

**HB**

**35**

26-LS0192\S  
Mischel  
4/15/09

**SENATE CS FOR CS FOR HOUSE BILL NO. 35(HSS)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTY-SIXTH LEGISLATURE - FIRST SESSION**

**BY THE SENATE HEALTH AND SOCIAL SERVICES COMMITTEE.**

**Offered:**

**Referred:**

**Sponsor(s): REPRESENTATIVES COGHILL, Neuman, Keller, Dahlstrom, Millett, Kelly, Harris, Lynn, Wilson, Ramras, Gatto, Johansen, Johnson**

**SENATORS Therriault, Dyson, Olson, Meyer, Huggins, Stevens, Wagoner, Menard**

**A BILL**

**FOR AN ACT ENTITLED**

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

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

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

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

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

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

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

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

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

22 (3) "medical emergency" means a condition that, on the basis of the  
23 physician's or surgeon's good faith clinical judgment, so complicates the medical  
24 condition of a pregnant minor that [(1)] an immediate abortion of the minor's  
25 pregnancy is necessary to avert the minor's death [;] or serious risk to the minor's  
26 physical health [(2) A DELAY IN PROVIDING AN ABORTION WILL CREATE  
27 SERIOUS RISK OF SUBSTANTIAL AND IRREVERSIBLE IMPAIRMENT OF A  
28 MAJOR BODILY FUNCTION OF THE PREGNANT MINOR].

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

30 **Sec. 18.16.020. Notice required before minor's abortion.** (a) A person may  
31 not knowingly perform or induce an abortion on a minor who is known to the person

1 to be pregnant, unmarried, under 17 years of age, and unemancipated unless, before  
2 the abortion, at least one of the following applies:

3 (1) one of the minor's parents, the minor's legal guardian, or the  
4 minor's custodian has been given notice of the planned abortion not less than 48 hours  
5 before the abortion is performed;

6 (2) a court issues an order under AS 18.16.030 authorizing the minor  
7 to consent to the abortion without notice to a parent, guardian, or custodian, and the  
8 minor consents to the abortion;

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

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

16 (A) the minor; and

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

18 who is

19 (i) the sibling of the minor who is 21 years of age or  
20 older;

21 (ii) a law enforcement officer;

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

24 (iv) a grandparent of the minor; or

25 (v) a stepparent of the minor.

26 (b) In (a)(1) of this section, actual notice must be given or attempted to be  
27 given in person or by telephone by either the physician who has referred the minor for  
28 an abortion or by the physician who intends to perform the abortion. An individual  
29 designated by the physician may initiate the notification process, but the actual notice  
30 shall be given by the physician. The physician giving notice of the abortion must  
31 document the notice or attempted notice in the minor's medical record and take

1 reasonable steps to verify that the person to whom the notice is provided is the parent,  
2 legal guardian, or custodian of the minor seeking an abortion. Reasonable steps to  
3 provide notice must include

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

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

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

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

27 (e) A physician who is informed that the pregnancy of a minor resulted from  
28 criminal sexual assault of the minor must retain, and take reasonable steps to preserve,  
29 the products of conception and evidence following the abortion for use by law  
30 enforcement officials in prosecuting the crime.

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

1 (a) A woman who is pregnant, unmarried, under 17 years of age, and  
2 unemancipated who wishes to have an abortion without notice to [THE CONSENT  
3 OF] a parent, guardian, or custodian may file a complaint in the superior court  
4 requesting the issuance of an order authorizing the minor to consent to the  
5 performance or inducement of an abortion without notice to [THE CONSENT OF] a  
6 parent, guardian, or custodian.

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

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

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

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

13 (3) a statement that the complainant wishes to have an abortion  
14 without notice to [THE CONSENT OF] a parent, guardian, or custodian;

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

16 (A) that the complainant is sufficiently mature and well enough  
17 informed to decide intelligently whether to have an abortion without notice to  
18 [THE CONSENT OF] a parent, guardian, or custodian; or

19 (B) that one or both of the minor's parents or the minor's  
20 guardian or custodian was engaged in physical abuse, sexual abuse, or a  
21 pattern of emotional abuse against the minor, or that notice to [THE  
22 CONSENT OF] a parent, guardian, or custodian otherwise is not in the minor's  
23 best interest;

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

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

28 (c) The court shall fix a time for a hearing on any complaint filed under (a) of  
29 this section and shall keep a record of all testimony and other oral proceedings in the  
30 action. The hearing shall be held at the earliest possible time, but not later than the  
31 third [FIFTH] business day after the day that the complaint is filed. The court shall

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (c) In this section, "coercion" means to restrain or dominate a minor by force,  
30 threat of force, or deprivation of food, support, or shelter.

