

CS FOR SENATE BILL NO. 105(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 4/13/95
Referred: Finance

Sponsor(s): SENATORS LEMAN, Miller, Halford, Taylor, Green

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to a requirement that a parent, guardian, or custodian consent
2 before a minor receives an abortion; establishing a judicial bypass procedure by
3 which a minor may petition a court for authorization to consent to an abortion
4 without consent of a parent, guardian, or custodian; amending the definition of
5 'abortion'; and amending Alaska Rules of Civil Procedure 40 and 79; Alaska
6 Rules of Appellate Procedure 204, 210, 212, 213, 508, and 512.5; and Alaska
7 Administrative Rule 9."

8 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

9 * **Section 1.** PURPOSE; FINDINGS. (a) It is the intent of the legislature in enacting this
10 Act to further the important and compelling state interests of
11 (1) protecting minors against their own immaturity;
12 (2) fostering the family structure and preserving it as a viable social unit;
13 (3) protecting the rights of parents to rear children who are members of their

1 household; and

2 (4) protecting the health of minor women.

3 (b) The legislature finds that

4 (1) immature minors often lack the ability to make fully informed choices that
5 take account of both immediate and long-range consequences;

6 (2) the physical, emotional, and psychological consequences of abortion are
7 serious and can be lasting particularly when the patient is immature;

8 (3) the capacity to become pregnant and the capacity for mature judgment
9 concerning the wisdom of an abortion are not necessarily related;

10 (4) parents ordinarily possess information essential to a physician's or surgeon's
11 best medical judgment concerning the child;

12 (5) parents who are aware that their minor daughter has had an abortion may
13 better ensure that the daughter receives adequate medical attention after the abortion;

14 (6) parental consultation is usually desirable and in the best interest of the minor;
15 and

16 (7) parental involvement legislation enacted in other states has shown to have
17 a significant effect in reducing abortion, birth, and pregnancy rates among minors.

18 * **Sec. 2.** AS 18.16.010(a) is amended to read:

19 (a) An abortion may not be performed in this state unless

20 (1) the abortion is performed by a physician or surgeon licensed by the
21 State Medical Board under AS 08.64.200;

22 (2) the abortion is performed in a hospital or other facility approved for
23 the purpose by the Department of Health and Social Services or a hospital operated by
24 the federal government or an agency of the federal government;

25 (3) **before an abortion is knowingly performed on an unmarried,**
26 **unemancipated woman under 18 years of age, consent has been given as required**
27 **under AS 18.16.020 or a court has authorized the minor to consent to the abortion**
28 **under AS 18.16.030 and the minor consents; for purposes of enforcing this**
29 **paragraph, there is a rebuttable presumption that a woman who is unmarried and**
30 **under 18 years of age is unemancipated** [CONSENT HAS BEEN RECEIVED FROM
31 THE PARENT OR GUARDIAN OF AN UNMARRIED WOMAN LESS THAN 18
32 YEARS OF AGE]; and

1 (4) the woman is domiciled or physically present in the state for 30 days
2 before the abortion.

3 * **Sec. 3.** AS 18.16.010 is amended by adding new subsections to read:

4 (e) A person who performs or induces an abortion in violation of (a)(3) of this
5 section is civilly liable to the pregnant woman and the woman's parents, guardian, or cus-
6 todian for compensatory and punitive damages.

7 (f) It is an affirmative defense to a prosecution or claim for a violation of (a)(3)
8 of this section that the pregnant woman provided the person who performed or induced
9 the abortion with false, misleading, or incorrect information about the woman's age,
10 marital status, or emancipation, and the person who performed or induced the abortion
11 did not otherwise have reasonable cause to believe that the pregnant woman was under
12 18 years of age, unmarried, or unemancipated.

13 (g) It is an affirmative defense to a prosecution or claim for violation of (a)(3)
14 of this section that compliance with the requirements of (a)(3) of this section was not
15 possible because an immediate threat of serious risk to the life or physical health of the
16 pregnant woman from the continuation of the pregnancy created a medical emergency
17 necessitating the immediate performance or inducement of an abortion. In this
18 subsection, "medical emergency" means a condition that, on the basis of the physician's
19 or surgeon's good faith clinical judgment, so complicates the medical condition of a
20 pregnant woman that

21 (1) an immediate abortion of the woman's pregnancy is necessary to avert
22 the woman's death; or

23 (2) a delay in providing an abortion will create serious risk of substantial
24 and irreversible impairment of a major bodily function of the pregnant woman.

