

REFERENCE TITLE: **abortion; parental consent; counseling exception**

State of Arizona
Senate
Fifty-sixth Legislature
First Regular Session
2023

SB 1492

Introduced by
Senators Mendez: Gonzales

AN ACT

AMENDING SECTION 36-2152, ARIZONA REVISED STATUTES; RELATING TO ABORTION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 36-2152, Arizona Revised Statutes, is amended to
3 read:

4 36-2152. Parental consent; exceptions; hearings; time limits;
5 violations; classification; civil relief; statute
6 of limitations; pregnancy information and
7 counseling

8 A. In addition to the other requirements of this chapter, a person
9 shall not knowingly perform an abortion on a pregnant unemancipated minor
10 unless the attending physician has secured the written and notarized
11 consent from one of the minor's parents or the minor's guardian or
12 conservator or unless a judge of the superior court authorizes the
13 physician to perform the abortion pursuant to subsection B of this
14 section. Notwithstanding section 41-319, the notarized statement of
15 parental consent and the description of the document or notarial act
16 recorded in the notary journal are confidential and are not public
17 records.

18 B. A judge of the superior court, on petition or motion, and after
19 an appropriate hearing, shall authorize a physician to perform the
20 abortion if the judge determines that the pregnant minor is mature and
21 capable of giving informed consent to the proposed abortion. If the judge
22 determines that the pregnant minor is not mature or if the pregnant minor
23 does not claim to be mature, the judge shall determine whether the
24 performance of an abortion on her without the consent from one of her
25 parents or her guardian or conservator would be in her best interests and
26 shall authorize a physician to perform the abortion without consent if the
27 judge concludes that the pregnant minor's best interests would be served.

28 C. If the pregnant minor claims to be mature at a proceeding held
29 pursuant to subsection B of this section, the minor must prove by clear
30 and convincing evidence that she is sufficiently mature and capable of
31 giving informed consent without consulting her parent or legal guardian
32 based on her experience level, perspective and judgment. In assessing the
33 pregnant minor's experience level, the court may consider, among other
34 relevant factors, the minor's age and experiences working outside the
35 home, living away from home, traveling on her own, handling personal
36 finances and making other significant decisions. In assessing the
37 pregnant minor's perspective, the court may consider, among other relevant
38 factors, what steps the minor took to explore her options and the extent
39 to which she considered and weighed the potential consequences of each
40 option. In assessing the pregnant minor's judgment, the court may
41 consider, among other relevant factors, the minor's conduct since learning
42 of her pregnancy and her intellectual ability to understand her options
43 and to make an informed decision.

44 D. The pregnant minor may participate in the court proceedings on
45 her own behalf. The court shall appoint a guardian ad litem for her. The

1 court shall advise her that she has the right to court-appointed counsel
2 and, on her request, shall provide her with counsel unless she appears
3 through private counsel or she knowingly and intelligently waives her
4 right to counsel.

5 E. Proceedings in the court under this section are confidential and
6 have precedence over other pending matters. Members of the public shall
7 not inspect, obtain copies of or otherwise have access to records of court
8 proceedings under this section unless authorized by law. A judge who
9 conducts proceedings under this section shall make in writing specific
10 factual findings and legal conclusions supporting the decision and shall
11 order a confidential record of the evidence to be maintained, including
12 the judge's own findings and conclusions. The minor may file the petition
13 using a fictitious name. For the purposes of this subsection, public does
14 not include judges, clerks, administrators, professionals or other persons
15 employed by or working under the supervision of the court or employees of
16 other public agencies who are authorized by state or federal rule or law
17 to inspect and copy closed court records.

18 F. The court shall hold the hearing and shall issue a ruling within
19 forty-eight hours, excluding weekends and holidays, after the petition is
20 filed. If the court fails to issue a ruling within this time period, the
21 petition is deemed to have been granted and the consent requirement is
22 waived.

23 G. An expedited confidential appeal is available to a pregnant
24 minor for whom the court denies an order authorizing an abortion without
25 parental consent. The appellate court shall hold the hearing and issue a
26 ruling within forty-eight hours, excluding weekends and holidays, after
27 the petition for appellate review is filed. Filing fees are not required
28 of the pregnant minor at either the trial or the appellate level.

29 H. Parental consent or judicial authorization is not required under
30 this section if ~~either~~ ANY OF THE FOLLOWING APPLIES:

31 1. The pregnant minor certifies to the attending physician that the
32 pregnancy resulted from sexual conduct with ~~a~~ THE minor by the minor's
33 parent, stepparent, uncle, grandparent, sibling, adoptive parent, legal
34 guardian or foster parent or by a person who lives in the same household
35 with the minor and the minor's mother. The physician performing the
36 abortion shall report the sexual conduct with ~~a~~ THE minor to the proper
37 law enforcement officials pursuant to section 13-3620 and shall preserve
38 and forward a sample of the fetal tissue to these officials for use in a
39 criminal investigation.

