

HOUSE BILL NO. 35

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES COGHILL, Neuman, Keller, Dahlstrom, Millett, Kelly, Harris, Lynn, Peggy Wilson, Ramras, Gatto, Johansen

Introduced: 1/20/09

Referred: Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to notice and consent for a minor's abortion; relating to penalties for**
2 **performing an abortion; relating to a judicial bypass procedure for an abortion; relating**
3 **to coercion of a minor to have an abortion; relating to reporting of abortions performed**
4 **on minors; amending Rule 220, Alaska Rules of Appellate Procedure, and Rule 20,**
5 **Alaska Probate Rules, relating to judicial bypass for an abortion; and providing for an**
6 **effective date."**

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

8 *** Section 1.** AS 18.16.010(a) is amended to read:

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

10 (1) the abortion is performed by a physician licensed by the State
11 Medical Board under AS 08.64.200;

12 (2) the abortion is performed in a hospital or other facility approved for
13 the purpose by the Department of Health and Social Services or a hospital operated by

1 the federal government or an agency of the federal government;

2 (3) before an abortion is knowingly performed or induced on **a**
 3 **pregnant**, [AN] unmarried, unemancipated woman under 17 years of age, **notice and**
 4 consent **have** [HAS] been given as required under AS 18.16.020 or a court has
 5 authorized the minor to consent to the abortion **without parental notice** under
 6 AS 18.16.030 and the minor consents; for purposes of enforcing this paragraph, there
 7 is a rebuttable presumption that a woman who is unmarried and under 17 years of age
 8 is unemancipated;

9 (4) the woman is domiciled or physically present in the state for 30
 10 days before the abortion; and

11 (5) the applicable requirements of AS 18.16.060 have been satisfied.

12 * **Sec. 2.** AS 18.16.010(g) is amended to read:

13 (g) It is **a** [AN AFFIRMATIVE] defense to a prosecution or claim for
 14 violation of (a)(3) of this section that, **in the clinical judgment of the physician or**
 15 **surgeon**, compliance with the requirements of (a)(3) of this section was not possible
 16 because, **in the clinical judgment of the physician or surgeon**, an immediate threat
 17 of serious risk to the life or physical health of the pregnant minor from the
 18 continuation of the pregnancy created a medical emergency necessitating the
 19 immediate performance or inducement of an abortion. In this subsection,

20 **(1) "clinical judgment" means a physician's or surgeon's**
 21 **subjective professional medical judgment exercised in good faith;**

22 **(2) "defense" has the meaning given in AS 11.81.900(b);**

23 **(3) "medical emergency" means a condition that, on the basis of the**
 24 **physician's or surgeon's good faith clinical judgment, so complicates the medical**
 25 **condition of a pregnant minor that**

26 **(A)** [(1)] an immediate abortion of the minor's pregnancy is
 27 necessary to avert the minor's death; or

28 **(B)** [(2)] a delay in providing an abortion will create serious
 29 risk of **medical instability caused by a** substantial and irreversible impairment
 30 of a major bodily function of the pregnant minor.

31 * **Sec. 3.** AS 18.16.020 is repealed and reenacted to read:

1 **Sec. 18.16.020. Notice and consent required before minor's abortion.** (a) A
 2 person may not knowingly perform or induce an abortion upon a minor who is known
 3 to the person to be pregnant, unmarried, under 17 years of age, and unemancipated
 4 unless, before the abortion, at least one of the following applies:

5 (1) one of the minor's parents, the minor's legal guardian, or the
 6 minor's custodian has been given notice of the planned abortion not less than 48 hours
 7 before the abortion is performed and the parent, legal guardian, or custodian has
 8 consented in writing to the performance or inducement of the abortion;

9 (2) a court issues an order under AS 18.16.030 authorizing the minor
 10 to consent to the abortion without notice and consent of a parent, guardian, or
 11 custodian, and the minor consents to the abortion;