25 * **Sec. 4.** AS 18.16 is amended by adding new sections to read:

26 Sec. 18.16.020. **CONSENT REQUIRED BEFORE MINOR'S ABORTION.** A
27 person may not knowingly perform or induce an abortion upon a woman who is known
28 to the person to be pregnant, unmarried, under 18 years of age, and unemancipated
29 unless, before the abortion, at least one of the following applies:

30 (1) one of the woman's parents or the woman's guardian or custodian
31 has consented in writing to the performance or inducement of the abortion;

32 (2) a court issues an order under AS 18.16.030 authorizing the woman

1 to consent to the abortion without consent of a parent, guardian, or custodian and the
2 woman consents to the abortion; or

3 (3) a court, by its inaction under AS 18.16.030, constructively has
4 authorized the woman to consent to the abortion without consent of a parent, guardian,
5 or custodian and the woman consents to the abortion.

6 Sec. 18.16.030. JUDICIAL BYPASS FOR MINOR SEEKING AN ABORTION.

7 (a) A woman who is pregnant, unmarried, under 18 years of age, and unemancipated
8 who wishes to have an abortion without the consent of a parent, guardian, or custodian
9 may file a complaint in the superior court requesting the issuance of an order authorizing
10 the woman to consent to the performance or inducement of an abortion without the
11 consent of a parent, guardian, or custodian.

12 (b) The complaint shall be made under oath and must include all of the
13 following:

14 (1) a statement that the complainant is pregnant;

15 (2) a statement that the complainant is unmarried, under 18 years of age,
16 and unemancipated;

17 (3) a statement that the complainant wishes to have an abortion without
18 the consent of a parent, guardian, or custodian;

19 (4) an allegation of either or both of the following:

20 (A) that the complainant is sufficiently mature and well enough
21 informed to decide intelligently whether to have an abortion without the consent
22 of a parent, guardian, or custodian; or

23 (B) that one or both of the woman's parents or the woman's
24 guardian or custodian was engaged in a pattern of physical, sexual, or emotional
25 abuse against the woman, or that the consent of a parent, guardian, or custodian
26 otherwise is not in the woman's best interest;

27 (5) a statement as to whether the complainant has retained an attorney
28 and, if an attorney has been retained, the name, address, and telephone number of the
29 attorney.

30 (c) The court shall fix a time for a hearing on any complaint filed under (a) of
31 this section and shall keep a record of all testimony and other oral proceedings in the
32 action. The hearing shall be held at the earliest possible time, but not later than the fifth

1 business day after the day that the complaint is filed. The court shall enter judgment on
2 the complaint immediately after the hearing is concluded. If the hearing required by this
3 subsection is not held by the fifth business day after the complaint is filed, the failure
4 to hold the hearing shall be considered to be a constructive order of the court authorizing
5 the complainant to consent to the performance or inducement of an abortion without the
6 consent of a parent, guardian, or custodian, and the complainant and any other person
7 may rely on the constructive order to the same extent as if the court actually had issued
8 an order under this section authorizing the complainant to consent to the performance or
9 inducement of an abortion without such consent.

10 (d) The court shall appoint a guardian ad litem to protect the interests of the
11 complainant at the hearing that is held under this section. If the complainant has not
12 retained an attorney, the court shall appoint an attorney to represent the complainant.
13 If the guardian ad litem is an attorney admitted to the practice of law in this state, the
14 court also may appoint the guardian ad litem to serve as the complainant's attorney.

15 (e) If the complainant makes only the allegation set out in (b)(4)(A) of this
16 section and if the court finds by clear and convincing evidence that the complainant is
17 sufficiently mature and well enough informed to decide intelligently whether to have an
18 abortion, the court shall issue an order authorizing the complainant to consent to the
19 performance or inducement of an abortion without the consent of a parent, guardian, or
20 custodian. If the court does not make the finding specified in this subsection, it shall
21 dismiss the complaint.