31 **Sec. 18.16.040. Reports.** For each month in which an abortion is performed on

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (e) **Findings and Order.** The court shall enter an order immediately after the  
27 hearing is concluded. The court shall grant the petition if the court finds by clear and  
28 convincing evidence that one of the statutory grounds for dispensing with notice to a  
29 parent, guardian, or custodian [PARENTAL CONSENT] exists. Otherwise, the  
30 court shall deny the petition. If the petition is denied, the court shall inform the  
31 petitioner of her right to an expedited appeal to the supreme court.

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

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

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

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

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



**Alaska State  
Legislature  
State Capitol  
Juneau, AK 99801  
907 465-3822 office  
907 465-3756 fax**

*From the Office of Senator Bettye Davis*

**To:** Legal Services **Fax:** 465-2029; phone: 465-2450

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**From:** Thomas S. Obermeyer **Date:** 4/7/2009

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**Re:** Request CS for HB 35 for Senate HSS Committee **Pages:** \_\_19\_\_ page(s) including cover

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**CC:**


**Urgent**     **For Review**     **Please Comment**     **Please Reply**     **Please Recycle**

**To Whom It May Concern:**

At the request of Rep. Coghill, Senator Davis, who possesses the CS for HB 35, 26-LS0192\R.A (attached) in Senate HSS, wishes to remove the "consent" provisions of the bill to make the bill a "notice" statute, not a "notice and/or consent" statute. These changes would for the most part mirror the "notice" provisions in (at least for the first 8 pages) SB 179, 26-LS0802\R (attached). To avoid duplicative work, it is my understanding from Senator Davis that the same drafter prepared both HB 35 and SB 179.

Please prepare 1) a CS for SB 35 for Senate HSS; and 2) a sectional summary. The last sectional summary for HB 35 refers to the "A" version, which had more sections and has since changed in many ways.

Sincerely,

  
Tom Obermeyer  
465-3762  
Cc: Lynda Zaugg

**SENATE BILL NO. 179**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTY-SIXTH LEGISLATURE - FIRST SESSION**

**BY SENATORS HUGGINS, Menard, Olson**

**Introduced: 4/3/09**

**Referred: Health and Social Services, Judiciary**

**A BILL**

**FOR AN ACT ENTITLED**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 Sec. 18.16.020. Notice required before minor's abortion. (a) A person may

1 not knowingly perform or induce an abortion on a minor who is known to the person  
 2 to be pregnant, unmarried, under 17 years of age, and unemancipated unless, before  
 3 the abortion, at least one of the following applies:

4 (1) one of the minor's parents, the minor's legal guardian, or the  
 5 minor's custodian has been given notice of the planned abortion not less than 48 hours  
 6 before the abortion is performed;

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

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

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

17 (A) the minor; and

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

19 who is

20 (i) the sibling of the minor who is 21 years of age or

21 older;

22 (ii) a law enforcement officer;

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

25 (iv) a grandparent of the minor; or

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27 (b) In (a)(1) of this section, actual notice must be given or attempted to be  
 28 given in person or by telephone by either the physician who has referred the minor for  
 29 an abortion or by the physician who intends to perform the abortion. An individual  
 30 designated by the physician may initiate the notification process, but the actual notice  
 31 shall be given by the physician. The physician giving notice of the abortion must

1 document the notice or attempted notice in the minor's medical record and take  
2 reasonable steps to verify that the person to whom the notice is provided is the parent,  
3 legal guardian, or custodian of the minor seeking an abortion. Reasonable steps to  
4 provide notice must include

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

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

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

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

28 (e) A physician who is informed that the pregnancy of a minor resulted from  
29 criminal sexual assault of the minor must retain, and take reasonable steps to preserve,  
30 the products of conception and evidence following the abortion for use by law  
31 enforcement officials in prosecuting the crime.

