HOUSE DOCKET, NO. 1198 FILED ON: 2/2/2021

HOUSE . . . . . No. 2328

The Commonwealth of Massachusetts

PRESENTED BY:

Hannah Kane and Claire D. Cronin

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to informed consent for concurrent surgical procedures.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
Hannah Kane	*11th Worcester*	*2/2/2021*
Claire D. Cronin	*11th Plymouth*	*2/2/2021*
Lori A. Ehrlich	*8th Essex*	*2/11/2021*
Carole A. Fiola	*6th Bristol*	*2/18/2021*
Christopher Hendricks	*11th Bristol*	*2/18/2021*
Lindsay N. Sabadosa	*1st Hampshire*	*2/18/2021*
Tami L. Gouveia	*14th Middlesex*	*2/22/2021*
Tricia Farley-Bouvier	*3rd Berkshire*	*2/24/2021*
Mathew J. Muratore	*1st Plymouth*	*2/24/2021*
Kate Lipper-Garabedian	*32nd Middlesex*	*2/26/2021*
Kimberly N. Ferguson	*1st Worcester*	*2/26/2021*
Jonathan D. Zlotnik	*2nd Worcester*	*2/26/2021*

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HOUSE . . . . . No. 2328

By Representatives Kane of Shrewsbury and Cronin of Easton, a petition (accompanied by bill, House, No. 2328) of Hannah Kane, Claire D. Cronin and others relative to informed consent for concurrent surgical procedures. Public Health.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. *1932* OF 2019-2020.]

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Second General Court
(2021-2022)

An Act relative to informed consent for concurrent surgical procedures.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section 70E of chapter 111 of the General Laws, as appearing in the 2016 Official Edition, is hereby amended by inserting after the first paragraph the following paragraph:-

As used in this section, the terms "Attending physician", "Concurrent surgical procedure", "Elective surgical procedure", "Emergency surgical procedure", and "Secondary emergency surgical procedure" shall have the same meanings as defined in section 70i.

SECTION 2. Said section 70E of said chapter 111, as so appearing, is hereby further amended by striking out, in line 105, the word "and".

SECTION 3. The fifth paragraph of said section 70E of said chapter 111, as so appearing, is hereby amended by striking out clause(o) and inserting in place thereof the following 2 clauses:-

(o) if the patient is a female rape victim of childbearing age, to receive medically and factually accurate written information prepared by the commissioner of public health about emergency contraception; to be promptly offered emergency contraception; and to be provided with emergency contraception upon request; and

(p) to refuse to undergo a concurrent surgical procedure, except in cases of an emergency surgical procedure.

SECTION 4. The sixth paragraph of said section 70E of said chapter 111, as so appearing, is hereby amended by striking out clause (h) and inserting in place thereof the following 3 clauses:-

(h) in the case of a patient suffering from any form of breast cancer, to complete information on all alternative treatments which are medically viable;

(i) in the case of a patient scheduled for an elective concurrent surgical procedure, to written notice and informed consent of such concurrent scheduling, and a detailed account of the attending physician's participation in the surgical procedure, at least 14 days prior to the surgical procedure pursuant to section 70i; and

(j) in the case of a patient scheduled for a secondary emergency concurrent surgical procedure, to written notice and informed consent of such concurrent scheduling, and a detailed

account of the attending physician's participation in the surgical procedure, at least 48 hours prior to the surgical procedure pursuant to section 70i.

SECTION 5. Said chapter 111 is hereby further amended by inserting after section 70H the following section:-

Section 70I. (a) As used in this section, the following words shall have the following meanings:

"Attending physician", the physician licensed under sections 2 through 9B of chapter 112, who has been credentialed by the facility to independently perform the patient's procedure and to supervise physician trainees or physician extenders.

"Concurrent surgical procedure", any surgical procedure during which the attending physician is scheduled to leave the operating room at any point between incision and skin closure of the procedure to participate in the performance or supervision of a different surgical procedure on a different patient in a different operating room, where critical portions of the operations are performed concurrently.

"Elective surgical procedure", a surgical procedure that is scheduled at least 14 days in advance, that is not urgent in nature and is not an emergency procedure.

"Emergency surgical procedure", an urgent surgical procedure that must be performed immediately upon the patient's arrival at the facility, and is not scheduled in advance.

"Facility", any hospital, institution for the care of unwed mothers, clinic, infirmary maintained in a town, convalescent or nursing home, rest home, or charitable home for the aged, licensed or subject to licensing by the department; any state hospital operated by the department;

any “facility” as defined in section 3 of chapter 111B; any private, county or municipal facility, department or ward which is licensed or subject to licensing by the department of mental health pursuant to section 19 of chapter 19; or by the department of developmental services pursuant to section 15 of chapter 19B; any “facility” as defined in section 1 of chapter 123; the Soldiers Home in Holyoke, the Soldiers’ Home in Massachusetts; and any facility set forth in section 1 of chapter 19 or section 1 of chapter 19B.

“Overlapping surgical procedure”, a surgical procedure during which the attending physician is scheduled to leave the operating room at any point between incision and skin closure of the procedure to participate in the performance or supervision of a different surgical procedure on a different patient in a different operating room at the same time, where critical portions of the operations are not performed concurrently.

“Physician”, a person licensed to practice medicine under sections 2 through 9B of chapter 112.

“Physician Extender”, a person who is participating in the patient’s procedure who is under the direct supervision of the attending physician. A physician extender may be a resident, a fellow, a physician assistant, an advanced practice registered nurse or other person authorized by the facility to participate in the procedure, and who is directly supervised by the attending physician.

“Secondary emergency surgical procedure”, a surgical procedure that is scheduled at least 48 hours in advance, but is still more urgent in nature than an elective surgical procedure.

“Staggered surgical procedure”, a surgical procedure during which the attending physician performs different surgical procedures on different patients in different operating

rooms, one procedure directly after another, where no portions of the operations are performed concurrently.

(b) At least 14 days before the attending physician operates on a patient scheduled for an elective concurrent surgical procedure, and at least 48 hours before the attending physician operates on a patient scheduled for a secondary emergency concurrent surgical procedure, the attending physician shall inform the patient, in writing, of the concurrent scheduling and the involvement of the attending physician in the patient's procedure, and shall obtain written informed consent from the patient prior to performing such procedure; provided, that the attending physician shall provide to the patient, in writing, a detailed description of what specific steps of the surgery said physician will and will not be performing, including, but not limited to critical surgical steps. The department shall develop a standardized written summary and consent form for use in obtaining informed consent for concurrent surgical procedures. This summary and consent form shall be written in a manner designed to permit a person unfamiliar with medical terminology to understand its purpose and content and shall inform the patient that they are scheduled to undergo a concurrent surgical procedure. The department shall update the form as necessary, and distribute such forms to each facility in the commonwealth in which the department knows or has reason to know concurrent surgical procedures are performed.

(c) The attending physician shall include in the patient's medical record written documentation of the attending physician's presence or absence during the surgical procedure. If the attending physician was absent for any part of the surgical procedure, the medical record shall accurately reflect the time of the absence or absences and who was the attending physician during the absence, if any.

(d) Any facility that performs concurrent surgical procedures shall publish, on their website, notice that said facility performs concurrent surgical procedures, and shall publish such notice on the individual webpages of each physician who performs concurrent surgeries at said facility.

SECTION 6. The department of public health shall promulgate rules and regulations necessary to implement this act.