12 (3) a court, by its inaction under AS 18.16.030, constructively has
 13 authorized the minor to consent to the abortion without notice and consent of a parent,
 14 guardian, or custodian, and the minor consents to the abortion; or

15 (4) the minor is the victim of physical abuse, sexual abuse, or a pattern
 16 of emotional abuse committed by one or both of the minor's parents or by a legal
 17 guardian or custodian of the minor and the abuse is documented by a declaration of the
 18 abuse in a signed and notarized statement by

19 (A) the minor; and

20 (B) another person who has personal knowledge of the abuse

21 who is

22 (i) the sibling of the minor who is 21 years of age or
 23 older;

24 (ii) a law enforcement officer;

25 (iii) a representative of the Department of Health and
 26 Social Services who has investigated the abuse;

27 (iv) a grandparent of the minor; or

28 (v) a stepparent of the minor.

29 (b) In (a)(1) of this section, actual notice must be given or attempted to be
 30 given in person or by telephone by either the physician who has referred the minor for
 31 an abortion or by the physician who intends to perform the abortion. An individual

1 designated by the physician may initiate the notification process, but the actual notice
2 shall be given by the physician. The physician giving notice of the abortion must
3 document the notice or attempted notice in the minor's medical record and take
4 reasonable steps to verify that the person to whom the notice is provided is the parent,
5 legal guardian, or custodian of the minor seeking an abortion. Reasonable steps to
6 provide notice must include

7 (1) if in person, requiring the person to show government-issued
8 identification along with additional documentation of the person's relationship to the
9 minor; additional documentation may include the minor's birth certificate or a court
10 order of adoption, guardianship, or custodianship;

11 (2) if by telephone, initiating the call, attempting to verify through a
12 review of published telephone directories that the number to be dialed is that of the
13 minor's parent, legal guardian, or custodian, and asking questions of the person to
14 verify that the person's relationship to the minor is that of parent, legal guardian, or
15 custodian; when notice is attempted by telephone but the physician or physician's
16 designee is unsuccessful in reaching the parent, legal guardian, or custodian, the
17 physician's designee shall continue to initiate the call, in not less than two-hour
18 increments, for not less than five attempts, in a 24-hour period.

19 (c) If actual notice is attempted unsuccessfully after reasonable steps have
20 been taken as described under (b) of this section, the referring physician or the
21 physician intending to perform an abortion on a minor may provide constructive
22 notice to the minor's parent, legal guardian, or custodian. Constructive notice is
23 considered to have been given 48 hours after the certified notice is mailed. In this
24 subsection, "constructive notice" means that notice of the abortion was provided in
25 writing and mailed by certified mail, delivery restricted to addressee only, to the last
26 known address of the parent, legal guardian, or custodian after taking reasonable steps
27 to verify the mailing address.

28 (d) A physician who suspects or receives a report of abuse under this section
29 shall report the abuse as provided under AS 47.17.020.

30 (e) A physician who is informed that the pregnancy of a minor resulted from
31 criminal sexual assault of the minor must retain, and take reasonable steps to preserve,

1 the products of conception and evidence following the abortion for use by law
2 enforcement officials in prosecuting the crime.

3 * **Sec. 4.** AS 18.16.030(a) is amended to read:

4 (a) A woman who is pregnant, unmarried, under 17 years of age, and
5 unemancipated who wishes to have an abortion without **notice to and** the consent of a
6 parent, guardian, or custodian may file a complaint in the superior court requesting the
7 issuance of an order authorizing the minor to consent to the performance or
8 inducement of an abortion without **notice to or** the consent of a parent, guardian, or
9 custodian.

10 * **Sec. 5.** AS 18.16.030(b) is amended to read:

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

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

14 (2) a statement that the complainant is unmarried, under 17 years of
15 age, and unemancipated;

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

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

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

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

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

29 * **Sec. 6.** AS 18.16.030(c) is amended to read:

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

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

12 * **Sec. 7.** AS 18.16.030(j) is amended to read:

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

1 under this subsection, shall liberally modify or dispense with the formal requirements
2 that normally apply as to the contents and form of an appellant's brief.