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

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

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

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

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

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

14 (3) a statement that the complainant wishes to have an abortion  
15 without notice to [THE CONSENT OF] a parent, guardian, or custodian;

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

17 (A) that the complainant is sufficiently mature and well enough  
18 informed to decide intelligently whether to have an abortion without notice to  
19 [THE CONSENT OF] a parent, guardian, or custodian; or

20 (B) that one or both of the minor's parents or the minor's  
21 guardian or custodian was engaged in physical abuse, sexual abuse, or a  
22 pattern of emotional abuse against the minor, or that notice to [THE  
23 CONSENT OF] a parent, guardian, or custodian otherwise is not in the minor's  
24 best interest;

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

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

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

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

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

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

1 requirements that normally apply as to the contents and form of an appellant's brief.

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

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

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

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

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

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

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

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

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

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

30 (c) In this section, "coercion" means to restrain or dominate a minor by force,  
31 threat of force, or deprivation of food, support, or shelter.

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

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

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

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

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

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

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

31       \* **Sec. 12.** The uncodified law of the State of Alaska is amended by adding a new section to

1 read:

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

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

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

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

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

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

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

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

1 petitioner of her right to an expedited appeal to the supreme court.

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

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

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

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

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

Lynda - Sen. Davis asks <sup>PH</sup>  
that you distribute  
attached to all members  
of HSS  
Re: HBES / LOM

# ALASKA STATE HOUSE OF REPRESENTATIVES

**Contact:**


Interim Address:

3340 Badger Road  
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(907)-488-5725  
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**Session**

(907)-465-3719  
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State Capitol  
Room 504

**SENATOR JOHN COGHILL**

Date: March 3, 2010  
To: Senator Bettye Davis, Chair  
Senate Health & Social Services Committee  
From: Senator John Coghill   
Re: HB 35 Parental Consent

---

I respectfully request HB 35, "An Act relating to notice and consent for a minor's abortion; relating to penalties for performing an abortion; relating to a judicial bypass procedure for an abortion; relating to coercion of a minor to have an abortion; and relating to reporting of abortions performed on minors," be heard in your committee at your earliest convenience.

I have attached back up information for you and will have it sent to you in electronic form.

As of yesterday, the Division of Elections has qualified 36,307 signatures from the initiative drive for the parental notification. The initiative required 32,734 signatures. Division of Elections estimates they are about three-quarters of the way through the signatures.

Thank you for your consideration.

# ALASKA STATE HOUSE OF REPRESENTATIVES



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## SENATOR JOHN COGHILL

### SPONSOR STATEMENT

#### HB 35 Parental Notification and Consent for a Pregnant Minor Aborting an Unborn Child

HB 35 requires parental consent unless the minor chooses a judicial bypass and enacts a notification process that the Court determined is the least restrictive means of achieving the State's compelling interest. It leaves intact the four exemptions from parental consent: *married minors, minors who have been legally emancipated, minors who have entered the armed services of the United States, and minors who have become employed and self-subsisting.*

On November 2, 2007 in *State of Alaska v. Planned Parenthood of Alaska*, the Alaska Supreme Court, in a 3 – 2 decision, has once again undermined a long history of social law, the intent of the Constitution, and the will of the people of Alaska.

The legislature passed the Parental Consent Act (PCA) in 1997. In July of that same year, Alaska Superior Court Judge Sen Tan ruled the law was unconstitutional because "the privacy clause of the Alaska Constitution protects minors as well as adults." The Superior Court did not address whether or not the PCA violated the privacy clause. The State appealed the decision and the Supreme Court ruled that the privacy clause extends to minors unless **there is a compelling state interest using the least restrictive means available**. The Supreme Court remanded the case back to Sen Tan to hold an evidentiary hearing to determine if PCA furthered a compelling state interest.

In January 2003 the Superior Court held a bench trial spanning almost three weeks to hear evidence regarding the constitutionality of the PCA. In October 2003, Judge Sen Tan ruled the PCA was **unconstitutional because it did not further a compelling state interest while using the least restrictive means available**. In January 2004 the Superior Court enjoined the State from enforcing the PCA declaring the PCA was unconstitutional under the equal protection and privacy clauses of the Alaska Constitution.

