

**HOUSE . . . . . No. 2203**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

***Hannah Kane and Carole A. Fiola***

*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:
<i>Hannah Kane</i>	<i>11th Worcester</i>	<i>1/10/2023</i>
<i>Carole A. Fiola</i>	<i>6th Bristol</i>	<i>1/24/2023</i>
<i>Kimberly N. Ferguson</i>	<i>1st Worcester</i>	<i>1/26/2023</i>
<i>David Allen Robertson</i>	<i>19th Middlesex</i>	<i>2/6/2023</i>
<i>William M. Straus</i>	<i>10th Bristol</i>	<i>2/6/2023</i>
<i>David Paul Linsky</i>	<i>5th Middlesex</i>	<i>2/7/2023</i>
<i>Paul McMurtry</i>	<i>11th Norfolk</i>	<i>2/15/2023</i>
<i>Bruce E. Tarr</i>	<i>First Essex and Middlesex</i>	<i>4/3/2023</i>

**HOUSE . . . . . No. 2203**

By Representatives Kane of Shrewsbury and Fiola of Fall River, a petition (accompanied by bill, House, No. 2203) of Hannah Kane, Carole A. Fiola and others relative to informed consent for concurrent surgical procedures. Public Health.

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE HOUSE, NO. 2328 OF 2021-2022.]

**The Commonwealth of Massachusetts**

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**In the One Hundred and Ninety-Third General Court  
(2023-2024)**  
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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:*

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

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

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

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

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

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

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

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

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

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

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

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

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

35 “Attending physician”, the physician licensed under sections 2 through 9B of chapter  
36 112, who has been credentialed by the facility to independently perform the patient’s procedure  
37 and to supervise physician trainees or physician extenders.

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

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

45 “Emergency surgical procedure”, an urgent surgical procedure that must be performed  
46 immediately upon the patient’s arrival at the facility, and is not scheduled in advance.

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

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

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

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

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

68 “Secondary emergency surgical procedure”, a surgical procedure that is scheduled at least  
69 48 hours in advance, but is still more urgent in nature than an elective surgical procedure.

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

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

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

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

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

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