

# ANALYSIS OF AMENDMENT #759 TO H5150 (THE NEW “INFANTICIDE ACT”)

## 1. Parental Consent Reduced/Eliminated (Amendment §§ 22A & 22L)

New Section 12F: “Any minor may give consent to his medical... care at the time such care is sought if... (iv) she is pregnant or believes herself to be pregnant;...

Consent shall not be granted under subparagraphs (ii) through (vi), inclusive, for ~~abortion or~~ sterilization.”

This appears to eliminate the need for parental consent in total, and internally inconsistent with the new Section 12S, which changes from “less than 18” to 16.

“If a patient is less than 16 years of age and has not married, an abortion shall not be performed unless the physician, physician assistant, nurse practitioner, or nurse midwife first obtains both the consent of the patient and that of 1 of the patient’s parents or guardians, except as hereinafter provided.”

## 2. Redefines or eliminates key definitions in state law, including, “Abortion,” “Pregnancy,” and “Unborn child.” (Amendment § 22B)

### *Current MA Law*

### *Amendment Language*

<b>Current MA Law</b>	<i>Current MA Law</i>	<i>Amendment Language</i>
<b>Abortion</b>	“the knowing destruction of the life of an <b>unborn child</b> or the intentional expulsion or removal of an <b>unborn child</b> from the womb other than for the principal purpose of producing a live birth or removing a dead fetus.”	“any medical treatment intended to induce the termination of, or to terminate, a clinically diagnosable pregnancy except for the purpose of producing a live birth; provided, however, that the term abortion shall not include providing care related to a miscarriage.”
<b>Pregnancy</b>	“the condition of a mother carrying an <b>unborn child.</b> ”	“the presence of an implanted human embryo or fetus in the uterus.”
<b>Unborn child</b>	“the individual human life in existence and developing from implantation of the embryo in the uterus until birth.”	[deleted entirely]

## 3. Allows abortions for any reason prior to 24 weeks – current law requires that an abortion at this stage be “necessary under all attendant circumstances.” (Amendment § 22C)

## 4. Allows abortions prior to 24 weeks to be performed by a physician, physician assistant, nurse practitioner, or nurse midwife. (Amendment §22C)

## 5. Eliminates any meaningful restrictions on abortions post 24-weeks. (Amendments §22D-F)

The new language is essentially the same as the ROE Act, where the requirement of there being a “substantial risk of grave impairment” to the mother’s health is watered down to simply being “necessary in the best medical judgment of the physician, to preserve” the mother’s health. The much discussed “lethal fetal anomaly” language is

tacked on at the end so it can be used as a talking point. That scenario is clearly already covered under current law as a woman wanting an abortion for that reason can easily claim it to be a risk of impairment to her mental health.

Current Section 12M in MA law: “If a pregnancy has existed for twenty-four weeks or more, no abortion may be performed except by a physician and only if it is necessary to save the life of the mother, or if a continuation of her pregnancy will impose on her a **substantial risk of grave impairment of her physical or mental health.**” (emphasis added)

New Section 12M under this legislation: “If a pregnancy has existed for twenty-four weeks or more, no abortion may be performed except by a physician and only if it is necessary in the best medical judgment of the physician, to preserve the life of the patient, or if it is necessary, in the best medical judgment of the physician, to preserve the patient’s physical or mental health, or, in the best medical judgment of the physician, an abortion is warranted because of a lethal fetal anomaly incompatible with sustained life outside the uterus.”

## **6. Physicians operating on a 24-week baby may now use procedures that intentionally kill the baby in utero. (Amendment §22H)**

Repeals Section 12O, which currently says, “If an abortion is performed pursuant to section twelve M, no abortion procedure which is designed to destroy the life of the unborn child or injure the unborn child in its mother's womb may be used unless, in the physician's best medical judgment, all other available procedures would create a greater risk of death or serious bodily harm to the mother either at the time of the abortion, or subsequently as the result of a future pregnancy, than the one being used.”

## **7. Physicians are no longer required to save the life of a baby born during a post-24-week abortion. (Amendment §22I)**

This new version still permits infanticide. The current language in the law that prohibits passive infanticide is found in Section 12P.

“...the physician performing the abortion **shall take all reasonable steps**, both during and subsequent to the abortion... to preserve the life and health of the aborted child.” [emphasis added]

Instead of simply striking this language, as the original ROE Act did, the new budget amendment version twists it to this:

“...the room where the abortion is performed shall maintain life-supporting equipment, ...**to enable the physician performing the abortion to take appropriate steps**, ...to preserve the life and health of a live birth and the patient.” [emphasis added]

Current law requires (“shall take”) physicians to try to save the life of the child. This new legislation simply requires that there be life-saving equipment present, but doesn’t require that the physician actually USE it. Instead, the operative language is merely that the equipment would “enable the physician...to take appropriate steps.” This is profoundly different from existing law and not materially different on the infanticide issue from the ROE Act.