3 * **Sec. 8.** AS 18.16.030(n) is amended to read:

4 (n) Blank copies of the forms prescribed under (l) of this section and
5 information on the proper procedures for filing a complaint or appeal shall be made
6 available by the court system at the official location of each superior court, district
7 court, and magistrate in the state. The information required under this subsection must
8 also include notification to the minor that

9 (1) there is no filing fee required for either form;

10 (2) no court costs will be assessed against the minor for procedures
11 under this section;

12 (3) an attorney will be appointed to represent the minor if the minor
13 does not retain an attorney;

14 (4) the minor may request that the superior court with appropriate
15 jurisdiction hold a telephonic hearing on the complaint so that the minor need not
16 personally be present;

17 **(5) the minor may request that the superior court with**
18 **appropriate jurisdiction issue an order directing the minor's school to excuse the**
19 **minor from school to attend court hearings held under this section and to have**
20 **the abortion if one is authorized by the court and directing the school not to**
21 **notify the minor's parent, legal guardian, or custodian that the minor is**
22 **pregnant, seeking an abortion, or is absent for purposes of obtaining an abortion.**

23 * **Sec. 9.** AS 18.16 is amended by adding new sections to read:

24 **Sec. 18.16.035. Coercion of a minor prohibited; emancipation.** (a) A person
25 may not coerce a minor who is pregnant to have an abortion.

26 (b) In addition to emancipation by other means provided by law, denial of
27 financial support by a parent, legal guardian, or custodian who has a legal duty of
28 support for purposes of coercing a minor to have an abortion shall be sufficient
29 evidence of emancipation status of the minor for purposes of AS 18.16.010 -
30 18.16.090.

31 (c) In this section, "coercion" means to restrain or dominate a minor by force,

1 threat of force, or deprivation of food, support, or shelter.

2 **Sec. 18.16.040. Reports.** For each month in which an abortion is performed on
3 a minor by a physician, the physician shall file a report with the Department of Health
4 and Social Services indicating the number of abortions performed on a minor for that
5 month, the age of each minor, the number of previous abortions performed on each
6 minor, if any, and the number of pregnancies of each minor, if any, and the number of
7 consents provided under each of the exceptions enumerated under AS 18.16.020(a)(1)
8 - (4). A report filed under this section may not include identifying information of the
9 minor other than the minor's age.

10 * **Sec. 10.** The uncodified law of the State of Alaska is amended by adding a new section to
11 read:

12 DIRECT COURT RULE AMENDMENT. Rule 220(a), Alaska Rules of
13 Appellate Procedure, is amended to read:

14 (a) **Scope.** This rule applies to an appeal from an order denying or dismissing
15 a petition filed by a minor under age 17 to bypass notice to and the [PARENTAL]
16 consent of a parent, guardian, or custodian to an abortion under AS 18.16.030. In
17 such appeals, this rule supersedes the other appellate rules to the extent they may be
18 inconsistent with this rule. It also supersedes the procedure for bypass appeals
19 established by AS 18.16.030(j).

20 * **Sec. 11.** The uncodified law of the state of Alaska is amended by adding a new section to
21 read:

22 DIRECT COURT RULE AMENDMENT. Rule 220(c)(1), Alaska Rules of
23 Appellate Procedure, is amended to read:

24 (1) A minor may appeal an order denying or dismissing a petition to
25 bypass notice to and the [PARENTAL] consent of a parent, guardian, or custodian
26 by filing a notice of appeal in any district or superior court, or directly with the clerk
27 of the appellate courts. The notice of appeal may be filed in person, by mail, or by fax,
28 and must be accompanied by a copy of the order from which the appeal is taken. No
29 filing fee will be charged. If the notice of appeal is filed in a district or superior court,
30 the clerk or magistrate shall immediately notify the clerk of the appellate courts that
31 the appeal has been filed.