40 2. The attending physician certifies in the pregnant minor's
41 medical record that, on the basis of the physician's good faith clinical
42 judgment, the pregnant minor has a condition that so complicates her
43 medical condition as to necessitate the immediate abortion of her
44 pregnancy to avert her death or for which a delay will create serious risk
45 of substantial and irreversible impairment of major bodily function.

1 3. A PHYSICIAN PROVIDES THE INFORMATION AND COUNSELING DESCRIBED IN
2 SUBSECTION N OF THIS SECTION OR REFERS THE PREGNANT MINOR TO A COUNSELOR
3 WHO WILL PROVIDE THE INFORMATION AND COUNSELING DESCRIBED IN SUBSECTION N
4 OF THIS SECTION, AND THE PERSON PROVIDING THE INFORMATION AND COUNSELING
5 PURSUANT TO SUBSECTION N OF THIS SECTION COMPLIES WITH THE REQUIREMENTS OF
6 SUBSECTION O OF THIS SECTION.

7 I. A person who performs an abortion in violation of this section
8 is guilty of a class 1 misdemeanor. A person who intentionally causes,
9 aids or assists a minor in obtaining an abortion in violation of this
10 section is guilty of a class 1 misdemeanor. A person is not subject to
11 any liability under this section if the person establishes by written
12 evidence that the person relied on evidence sufficient to convince a
13 careful and prudent person that the representations of the pregnant minor
14 regarding information necessary to comply with this section are true.

15 J. In addition to other remedies available under the common or
16 statutory law of this state, one or both of the minor's parents or the
17 minor's guardian may bring a civil action in the superior court in the
18 county in which the parents or the guardian resides to obtain appropriate
19 relief for a violation of this section, unless the pregnancy resulted from
20 the criminal conduct of the parent or guardian. The civil action may be
21 based on a claim that failure to obtain consent was a result of simple
22 negligence, gross negligence, wantonness, wilfulness, intention or any
23 other legal standard of care. The civil action may be brought against the
24 person who performs the abortion in violation of this section and any
25 person who causes, aids or assists a minor ~~to obtain~~ IN OBTAINING an
26 abortion without meeting the requirements of this section. Relief
27 pursuant to this subsection includes the following:

- 28 1. Money damages for all psychological, emotional and physical
29 injuries that result from the violation of this section.
- 30 2. Statutory damages in an amount equal to \$5,000 or three times
31 the cost of the abortion, whichever is greater.
- 32 3. Reasonable attorney fees and costs.

33 K. A civil action brought pursuant to this section must be
34 initiated within six years after the violation occurred.

35 L. The consent required by this section must be obtained on a form
36 prescribed by the department of health services. At a minimum, the form
37 must:

- 38 1. List the possible medical risks that may occur with any
39 surgical, medical or diagnostic procedure, including the potential for
40 infection, blood clots, hemorrhage, allergic reactions and death.
- 41 2. List the possible medical risks that may occur with a surgical
42 abortion, including hemorrhage, uterine perforation, sterility, injury to
43 the bowel or bladder, a possible hysterectomy as a result of a
44 complication or injury during the procedure and failure to remove the
45 unborn child that may result in an additional procedure.

1 3. List the possible medical risks that may occur with a medication
2 abortion, including hemorrhage, infection, failure to remove the unborn
3 child that may result in an additional procedure, sterility and the
4 possible continuation of the pregnancy.

5 4. Require the pregnant minor's and the pregnant minor's parent's
6 initials on each page of the form and a full signature on the final page
7 of the form.

8 5. Include a space for the notary's signature and seal on the final
9 page of the form.

10 M. The physician must maintain the form in the pregnant minor's
11 records for seven years after the date of the procedure or five years
12 after the date of the minor's maturity, whichever is longer.

13 N. A PHYSICIAN OR COUNSELOR WHO PROVIDES PREGNANCY INFORMATION AND
14 COUNSELING UNDER THIS SUBSECTION SHALL DO ALL OF THE FOLLOWING IN A MANNER
15 THAT THE PREGNANT MINOR WILL UNDERSTAND:

16 1. EXPLAIN THAT THE INFORMATION BEING GIVEN TO THE MINOR IS
17 OBJECTIVE AND IS NOT INTENDED TO COERCE, PERSUADE OR INDUCE THE MINOR TO
18 CHOOSE TO EITHER HAVE AN ABORTION OR CARRY THE PREGNANCY TO TERM.

19 2. EXPLAIN THAT THE MINOR MAY WITHDRAW HER DECISION TO HAVE AN
20 ABORTION AT ANY TIME BEFORE THE ABORTION IS PERFORMED OR MAY RECONSIDER A
21 DECISION NOT TO HAVE AN ABORTION AT ANY TIME WITHIN THE TIME PERIOD DURING
22 WHICH AN ABORTION MAY LEGALLY BE PERFORMED.