22 (f) If the complainant makes only the allegation set out in (b)(4)(B) of this
23 section and the court finds by clear and convincing evidence that there is evidence of a
24 pattern of physical, sexual, or emotional abuse of the complainant by one or both of the
25 woman's parents or the woman's guardian or custodian, or that the consent of the
26 parents, guardian, or custodian of the complainant otherwise is not in the best interest
27 of the complainant, the court shall issue an order authorizing the complainant to consent
28 to the performance or inducement of an abortion without the consent of a parent,
29 guardian, or custodian. If the court does not make the finding specified in this
30 subsection, it shall dismiss the complaint.

31 (g) If the complainant makes both of the allegations set out in (b)(4) of this
32 section, the court shall proceed as follows:

1 (1) the court first shall determine whether it can make the finding
2 specified in (e) of this section and, if so, shall issue an order under that subsection; if
3 the court issues an order under this paragraph, it may not proceed under (f) of this
4 section; if the court does not make the finding specified in (e) of this section, it shall
5 proceed under (2) of this subsection;

6 (2) if the court under (1) of this subsection does not make the finding
7 specified in (e) of this section, it shall proceed to determine whether it can make the
8 finding specified in (f) of this section and, if so, shall issue an order under that
9 subsection; if the court does not make the finding specified in (f) of this section, it shall
10 dismiss the complaint.

11 (h) The court may not notify the parents, guardian, or custodian of the
12 complainant that the complainant is pregnant or wants to have an abortion.

13 (i) If the court dismisses the complaint, the complainant has the right to appeal
14 the decision to the supreme court, and the superior court immediately shall notify the
15 complainant that there is a right to appeal.

16 (j) If the complainant files a notice of appeal authorized under this section, the
17 superior court shall deliver a copy of the notice of appeal and the record on appeal to
18 the supreme court within four days after the notice of appeal is filed. Upon receipt of
19 the notice and record, the clerk of the supreme court shall place the appeal on the docket.
20 The appellant shall file a brief within four days after the appeal is docketed. Unless the
21 appellant waives the right to oral argument, the supreme court shall hear oral argument
22 within five days after the appeal is docketed. The supreme court shall enter judgment
23 in the appeal immediately after the oral argument or, if oral argument has been waived,
24 within five days after the appeal is docketed. Upon motion of the appellant and for good
25 cause shown, the supreme court may shorten or extend the maximum times set out in this
26 subsection. However, in any case, if judgment is not entered within five days after the
27 appeal is docketed, the failure to enter the judgment shall be considered to be a
28 constructive order of the court authorizing the appellant to consent to the performance
29 or inducement of an abortion without the consent of a parent, guardian, or custodian, and
30 the appellant and any other person may rely on the constructive order to the same extent
31 as if the court actually had entered a judgment under this subsection authorizing the
32 appellant to consent to the performance or inducement of an abortion without consent

1 of another person. In the interest of justice, the supreme court, in an appeal under this
2 subsection, shall liberally modify or dispense with the formal requirements that normally
3 apply as to the contents and form of an appellant's brief.

4 (k) Each hearing under this section, and all proceedings under (j) of this section,
5 shall be conducted in a manner that will preserve the anonymity of the complainant. The
6 complaint and all other papers and records that pertain to an action commenced under
7 this section, including papers and records that pertain to an appeal under this section,
8 shall be kept confidential and are not public records under AS 09.25.110 - 09.25.120.

9 (l) The supreme court shall prescribe complaint and notice of appeal forms that
10 shall be used by a complainant filing a complaint or appeal under this section. The clerk
11 of each superior court shall furnish blank copies of the forms, without charge, to any
12 person who requests them.

13 (m) A filing fee may not be required of, and court costs may not be assessed
14 against, a complainant filing a complaint under this section or an appellant filing an
15 appeal under this section.