On November 2, 2007, the court agreed with the State that "*protecting minors from their own immaturity and aiding parents in fulfilling their parental responsibilities*" are "*compelling interests.*" So the issue at hand for the court was whether the PCA was the least restrictive means of achieving the State's compelling interests.

HB 35 addresses the legal issues of parental consent in a practical manner based on the historical beliefs of our forefathers. The Parental Consent Act of 1997 was fully compliant with the U.S. Supreme Court precedent *Bellotti v. Baird*, (443 U.S. 622 1979). In essence, the Alaska Supreme Court in its November 2, 2007 decision struck down a decision of the U.S. Supreme Court. Justice Carpeneti eloquently wrote the dissenting decision stating the following:

*"Because this court's rejection of the legislature's thoughtful balance is inconsistent with our own case law and unnecessarily dismissive of the legislature's role in expressing the will of the people, I respectfully dissent."*

The dissent opinion brought to light the lack of consideration or recognition in case law that "*children are not generally considered competent to consent to medical procedures.*" It brought to light the four exemptions in the PCA, "*married minors, ... minors who have been legally emancipated, ... minors who have entered the armed services of the United States, and ... who have become employed and self-subsisting.*" For those pregnant minors who did not fall into the four exempt categories a judicial bypass provision was provided for appropriate circumstances. It was a process designed to be speedy and cost-free to the child. The PCA called for a five-day response of the court; HB 35 calls for a three-day response. Failure by the court to respond in time would be construed as an act constructive authorization. The judicial bypass requires a sworn statement from the pregnant minor and an adult family member or state agent such as an Office of Children's Services caseworker or law enforcement officer.

Carpeneti discussed the fact that the Court quickly recognized that there was a compelling State interest but failed to "*look closely at the nature of the state's and parents' interests*" leaving "*its constitutional 'balance' one-sided.*" Carpeneti continues in his dissent to outline case law that creates a judicial history of "*treating minors differently from adults,*" "*protecting twelve-year-olds from older teenagers and from their own immaturity in choosing to participate in harmful activity,*" prohibiting minors from making contract to "*smoke cigarettes or drink alcoholic beverages or consent to sexual intercourse. Without a parent's consent they may not become licensed drivers or get married or obtain general medical or dental treatment.*"

*"In sum, the Alaska Parental Consent Act appears to be the product of a concerted effort to make certain that those pregnant girls who are sufficiently mature to make the decision to obtain an abortion on their own are allowed to do so while those who are not sufficiently mature either obtain a parent's consent or, in the case of parental abuse, a judicial determination that the procedure is in their best interest."*

In his dissenting opinion, Carpeneti uses the litmus test for parental consent that is required for participation in school field trips to demonstrating the extent to which the State must go to terminate parental rights is his argument:

*"In addition to society's interest in protecting children from their own immaturity, we have long held that parents have a fundamental right in raising of their children."*

Carpeneti's dissenting opinion determines that the State's compelling interest does outweigh the equal protection and privacy clauses because:

*"In sum, the norm in American, and Alaskan, life and law is that the parents are a child's first and most important resource for assistance in decision-making. For that reason, the state's interest in protecting children from the consequences of their own immaturity, and in so doing protecting the health of its children, and its interest in supporting parents' right and duty to guide the upbringing of their children is particularly compelling."*

I believe parental consent can still recognize the State's compelling interest in *"protecting minors from their own immaturity and aiding parents in fulfilling their parental responsibilities."* In addition to **parental consent**, HB 35 provides for a judicial bypass for sexual abuse cases using a *lower standard than the 1997 PCA Act's clear and convincing* provision, and a **provision prohibiting the parents from coercing a pregnant minor to have an abortion.**

**SENATE CS FOR CS FOR HOUSE BILL NO. 35(HSS)  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-SIXTH LEGISLATURE - FIRST SESSION**

**BY THE SENATE HEALTH AND SOCIAL SERVICES COMMITTEE**

**Offered:  
Referred:**

**Sponsor(s): REPRESENTATIVES COGHILL, Neuman, Keller, Dahlstrom, Millett, Kelly, Harris, Lynn,  
Wilson, Ramras, Gatto, Johansen, Johnson**

**SENATORS Therriault, Dyson**

**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; and relating to reporting of abortions**  
4 **performed on minors."**