23 3. CLEARLY AND FULLY EXPLORE WITH THE MINOR THE ALTERNATIVE CHOICES
24 AVAILABLE FOR MANAGING THE PREGNANCY, INCLUDING ALL OF THE FOLLOWING:

25 (a) CARRYING THE PREGNANCY TO TERM AND KEEPING THE CHILD.

26 (b) CARRYING THE PREGNANCY TO TERM AND PLACING THE CHILD WITH A
27 RELATIVE OR WITH ANOTHER FAMILY THROUGH FOSTER CARE OR ADOPTION.

28 (c) THE ELEMENTS OF PRENATAL AND POSTNATAL CARE.

29 (d) HAVING AN ABORTION.

30 4. EXPLAIN THAT AGENCIES ARE AVAILABLE TO PROVIDE BIRTH CONTROL
31 INFORMATION AND THAT A LIST OF THESE AGENCIES AND THE SERVICES AVAILABLE
32 FROM EACH WILL BE PROVIDED IF THE MINOR REQUESTS.

33 5. DISCUSS THE POSSIBILITY OF INVOLVING THE MINOR'S PARENT OR
34 GUARDIAN OR ANOTHER ADULT FAMILY MEMBER IN THE MINOR'S DECISION-MAKING
35 CONCERNING THE PREGNANCY AND EXPLORE WHETHER THE MINOR BELIEVES THAT
36 INVOLVEMENT WOULD BE IN THE MINOR'S BEST INTERESTS.

37 6. PROVIDE ADEQUATE OPPORTUNITY FOR THE MINOR TO ASK ANY QUESTIONS
38 CONCERNING THE PREGNANCY, ABORTION, CHILD CARE AND ADOPTION AND PROVIDE
39 THE INFORMATION THE MINOR SEEKS OR, IF THE PHYSICIAN OR COUNSELOR CANNOT
40 PROVIDE THE INFORMATION, INDICATE WHERE THE MINOR CAN RECEIVE THE
41 INFORMATION.

42 O. AFTER PROVIDING THE INFORMATION AND COUNSELING TO A PREGNANT
43 MINOR AS REQUIRED BY SUBSECTION N OF THIS SECTION, THE PHYSICIAN OR
44 COUNSELOR SHALL:

45 1. HAVE THE MINOR SIGN AND DATE A FORM STATING:

- 1 (a) THAT THE MINOR RECEIVED INFORMATION ON PRENATAL AND POSTNATAL
2 CARE AND ALTERNATIVES TO ABORTION AND THAT THERE ARE AGENCIES THAT WILL
3 PROVIDE ASSISTANCE.
- 4 (b) THAT THE MINOR RECEIVED AN EXPLANATION THAT THE MINOR MAY
5 WITHDRAW AN ABORTION DECISION OR RECONSIDER HER DECISION TO CARRY A
6 PREGNANCY TO TERM.
- 7 (c) THAT THE ALTERNATIVES AVAILABLE FOR MANAGING THE PREGNANCY WERE
8 CLEARLY AND FULLY EXPLORED WITH THE MINOR.
- 9 (d) THAT THE MINOR RECEIVED AN EXPLANATION ABOUT AGENCIES AVAILABLE
10 TO PROVIDE BIRTH CONTROL INFORMATION.
- 11 (e) THAT THE MINOR DISCUSSED WITH THE PHYSICIAN OR COUNSELOR THE
12 POSSIBILITY OF INVOLVING THE MINOR'S PARENT OR GUARDIAN OR ANOTHER ADULT
13 FAMILY MEMBER IN THE MINOR'S DECISION-MAKING ABOUT THE PREGNANCY.
- 14 (f) THE REASONS FOR NOT INVOLVING THE MINOR'S PARENT OR GUARDIAN OR
15 ANOTHER ADULT FAMILY MEMBER, IF APPLICABLE.
- 16 (g) THAT THE MINOR WAS GIVEN AN ADEQUATE OPPORTUNITY TO ASK
17 QUESTIONS.
- 18 2. SIGN AND DATE THE FORM AND INCLUDE THE PHYSICIAN'S OR
19 COUNSELOR'S ADDRESS AND TELEPHONE NUMBER. THE PHYSICIAN OR COUNSELOR
20 SHALL KEEP A COPY FOR THE PHYSICIAN'S OR COUNSELOR'S FILES AND SHALL GIVE
21 THE FORM TO THE MINOR OR, IF THE MINOR REQUESTS AND IF THE PHYSICIAN OR
22 COUNSELOR PROVIDING THE INFORMATION IS NOT THE ATTENDING PHYSICIAN,
23 TRANSMIT THE FORM TO THE MINOR'S ATTENDING PHYSICIAN.