16 Sec. 18.16.090. DEFINITIONS. In this chapter,

17 (1) "abortion" means the use or prescription of an instrument, medicine,
18 drug, or other substance or device to terminate the pregnancy of a woman known to be
19 pregnant, except that "abortion" does not include the termination of a pregnancy if done
20 with the intent to

21 (A) save the life or preserve the health of the unborn child;

22 (B) deliver the unborn child prematurely to preserve the health
23 of both the pregnant woman and the woman's child; or

24 (C) remove a dead unborn child;

25 (2) "unemancipated" means that a woman who is unmarried and under
26 18 years of age has not done any of the following:

27 (A) entered the armed services of the United States;

28 (B) become employed and self-subsisting;

29 (C) been emancipated under AS 09.55.590; or

30 (D) otherwise become independent from the care and control of
31 the woman's parent, guardian, or custodian.

32 * Sec. 5. AS 44.21.410(a) is amended to read:

- 1 (a) The office of public advocacy shall
- 2 (1) perform the duties of the public guardian under AS 13.26.360 -
- 3 13.26.410;
- 4 (2) provide visitors and experts in guardianship proceedings under
- 5 AS 13.26.131;
- 6 (3) provide guardian ad litem services to children in child protection
- 7 actions under AS 47.17.030(e) and to wards and respondents in guardianship proceedings
- 8 who will suffer financial hardship or become dependent upon a government agency or
- 9 a private person or agency if the services are not provided at state expense under
- 10 AS 13.26.112;
- 11 (4) provide legal representation in guardianship proceedings to
- 12 respondents who are financially unable to employ attorneys under AS 13.26.106(b), to
- 13 indigent parties in cases involving child custody in which the opposing party is
- 14 represented by counsel provided by a public agency, to indigent parents or guardians of
- 15 a minor respondent in a commitment proceeding concerning the minor under
- 16 AS 47.30.775;
- 17 (5) provide legal representation and guardian ad litem services under
- 18 AS 25.24.310; in cases arising under AS 47.15 (Uniform Interstate Compact on
- 19 Juveniles); in cases involving petitions to adopt a minor under AS 25.23.125(b) or
- 20 petitions for the termination of parental rights on grounds set out in AS 25.23.180(c)(3);
- 21 in cases involving petitions to remove the disabilities of a minor under AS 09.55.590;
- 22 in children's proceedings under AS 47.10.050(a); **in cases involving judicial bypass**
- 23 **procedures for minors seeking abortions under AS 18.16.030**; and in cases involving
- 24 indigent persons who are entitled to representation under AS 18.85.100 and who cannot
- 25 be represented by the public defender agency because of a conflict of interests;
- 26 (6) develop and coordinate a program to recruit, select, train, assign, and
- 27 supervise volunteer guardians ad litem from local communities to aid in delivering
- 28 services in cases in which the office of public advocacy is appointed as guardian ad
- 29 litem;
- 30 (7) provide guardian ad litem services in proceedings under
- 31 AS 12.45.046;
- 32 (8) establish a fee schedule and collect fees for services provided by the

1 office, except as provided in AS 18.85.120 or when imposition or collection of a fee is
2 not in the public interest as defined under regulations adopted by the commissioner of
3 administration;

4 (9) provide visitors and guardians ad litem in proceedings under
5 AS 47.30.839;

6 (10) provide legal representation to indigent parents under
7 AS 14.30.195(e).

8 * **Sec. 6.** AS 18.16.010(d) is repealed.

9 * **Sec. 7.** AS 18.16.030(c), added by sec. 4 of this Act, has the effect of amending Alaska
10 Rule of Civil Procedure 40 by setting a specific timetable for hearing certain cases.

11 * **Sec. 8.** AS 18.16.030(j), added by sec. 4 of this Act, has the effect of amending Alaska
12 Rules of Appellate Procedure 204, 210, 212, and 213 by establishing specific time limits
13 applicable to certain appeals and by instructing the supreme court to modify or dispense with
14 formal requirements applicable to certain briefs.

15 * **Sec. 9.** AS 18.16.030(k), added by sec. 4 of this Act, has the effect of amending Alaska
16 Rule of Appellate Procedure 512.5 by making certain appellate records and papers confidential.

17 * **Sec. 10.** AS 18.16.030(m), added by sec. 4 of this Act, has the effect of amending Alaska
18 Administrative Rule 9, Alaska Rule of Civil Procedure 79, and Alaska Rule of Appellate
19 Procedure 508 by prohibiting filing fees and assessment of court costs in certain actions.