To summarize, this new version still requires life-saving equipment in the room where the abortion takes place, but removes the requirement for abortionists to actually have to USE it.

**Amendment #759 to H5150**  
**Improved Access to Healthcare**

Ms. Cronin of Easton moves to amend the bill by inserting, after section 22, the following 13 new sections:-

**SECTION 22A.** Section 12F of chapter 112 of the General Laws, as appearing in the 2018 Official Edition, is hereby amended by striking out, in line 20, the words “abortion or”.

**Commented [A1]:** This allows for underage girls to get an abortion without parental consent.

**SECTION 22B.** Said chapter 112 is hereby further amended by striking out section 12K, as appearing in the 2018 Official Edition, and inserting in place thereof the following section:-

**Commented [A2]:** Changes the following definitions:

“Abortion, the knowing destruction of the life of an unborn child or the intentional expulsion or removal of an unborn child from the womb other than for the principal purpose of producing a live birth or removing a dead fetus.”

Section 12K. As used in section 12L through section 12T, inclusive, the following words shall, unless the context clearly requires otherwise, have the following meanings:-

And

“Pregnancy, the condition of a mother carrying an unborn child.”

“Abortion”, any medical treatment intended to induce the termination of, or to terminate, a clinically diagnosable pregnancy except for the purpose of producing a live birth; provided, however, that the term abortion shall not include providing care related to a miscarriage.

Eliminates:

“Unborn child, the individual human life in existence and developing from implantation of the embryo in the uterus until birth.”

“Hospital”, an institution as defined in section 52 of chapter 111 of the General Laws and duly licensed pursuant to section 51 of chapter 111 of the General Laws.

“Nurse midwife”, a nurse who is designated as a certified nurse midwife by the board of registration in nursing pursuant to section 80B.

“Nurse practitioner”, a nurse who is designated as a certified nurse practitioner by the board of registration in nursing pursuant to section 80B.

“Physician”, a person registered with the board of registration in medicine to practice medicine within the commonwealth.

“Physician assistant”, a person who is a graduate of an approved program for the training of physician assistants who is supervised by a physician in accordance with sections 9C to 9H, inclusive.

“Pregnancy”, the presence of an implanted human embryo or fetus in the uterus.

SECTION 22C. Said chapter 112 is hereby further amended by striking out section 12L, as appearing in the 2018 Official Edition, and inserting in place thereof the following section:-

Section 12L. A physician, physician assistant, nurse practitioner, or nurse midwife may perform an abortion consistent with the scope of their practice and license if, in their best medical judgment, the pregnancy has existed for less than 24 weeks.

**Commented [A3]:** Abortions can be performed by any of these professions for ANY reason, no long just by a "physician" when "necessary under all attendant circumstances."

SECTION 22D. Section 12M of said chapter 112, as so appearing, is hereby amended by striking out, in line 3, the words "to save" and inserting in place thereof the following words:- , in the best medical judgment of the physician, to preserve.

SECTION 22E. Said section 12M of said chapter 112, as so appearing, is hereby amended by striking out, in lines 3 to 5, inclusive, the words "mother, or if a continuation of her pregnancy will impose on her a substantial risk of grave impairment of her" and inserting in place thereof the following words:- patient, or if it is necessary, in the best medical judgment of the physician, to preserve the patient's.

**Commented [A4]:** New Section 12M:

If a pregnancy has existed for twenty-four weeks or more, no abortion may be performed except by a physician and only if it is necessary in the best medical judgment of the physician, to preserve the life of the patient, or if it is necessary, in the best medical judgment of the physician, to preserve the patient's physical or mental health, or, in the best medical judgment of the physician, an abortion is warranted because of a lethal fetal anomaly incompatible with sustained life outside the uterus.

SECTION 22F. Said section 12M of said chapter 112, as so appearing, is hereby amended by inserting after the word "health", in line 5, the following words:- , or, in the best medical judgment of the physician, an abortion is warranted because of a lethal fetal anomaly incompatible with sustained life outside the uterus.

**Commented [A5]:** Killing or injuring unborn children inside the womb (at 24 weeks or more of gestational age) is permissible, even if the mother's life or health is not threatened by having a procedure that does NOT injure the baby.

SECTION 22G. Section 12N of said chapter 112, as so appearing, is hereby amended by striking out, in line 6, the figure "12U" and inserting in place thereof the following figure:- 12T.

This is what would be repealed: "Section 12O. If an abortion is performed pursuant to section twelve M, no abortion procedure which is designed to destroy the life of the unborn child or injure the unborn child in its mother's womb may be used unless, in the physician's best medical judgment, all other available procedures would create a greater risk of death or serious bodily harm to the mother either at the time of the abortion, or subsequently as the result of a future pregnancy, than the one being used."

SECTION 22H. Section 12O of said chapter 112 of the General Laws is hereby repealed.

