

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

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

SB 1493

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

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

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

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

43 D. The pregnant minor may participate in the court proceedings on
44 her own behalf. The court shall appoint a guardian ad litem for her. The
45 court shall advise her that she has the right to court-appointed counsel

1 and, on her request, shall provide her with counsel unless she appears
2 through private counsel or she knowingly and intelligently waives her
3 right to counsel.

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

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

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

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

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

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

1 3. THE ATTENDING PHYSICIAN RECEIVES THE INFORMED WRITTEN CONSENT OF
2 THE PREGNANT MINOR AND DETERMINES THAT THE MINOR IS, UNDER ALL THE
3 SURROUNDING CIRCUMSTANCES, MENTALLY AND PHYSICALLY COMPETENT TO GIVE
4 CONSENT. TO ENSURE THAT THE CONSENT FOR AN ABORTION IS INFORMED CONSENT,
5 THE ATTENDING PHYSICIAN SHALL INFORM THE PREGNANT MINOR, IN A MANNER THAT
6 IN THE PHYSICIAN'S PROFESSIONAL JUDGMENT IS NOT MISLEADING AND THAT THE
7 MINOR WILL UNDERSTAND, OF AT LEAST THE FOLLOWING:

8 (a) THAT ACCORDING TO THE PHYSICIAN'S BEST JUDGMENT THE MINOR IS
9 PREGNANT.

10 (b) THE NUMBER OF WEEKS OF DURATION OF THE PREGNANCY.

11 (c) THE PARTICULAR RISKS ASSOCIATED WITH THE MINOR'S PREGNANCY AND
12 THE ABORTION TECHNIQUE THAT MAY BE PERFORMED.

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

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

34 1. Money damages for all psychological, emotional and physical
35 injuries that result from the violation of this section.

36 2. Statutory damages in an amount equal to \$5,000 or three times
37 the cost of the abortion, whichever is greater.

38 3. Reasonable attorney fees and costs.

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

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

- 1 1. List the possible medical risks that may occur with any
2 surgical, medical or diagnostic procedure, including the potential for
3 infection, blood clots, hemorrhage, allergic reactions and death.
- 4 2. List the possible medical risks that may occur with a surgical
5 abortion, including hemorrhage, uterine perforation, sterility, injury to
6 the bowel or bladder, a possible hysterectomy as a result of a
7 complication or injury during the procedure and failure to remove the
8 unborn child that may result in an additional procedure.
- 9 3. List the possible medical risks that may occur with a medication
10 abortion, including hemorrhage, infection, failure to remove the unborn
11 child that may result in an additional procedure, sterility and the
12 possible continuation of the pregnancy.
- 13 4. Require the pregnant minor's and the pregnant minor's parent's
14 initials on each page of the form and a full signature on the final page
15 of the form.
- 16 5. Include a space for the notary's signature and seal on the final
17 page of the form.
- 18 M. The physician must maintain the form in the pregnant minor's
19 records for seven years after the date of the procedure or five years
20 after the date of the minor's maturity, whichever is longer.