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

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

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

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

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

13 (3) before an abortion is knowingly performed or induced on a  
14 pregnant, [AN] unmarried, unemancipated woman under 17 years of age, notice

1 [CONSENT] has been given as required under AS 18.16.020 or a court has authorized  
 2 the minor to consent to the abortion without parental notice under AS 18.16.030 and  
 3 the minor consents; for purposes of enforcing this paragraph, there is a rebuttable  
 4 presumption that a woman who is unmarried and under 17 years of age is  
 5 unemancipated;

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

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

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

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

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

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

20 (3) "medical emergency" means a condition that, on the basis of the  
 21 physician's or surgeon's good faith clinical judgment, so complicates the medical  
 22 condition of a pregnant minor that [(1) an immediate abortion of the minor's  
 23 pregnancy is necessary to avert the minor's death [;] or serious risk to the minor's  
 24 physical health [(2) A DELAY IN PROVIDING AN ABORTION WILL CREATE  
 25 SERIOUS RISK OF SUBSTANTIAL AND IRREVERSIBLE IMPAIRMENT OF A  
 26 MAJOR BODILY FUNCTION OF THE PREGNANT MINOR].

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

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

1 (1) one of the minor's parents, the minor's legal guardian, or the  
2 minor's custodian has been given notice of the planned abortion not less than 48 hours  
3 before the abortion is performed;

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

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

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

14 (A) the minor; and

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

16 who is

17 (i) the sibling of the minor who is 21 years of age or  
18 older;

19 (ii) a law enforcement officer;

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

22 (iv) a grandparent of the minor; or

23 (v) a stepparent of the minor.

24 (b) In (a)(1) of this section, actual notice must be given or attempted to be  
25 given in person or by telephone by either the physician who has referred the minor for  
26 an abortion or by the physician who intends to perform the abortion. An individual  
27 designated by the physician may initiate the notification process, but the actual notice  
28 shall be given by the physician. The physician giving notice of the abortion must  
29 document the notice or attempted notice in the minor's medical record and take  
30 reasonable steps to verify that the person to whom the notice is provided is the parent,  
31 legal guardian, or custodian of the minor seeking an abortion. Reasonable steps to

1 provide notice must include

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

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

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

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

25 (e) A physician who is informed that the pregnancy of a minor resulted from  
26 criminal sexual assault of the minor must retain, and take reasonable steps to preserve,  
27 the products of conception and evidence following the abortion for use by law  
28 enforcement officials in prosecuting the crime.

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

30 (a) A woman who is pregnant, unmarried, under 17 years of age, and  
31 unemancipated who wishes to have an abortion without notice to [THE CONSENT

1 OF] a parent, guardian, or custodian may file a complaint in the superior court  
2 requesting the issuance of an order authorizing the minor to consent to the  
3 performance or inducement of an abortion without notice to [THE CONSENT OF] a  
4 parent, guardian, or custodian.

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

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

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

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

11 (3) a statement that the complainant wishes to have an abortion  
12 without notice to [THE CONSENT OF] a parent, guardian, or custodian;

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

14 (A) that the complainant is sufficiently mature and well enough  
15 informed to decide intelligently whether to have an abortion without notice to  
16 [THE CONSENT OF] a parent, guardian, or custodian; or

17 (B) that one or both of the minor's parents or the minor's  
18 guardian or custodian was engaged in physical abuse, sexual abuse, or a  
19 pattern of emotional abuse against the minor, or that notice to [THE  
20 CONSENT OF] a parent, guardian, or custodian otherwise is not in the minor's  
21 best interest;

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

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

26 (c) The court shall fix a time for a hearing on any complaint filed under (a) of  
27 this section and shall keep a record of all testimony and other oral proceedings in the  
28 action. The hearing shall be held at the earliest possible time, but not later than the  
29 third [FIFTH] business day after the day that the complaint is filed. The court shall  
30 enter judgment on the complaint immediately after the hearing is concluded. If the  
31 hearing required by this subsection is not held by the third [FIFTH] business day after

1 the complaint is filed, the failure to hold the hearing shall be considered to be a  
2 constructive order of the court authorizing the complainant to consent to the  
3 performance or inducement of an abortion without notice to [THE CONSENT OF] a  
4 parent, guardian, or custodian, and the complainant and any other person may rely on  
5 the constructive order to the same extent as if the court actually had issued an order  
6 under this section authorizing the complainant to consent to the performance or  
7 inducement of an abortion without such notice [CONSENT].