SECTION 22I. Said chapter 112 is hereby further amended by striking out section 12P, as appearing in the 2018 Official Edition, and inserting in place thereof the following section:-

**Commented [A6]:** Abortionists must have live-saving equipment on hand for both mother and child, BUT this rewrite of 12P eliminates the requirement to actually USE it. Also, "aborted child" is now a "live birth."

Section 12P. If an abortion is performed pursuant to section 12M, the room where the abortion is performed shall maintain life-supporting equipment, as defined by the department of public health, to enable the physician performing the abortion to take appropriate steps, in keeping with good medical practice and consistent with the procedure being used, to preserve the life and health of a live birth and the patient.

Original 12P is: "Section 12P. If an abortion is performed pursuant to section twelve M, the physician performing the abortion shall take all reasonable steps, both during and subsequent to the abortion, in keeping with good medical practice, consistent with the procedure being used, to preserve the life and health of the aborted child. Such steps shall include the presence of life-supporting equipment, as defined by the department of public health, in the room where the abortion is to be performed."

SECTION 22J. Said section 12Q of said chapter 112 of the General Laws, as so appearing, is hereby further amended by striking out, in line 4, the words “delivered to the physician performing the abortion” and inserting in place thereof the following word:- obtained.

SECTION 22K. Said chapter 112 is hereby further amended by striking out section 12R and inserting in place thereof the following section:-

Section 12R. The commissioner of public health shall collect aggregate data on abortions performed by a physician, physician assistant, certified nurse practitioner, or certified nurse midwife on a form promulgated by the commissioner which shall include, but not be limited to, the following information: the date and place of the abortions performed, the ages of the patients, the method used to perform the abortions, and the gestational age when the abortions were performed. The commissioner shall prepare from these forms such statistical tables with respect to maternal health, abortion procedures, and gestational age as the commissioner deems useful and shall make an annual report thereof to the general court. Nothing in this section shall be construed to limit the authority of the department of public health to require reports pursuant to sections 24A and 25A of chapter 111.

SECTION 22L. Said chapter 112 is hereby further amended by striking out section 12S, as appearing in the 2018 Official Edition, and inserting in place thereof the following section:-

Section 12S. No abortion may be performed without first obtaining the written informed consent of the patient seeking an abortion. The commissioner of public health shall prescribe a form to use in obtaining such consent. A patient seeking an abortion shall sign the consent form in advance of the time for which the abortion is scheduled, except in an emergency requiring immediate action. The patient shall then return it to the physician, physician assistant, nurse practitioner, or nurse midwife performing the abortion who shall maintain it in their files and who shall destroy it 7 years after the date upon which the abortion is performed.

The consent form and any other forms, transcript of evidence, or written findings or conclusions of a court, shall be confidential and shall not be released to any other person except by the patient’s written informed consent or by a proper judicial order, other than to the patient themselves, to whom such documents relate, the physician, physician assistant, nurse practitioner, or nurse midwife who performed the abortion, or any person whose consent is required pursuant to this section, or under the law. **If a patient is less than 16 years of age and has not married, an abortion shall not be performed unless the physician, physician assistant, nurse practitioner, or nurse**

**Commented [A7]:** Current law requires this for pregnant women under EIGHTEEN. So 16 and 17 year old girls could get abortions without any parental consent under this new provision.

midwife first obtains both the consent of the patient and that of 1 of the patient's parents or guardians, except as hereinafter provided. In deciding whether to grant such consent, a patient's parent shall consider only the patient's best interests. If a patient less than 16 years of age has not married and if the patient is unable to obtain the consent of 1 of their parents or 1 of their guardians to the performance of an abortion, or if they elect not to seek the consent of a parent or a guardian, or in the case of incest, or if the patient is in the custody of the department of children and families, a judge of the superior court department of the trial court shall, upon petition, or motion, and after an appropriate hearing held in person or via teleconference, authorize a physician, physician assistant, nurse practitioner, or nurse midwife to perform the abortion if said judge determines that the patient is mature and capable of giving informed consent to the procedure or, if said judge determines that the patient is not mature, that performance of an abortion would be in the patient's best interests. A patient less than 16 years of age may participate in proceedings in the superior court department of the trial court on their own behalf, and the court may appoint a guardian ad litem for the patient. The court shall, however, advise the patient that they have a right to court appointed counsel, and shall, upon the patient's request, provide the patient with such appointed counsel. Proceedings in the superior court department of the trial court under this section shall be confidential and shall be given such precedence over other pending matters that the court may reach a decision promptly and without delay so as to serve the best interests of the patient. The chief justice of the superior court department of the trial court shall establish procedures for conducting proceedings under this section promptly and without delay including, but not limited to, procedures to accommodate the patient outside of normal court hours. A judge of the superior court department of the trial court who conducts proceedings under this section shall make in writing specific factual findings and legal conclusions supporting their decision and shall order a record of the evidence to be maintained including the findings and conclusions.

SECTION 22M. Section 12U of said chapter 112 of the General Laws is hereby repealed.