

# HB 35 PARENTAL CONSENT FOR ABORTIONS

- This bill is in the Alaska Statutes dealing with abortions.
- This bill answers an Alaska Supreme Court decision in statute by modifying the standards, process, and parental part of a minor girl with regard to abortions.

## THE STANDARD

- The Standards are a balance of parental rights and responsibilities, the minor's right of protection under the privacy clause, and the states compelling interest in protecting the family, the minor, and each right enjoyed by both.
- The way the Court viewed the standard was it needed to be the least restrictive of the minor's right to privacy.
- Therefore this bill outlines the flow of consent requirements:
  1. Minor must obtain consent of parents and 48 hour notice for fit and loving parents.
  2. If married - **no parental consent required.**
  3. If legally emancipated – **no parental consent required.**
  4. If entered in armed forces – **no parental consent required.**
  5. If self-subsisting and employed – **no parental consent required.**
  6. If petition court showing mature decision – **no parental consent required.**
  7. If court inactive – **no parental consent required.**
  8. If sexual or physical abuse upon signature and witness – **no parental or court consent required.**

9. **ADDITIONAL BYPASS OF JUDICIAL BYPASS:**

Victims of physical abuse, sexual abuse, or emotional abuse can go **directly to a doctor** for an abortion **with a signed and notarized statement from** the **minor** and one of the following:

- (1) Adult sibling
- (2) Law enforcement officer
- (3) DHSS representative such as a case worker for OCS or JJ
- (4) A grandparent
- (5) A stepparent

## THE PROCESS

### **NOTIFICATION OF PARENTS:**

Parental notification must be given by the referring physician or the physician intending to perform the abortion:

1. First preference is notice in person or by phone.
    - (a) There must be documentation of notice or attempted notice.
    - (b) Verification of person's identity & relationship must be made by physician.
  2. If notice cannot be made in person or by phone, written "constructive notice" by certified mail must be sent 48 hours before the abortion can be performed.
- Physicians judgment – defined
  - Medical emergency – defined

### **BYPASS PROVISION**

- A minor after determining pregnancy and desire for an abortion may bypass parental consent and notification by getting a court order, or by court inaction; **OR**
- If by written statement the minor shows physical or sexual abuse, she may bypass parents and the courts with at least one witness **OR** can demonstrate that it is otherwise not in the minor's best interest – **LEAST RESTRICTIVE**

### **MANDATORY REPORTING OF ABUSE OR SEXUAL ASSAULT:**

- (1) A physician is required to report abuse under the child protection laws in AS 47.17.
- (2) A physician is required to make a reasonable effort to preserve products of conception and evidence when pregnancy was result of criminal sexual assault.

### **COERCION OF A MINOR PROHIBITED:**

A minor cannot be coerced to have an abortion.

If a parent who has a legal duty to do so, refuses to provide financial support for a minor who is pregnant so as to force the minor to have an abortion that is considered evidence for the minor child to obtain emancipation.

## **U.S. SUPREME COURT DECISION**

In *Bellotti v. Baird*, (1979), the Massachusetts parental consent law was found unconstitutional by the U.S. Supreme Court because:

- 1.** It allowed judicial authorization for an abortion to be withheld from a minor who is mature and competent enough to make the decision independently. **HB 35 complies and allows exemption for this minor.**
- 2.** It required parental notification in all cases (parents were required to be notified if their daughter initiated proceedings in

superior court) without allowing the minor to seek an independent judicial assessment of her competence to decide the abortion issue.  
**HB 35 allows for judicial by pass without notification of parents.**