1 * **Sec. 12.** The uncodified law of the State of Alaska is amended by adding a new section to
2 read:

3 DIRECT COURT RULE AMENDMENT. Rule 220(h), Alaska Rules of
4 Appellate Procedure, is amended to read:

5 (h) **Constructive Order.** If the court fails to enter an order within three
6 [FIVE] days after the date the clerk of the appellate courts receives the record on
7 appeal, the clerk shall issue a certificate stating that (1) no order was entered within
8 three [FIVE] days after the appeal was docketed; and (2) under AS 18.16.030(j), the
9 failure to enter an order constitutes a constructive order of the court authorizing the
10 minor to consent to an abortion without the consent of a parent, guardian, or custodian.
11 For purposes of AS 18.16.030(j), an appeal is deemed to be docketed on the date the
12 clerk of the appellate courts receives the record on appeal.

13 * **Sec. 13.** The uncodified law of the State of Alaska is amended by adding a new section to
14 read:

15 DIRECT COURT RULE AMENDMENT. Rule 20(a), Alaska Probate Rules,
16 is amended to read:

17 (a) **Petition.** An action for an order authorizing a minor under age 17 to
18 consent to an abortion without notice to or the consent of a parent, guardian, or
19 custodian is commenced by filing a petition. The petition must be under oath and must
20 include the information required by AS 18.16.030(b). The petitioner is not required to
21 provide an address or telephone number. Blank petition forms will be available at all
22 court locations and will be mailed or faxed to a petitioner upon request. No fee will be
23 charged for this service or other services provided to a petitioner.

24 * **Sec. 14.** The uncodified law of the State of Alaska is amended by adding a new section to
25 read:

26 DIRECT COURT RULE AMENDMENT. Rule 20(e), Alaska Probate Rules,
27 is amended to read:

28 (e) **Findings and Order.** The court shall enter an order immediately after the
29 hearing is concluded. The court shall grant the petition if the court finds by clear and
30 convincing evidence that one of the statutory grounds for dispensing with notice to or
31 the [PARENTAL] consent of a parent, guardian, or custodian exists. Otherwise, the

1 court shall deny the petition. If the petition is denied, the court shall inform the
2 petitioner of her right to an expedited appeal to the supreme court.

3 * **Sec. 15.** The uncodified law of the State of Alaska is amended by adding a new section to
4 read:

5 DIRECT COURT RULE AMENDMENT. Rule 20(f), Alaska Probate Rules, is
6 amended to read:

7 (f) **Constructive Order.** If the court fails to hold a hearing within **three**
8 [FIVE] days after the petition is filed, the presiding judge of the judicial district, or
9 another judge designated by the presiding judge, shall issue a certificate stating that
10 (1) no hearing was held within **three** [FIVE] business days after the petition was filed;
11 and (2) under AS 18.16.030(c), the failure to hold a hearing constitutes a constructive
12 order of the court authorizing the minor to consent to an abortion without the consent
13 of a parent, guardian, or custodian. A certificate should not be issued if the hearing
14 was not held because it was postponed at the petitioner's request or because the
15 petitioner failed to appear at the hearing.

16 * **Sec. 16.** The uncodified law of the State of Alaska is amended by adding a new section to
17 read:

18 SEVERABILITY. If any provision of this Act is held to be invalid or unenforceable
19 by its terms or as applied to any person or circumstance, the remainder of the provisions shall
20 be construed to give the maximum effect permitted by law, unless the holding shall be of utter
21 invalidity or unenforceability, in which event, the provision shall be considered severable and
22 does not affect the remaining provisions or the application of the severed provision to other
23 persons who are not similarly situated or to other dissimilar circumstances.

24 * **Sec. 17.** This Act takes effect 30 days after enactment.