

HOUSE BILL NO. 37

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES KELLY, KOHRING, VEZEY, AND MULDER, Ogan, Dyson, Martin

Introduced: 1/13/97

Referred: State Affairs, Judiciary

A BILL

FOR AN ACT ENTITLED

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

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
11 surgeon's 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
15 minor; 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 16 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 16 years of age is unemancipated** [CONSENT HAS BEEN RECEIVED
31 FROM THE PARENT OR GUARDIAN OF AN UNMARRIED WOMAN LESS

1 THAN 18 YEARS OF AGE]; and

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

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

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

8 (f) It is an affirmative defense to a prosecution or claim for a violation of
9 (a)(3) of this section that the pregnant woman provided the person who performed or
10 induced the abortion with false, misleading, or incorrect information about the
11 woman's age, marital status, or emancipation, and the person who performed or
12 induced the abortion did not otherwise have reasonable cause to believe that the
13 pregnant woman was under 16 years of age, unmarried, or unemancipated.

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

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

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

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

28 **Sec. 18.16.020. Consent required before minor's abortion.** A person may
29 not knowingly perform or induce an abortion upon a woman who is known to the
30 person to be pregnant, unmarried, under 16 years of age, and unemancipated unless,
31 before the abortion, at least one of the following applies:

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

3 (2) a court issues an order under AS 18.16.030 authorizing the woman
4 to consent to the abortion without consent of a parent, guardian, or custodian and the
5 woman consents to the abortion; or

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

9 **Sec. 18.16.030. Judicial bypass for minor seeking an abortion.** (a) A
10 woman who is pregnant, unmarried, under 16 years of age, and unemancipated who
11 wishes to have an abortion without the consent of a parent, guardian, or custodian may
12 file a complaint in the superior court requesting the issuance of an order authorizing
13 the woman to consent to the performance or inducement of an abortion without the
14 consent of a parent, guardian, or custodian.

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

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

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

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

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

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

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

30 (5) a statement as to whether the complainant has retained an attorney
31 and, if an attorney has been retained, the name, address, and telephone number of the

1 attorney.

2 (c) The court shall fix a time for a hearing on any complaint filed under (a)
3 of this section and shall keep a record of all testimony and other oral proceedings in
4 the action. The hearing shall be held at the earliest possible time, but not later than
5 the fifth business day after the day that the complaint is filed. The court shall enter
6 judgment on the complaint immediately after the hearing is concluded. If the hearing
7 required by this subsection is not held by the fifth business day after the complaint
8 is filed, the failure to hold the hearing shall be considered to be a constructive order
9 of the court authorizing the complainant to consent to the performance or inducement
10 of an abortion without the consent of a parent, guardian, or custodian, and the
11 complainant and any other person may rely on the constructive order to the same
12 extent as if the court actually had issued an order under this section authorizing the
13 complainant to consent to the performance or inducement of an abortion without such
14 consent.

15 (d) If the complainant has not retained an attorney, the court shall appoint an
16 attorney to represent the complainant.

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

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

1 subsection, it shall dismiss the complaint.

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

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

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

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

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

19 (j) If the complainant files a notice of appeal authorized under this section, the
20 superior court shall deliver a copy of the notice of appeal and the record on appeal to
21 the supreme court within four days after the notice of appeal is filed. Upon receipt of
22 the notice and record, the clerk of the supreme court shall place the appeal on the
23 docket. The appellant shall file a brief within four days after the appeal is docketed.
24 Unless the appellant waives the right to oral argument, the supreme court shall hear
25 oral argument within five days after the appeal is docketed. The supreme court shall
26 enter judgment in the appeal immediately after the oral argument or, if oral argument
27 has been waived, within five days after the appeal is docketed. Upon motion of the
28 appellant and for good cause shown, the supreme court may shorten or extend the
29 maximum times set out in this subsection. However, in any case, if judgment is not
30 entered within five days after the appeal is docketed, the failure to enter the judgment
31 shall be considered to be a constructive order of the court authorizing the appellant to

1 consent to the performance or inducement of an abortion without the consent of a
 2 parent, guardian, or custodian, and the appellant and any other person may rely on the
 3 constructive order to the same extent as if the court actually had entered a judgment
 4 under this subsection authorizing the appellant to consent to the performance or
 5 inducement of an abortion without consent of another person. In the interest of justice,
 6 the supreme court, in an appeal under this subsection, shall liberally modify or
 7 dispense with the formal requirements that normally apply as to the contents and form
 8 of an appellant's brief.