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

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

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

31 (n) Blank copies of the forms prescribed under (l) of this section and

1 information on the proper procedures for filing a complaint or appeal shall be made  
 2 available by the court system at the official location of each superior court, district  
 3 court, and magistrate in the state. The information required under this subsection must  
 4 also include notification to the minor that

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

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

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

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

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

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

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

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

27 (c) In this section, "coercion" means to restrain or dominate a minor by force,  
 28 threat of force, or deprivation of food, support, or shelter.

29 **Sec. 18.16.040. Reports.** For each month in which an abortion is performed on  
 30 a minor by a physician, the physician shall file a report with the Department of Health  
 31 and Social Services indicating the number of abortions performed on a minor for that

1 month, the age of each minor, the number of previous abortions performed on each  
2 minor, if any, and the number of pregnancies of each minor, if any, and the number of  
3 abortions provided under each of the exceptions enumerated under AS 18.16.020(a)(1)  
4 - (4). A report filed under this section may not include identifying information of the  
5 minor other than the minor's age.

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

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

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101


State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

April 8, 2009

**SUBJECT:** Parental Notice of Abortion (SCS CSHB 35(HSS);  
Work Order No. 26-LS0192\E)

**TO:** Senator Bettye Davis  
Chair of the Senate Health and Social Services Committee  
Attn: Thomas Obermeyer

**FROM:** Jean M. Mischel  
Legislative Counsel 

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

**Section 1.** Amends current abortion restrictions to require parental notice under AS 18.16.020, repealed and reenacted in sec. 3 of the bill.

**Section 2.** Amends the defense to a criminal prosecution or civil claim against a physician who performs an abortion without notice as required in sec. 1 of the bill in a medical emergency, as defined.

**Section 3.** Repeals and reenacts the restrictions related to an abortion on a minor who is under 17 and unemancipated to delete the parental consent requirement and to require (1) notification of a parent, legal guardian, or custodian of the minor at least 48 hours before the abortion; (2) a court order; (3) or a witnessed and notarized statement alleging parental abuse. Describes a detailed notification procedure by a physician and provides for "constructive notice" if notice is mailed. Requires a physician to report alleged abuse and to retain the products of conception and other evidence for alleged sexual abuse investigation by law enforcement.

**Section 4.** Amends the court procedure to bypass parental notice required under secs. 2 and 3 of the bill by deleting references to consent that have been found by the Alaska Supreme Court to be unconstitutional.

Senator Bettye Davis

April 8, 2009

Page 2

**Section 5.** Amends the court procedure to bypass parental notice required under secs. 2 and 3 of the bill by deleting references to consent that have been found by the Alaska Supreme Court to be unconstitutional.

**Section 6.** Amends the court procedure to bypass parental notice required under secs. 2 and 3 of the bill by deleting references to consent that have been found by the Alaska Supreme Court to be unconstitutional and to reduce the number of business days from five to three for a default order permitting an abortion on a minor.

**Section 7.** Amends the court procedure to bypass parental notice required under secs. 2 and 3 of the bill by deleting references to consent that have been found by the Alaska Supreme Court to be unconstitutional and to reduce the number of business days from five to three for a default order permitting an abortion on a minor.

**Section 8.** Amends the court procedure to bypass parental notice required under secs. 2 and 3 of the bill by providing notice to a minor that she may request an order excusing her from school attendance.

**Section 9.** Prohibits coercion, as defined, for a minor to have an abortion. Provides for emancipation by failure to provide financial support if required by law to a pregnant minor for purposes of an abortion. Requires physicians who perform an abortion on a minor in the state to submit reports pertaining to the abortions to the Department of Health and Social Services.

