or incest has
- 28 been reported at any time before the abortion to any
- 29 law enforcement agency or government agency authorized
- 30 to act on reports of child abuse; provided that,
- 31 before the abortion, the physician or surgeon places
- 32 in the patient's medical file documentation from the
- 33 government agency or law enforcement agency to which
- 34 the rape or incest of the minor was reported; and
- 35

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

- 40 (1) Before commencing the abortion procedure, to provide
- 41 the woman seeking the abortion a disclosure form that:
- 42

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- 1 (A) Indicates the probable post-fertilization age of
- 2 the unborn child;
- 3
- 4 (B) States that, due to the unborn child's stage of
- 5 development at that post-fertilization age, the
- 6 child may be capable of experiencing pain;
- 7
- 8 (C) Requires the woman seeking the abortion to
- 9 indicate by her signature whether or not she
- 10 understands the form; and
- 11
- 12 (D) Requires the physician or surgeon performing the
- 13 abortion and a second witness to sign the form;
- 14
- 15 (2) To decline to commence the abortion if the woman
- 16 seeking the abortion does not understand the contents
- 17 of the foregoing disclosure form, unless in the
- 18 physician or surgeon's reasonable medical judgment,
- 19 declining to perform the abortion would pose a greater
- 20 risk of:
- 21
- 22 (A) The death of the pregnant woman; or
- 23
- 24 (B) The substantial and irreversible physical
- 25 impairment of a major bodily function, not
- 26 including psychological or emotional conditions,
- 27 of the pregnant woman;
- 28
- 29 (3) To perform the abortion in a manner that, in the
- 30 physician or surgeon's reasonable medical judgment,
- 31 provides the best opportunity for the unborn child to
- 32 survive, unless the circumstances in the foregoing
- 33 paragraph are present;
- 34
- 35 (4) To sedate or abort the unborn child before any
- 36 dismemberment of the child's body is made; and
- 37
- 38 (5) To submit to the Department of Health not later than
- 39 sixty days after the end of each calendar year an
- 40 annual summary, without personally identifiable
- 41 patient information, of the number of abortions
- 42 performed or attempted by the physician or surgeon



1 within the previous calendar year on an unborn child  
2 who had a post-fertilization age of twenty weeks or  
3 more; provided that each annual summary is requested  
4 to include:

- 5
- 6 (A) The probable post-fertilization age of the unborn  
7 child;
  - 8
  - 9 (B) The method used to carry out the abortion;
  - 10
  - 11 (C) The location where the abortion was conducted;
  - 12
  - 13 (D) The exceptional circumstance under which the  
14 abortion was conducted; and
  - 15
  - 16 (E) Any incident of live birth that occurred in spite  
17 of an attempted abortion; and
  - 18

19 BE IT FURTHER RESOLVED that the Department of Health is  
20 requested to submit to the Legislature no later than twenty days  
21 prior to the convening of each Regular Session a publicly-  
22 available annual report with statistics compiled from all of the  
23 foregoing annual summaries made to the Department; provided that  
24 the report does not include any information that could  
25 reasonably lead to the identification of any pregnant woman upon  
26 whom an abortion was performed or attempted; and

27

28 BE IT FURTHER RESOLVED that all licensed physicians and  
29 surgeons, including licensed osteopathic physicians and  
30 surgeons, in the State are requested to decline to perform any  
31 abortion by dismemberment of an unborn child unless the  
32 dismemberment is necessary to save the life of a pregnant woman  
33 whose life is endangered by a physical disorder, physical  
34 illness, or physical injury, including a life-endangering  
35 physical condition caused by or arising from the pregnancy  
36 itself, but not including psychological or emotional conditions;  
37 and

38

39 BE IT FURTHER RESOLVED that certified copies of this  
40 Resolution be transmitted to the Director of Health and  
41 Chairperson of the Hawaii Medical Board, the latter of whom is  
42 requested to transmit copies of this measure to each physician,



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1 surgeon, osteopathic physician, and osteopathic surgeon who is  
2 licensed to practice in this State pursuant to Chapter 453,  
3 Hawaii Revised Statutes.

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OFFERED BY:

*Kwot Ferella*