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

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

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

22 **Sec. 18.16.090. Definitions.** In this chapter,

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

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

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

30 (C) remove a dead unborn child;

31 (2) "unemancipated" means that a woman who is unmarried and under

1 16 years of age has not done any of the following:

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

3 (B) become employed and self-subsisting;

4 (C) been emancipated under AS 09.55.590; or

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

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

8 (a) The office of public advocacy shall

9 (1) perform the duties of the public guardian under AS 13.26.360 -
10 13.26.410;

11 (2) provide visitors and experts in guardianship proceedings under
12 AS 13.26.131;

13 (3) provide guardian ad litem services to children in child protection
14 actions under AS 47.17.030(e) and to wards and respondents in guardianship
15 proceedings who will suffer financial hardship or become dependent upon a
16 government agency or a private person or agency if the services are not provided at
17 state expense under AS 13.26.112;

18 (4) provide legal representation **in cases involving judicial bypass**
19 **procedures for minors seeking abortions under AS 18.16.030**, in guardianship
20 proceedings to respondents who are financially unable to employ attorneys under
21 AS 13.26.106(b), to indigent parties in cases involving child custody in which the
22 opposing party is represented by counsel provided by a public agency, to indigent
23 parents or guardians of a minor respondent in a commitment proceeding concerning
24 the minor under AS 47.30.775;

25 (5) provide legal representation and guardian ad litem services under
26 AS 25.24.310; in cases arising under AS 47.15 (Uniform Interstate Compact on
27 Juveniles); in cases involving petitions to adopt a minor under AS 25.23.125(b) or
28 petitions for the termination of parental rights on grounds set out in
29 AS 25.23.180(c)(3); in cases involving petitions to remove the disabilities of a minor
30 under AS 09.55.590; in children's proceedings under AS 47.10.050(a) or under
31 AS 47.12.090; in cases involving appointments under AS 18.66.100(a) in petitions for

1 protective orders on behalf of a minor; and in cases involving indigent persons who
2 are entitled to representation under AS 18.85.100 and who cannot be represented by
3 the public defender agency because of a conflict of interests;

4 (6) develop and coordinate a program to recruit, select, train, assign,
5 and supervise volunteer guardians ad litem from local communities to aid in delivering
6 services in cases in which the office of public advocacy is appointed as guardian ad
7 litem;

8 (7) provide guardian ad litem services in proceedings under
9 AS 12.45.046;

10 (8) establish a fee schedule and collect fees for services provided by
11 the office, except as provided in AS 18.85.120 or when imposition or collection of a
12 fee is not in the public interest as defined under regulations adopted by the
13 commissioner of administration;

14 (9) provide visitors and guardians ad litem in proceedings under
15 AS 47.30.839;

16 (10) provide legal representation to indigent parents under
17 AS 14.30.195(e).

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

19 * **Sec. 7.** AS 18.16.030(c), added by sec. 4 of this Act, has the effect of amending Rule
20 40, Alaska Rules of Civil Procedure, by setting a specific timetable for hearing certain cases.

21 * **Sec. 8.** AS 18.16.030(j), added by sec. 4 of this Act, has the effect of amending Rules
22 204, 210, 212, and 213, Alaska Rules of Appellate Procedure, by establishing specific time
23 limits applicable to certain appeals and by instructing the supreme court to modify or dispense
24 with formal requirements applicable to certain briefs.

25 * **Sec. 9.** AS 18.16.030(k), added by sec. 4 of this Act, has the effect of amending Rule
26 512.5, Alaska Rules of Appellate Procedure, by making certain appellate records and papers
27 confidential.

28 * **Sec. 10.** AS 18.16.030(m), added by sec. 4 of this Act, has the effect of amending Rule
29 9, Alaska Administrative Rules, Rule 79, Alaska Rules of Civil Procedure, and Rule 508,
30 Alaska Rules of Appellate Procedure, by prohibiting filing fees and assessment of court costs
31 in certain actions.