**Section 10.** Provides for severability of any provision held to be invalid or unenforceable.

JMM:ljw  
09-223.ljw

# FISCAL NOTE

STATE OF ALASKA  
2009 LEGISLATIVE SESSION

Fiscal Note Number: 1  
Bill Version: HB 35  
(H) Publish Date: 3/16/09

Identifier (file name): HB035-LAW-CIV-3-6-09 Dept. Affected: LAW  
Title An Act relating to notice and consent for a minor's abortion. RDU CIVIL  
Component HUMAN SERVICES  
Sponsor REPRESENTATIVE(s) COGHILL, Neuman, et al.  
Requester Judiciary Component Number 2208

## Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information						
		FY 2010	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
<b>OPERATING EXPENDITURES</b>								
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Travel								
Contractual								
Supplies								
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>								
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<b>CHANGE IN REVENUES ( )</b>								
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## FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other Interagency Receipts								
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2009) cost: \_\_\_\_\_

### POSITIONS

Full-time								
Part-time								
Temporary								

**ANALYSIS:** *(Attach a separate page if necessary)*

See attached page...

Prepared by: Robert Meiners, Deputy Director  
Division: Administrative Services Division  
Approved by: Richard Svobodny, Acting Attorney General  
Department of Law

Phone 907-465-5427  
Date/Time 3/9/09 10:20 PM  
Date 3/9/2009

FISCAL NOTE #1

STATE OF ALASKA  
2009 LEGISLATIVE SESSION

BILL NO. HB 35

**ANALYSIS CONTINUATION**

HB35 would amend existing state statutes regarding the requirement of parental notice and consent to be given if a person under age 17, who is unmarried, unemancipated, and pregnant, intends to obtain an abortion. The bill prohibits a person from performing an abortion unless the requisite parental notice and consent is provided or the person qualifies for an exception to those requirements. The bill also enacts new provisions of law regarding coercion of a minor who is pregnant and regarding certain reports that must be filed by physicians.

If this bill is enacted there would be a zero cost of implementation to the department. Should a legal challenge be mounted, especially of a constitutional nature, there would be costs in defending the provisions of this bill. Costs of defending legislation may arise with any legislature and often can not be anticipated; however, the department has previously defended the constitutionality of similar legislation. Those efforts approached \$500,000 in addition to the payment of a court ordered award of \$940,000 in costs and fees to the plaintiffs in the case.

# FISCAL NOTE

STATE OF ALASKA  
2009 LEGISLATIVE SESSION

Fiscal Note Number: 2  
Bill Version: HB 35  
(H) Publish Date: 3/16/09

Identifier (file name): HB035-DHSS-MS-03-09-09 Dept. Affected: Health & Social Services  
Title: Notice & Consent for Minor's Abortion RDU: Health Care Services  
Component: Medicaid Services  
Sponsor: Coghill  
Requester: House JUD Component Number: 2077

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
		FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
<b>OPERATING EXPENDITURES</b>							
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims	***	***	***	***	***	***	***
Miscellaneous							
<b>TOTAL OPERATING</b>	***	***	***	***	***	***	***

<b>CAPITAL EXPENDITURES</b>							
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<b>CHANGE IN REVENUES (</b>							
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match	***	***	***	***	***	***	***
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
<b>TOTAL</b>	***	***	***	***	***	***	***

Estimate of any current year (FY2009) cost: \_\_\_\_\_

**POSITIONS**

Full-time							
Part-time							
Temporary							

**ANALYSIS:** (Attach a separate page if necessary)

This fiscal note is indeterminate (\*\*\*)

There is no way to determine which minors enrolled in Medicaid had consent from a parent or guardian for abortions because the department does not require a consent form to process claims.

Expenditures for abortions are made from general fund dollars. These claims are paid pursuant to an Alaska Supreme Court decision that requires state funding of medically necessary abortions for low-income women eligible for Medicaid. (continued on page 2)

Prepared by: William J. Streur, Deputy Commissioner Phone 269-7827  
Division: Health Care Services Date/Time 3/9/09 12:00 AM  
Approved by: Alison Elgee, Assistant Commissioner Date 3/9/2009  
DHSS Finance & Management Services

**FISCAL NOTE #2**

**STATE OF ALASKA  
2009 LEGISLATIVE SESSION**

**BILL NO. HB 35**

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**ANALYSIS CONTINUATION**

The only abortion services eligible for federal financial participation are those that the department is required to cover under the federal Hyde amendment. To qualify under the Hyde amendment, the abortion must be the result of rape or incest, or the life of the mother must be endangered if the pregnancy were carried to term. Hyde amendment qualifying abortion claims are rare—in FY 2008, there were no Hyde amendment claims.