

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

State of Arizona
House of Representatives
Fifty-second Legislature
First Regular Session
2015

HB 2455

Introduced by
Representatives Mendez, Cardenas, Clark, Steele: Gabaldón, 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; exception; hearings; time limits;
5 violations; classification; civil relief; statute of
6 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 consent
10 from one of the minor's parents or the minor's guardian or conservator or
11 unless a judge of the superior court authorizes the physician to perform the
12 abortion pursuant to subsection B of this section. Notwithstanding section
13 41-319, the notarized statement of parental consent and the description of
14 the document or notarial act recorded in the notary journal are confidential
15 and are not public records.

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

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

41 D. The pregnant minor may participate in the court proceedings on her
42 own behalf. The court shall appoint a guardian ad litem for her. The court
43 shall advise her that she has the right to court-appointed counsel and, on
44 her request, shall provide her with counsel unless she appears through

1 private counsel or she knowingly and intelligently waives her right to
2 counsel.

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

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

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

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

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

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

43 3. A PHYSICIAN PROVIDES THE INFORMATION AND COUNSELING DESCRIBED IN
44 SUBSECTION N OF THIS SECTION OR REFERS THE MINOR TO A COUNSELOR WHO WILL
45 PROVIDE THE INFORMATION AND COUNSELING DESCRIBED IN SUBSECTION N OF THIS

1 SECTION, AND THE PERSON PROVIDING THE INFORMATION AND COUNSELING PURSUANT TO
2 SUBSECTION N OF THIS SECTION COMPLIES WITH THE REQUIREMENTS OF SUBSECTION O
3 OF THIS SECTION.

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

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

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

26 2. Statutory damages in an amount equal to five thousand dollars or
27 three times the cost of the abortion, whichever is greater.

28 3. Reasonable attorney fees and costs.

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

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

34 1. List the possible medical risks that may occur with any surgical,
35 medical or diagnostic procedure, including the potential for infection, blood
36 clots, hemorrhage, allergic reactions and death.

37 2. List the possible medical risks that may occur with a surgical
38 abortion, including hemorrhage, uterine perforation, sterility, injury to the
39 bowel or bladder, a possible hysterectomy as a result of a complication or
40 injury during the procedure and failure to remove all products of conception
41 that may result in an additional procedure.

42 3. List the possible medical risks that may occur with a medication
43 abortion, including hemorrhage, infection, failure to remove all products of
44 conception that may result in an additional procedure, sterility and the
45 possible continuation of the pregnancy.

1 4. Require the pregnant minor's and the pregnant minor's parent's
2 initials on each page of the form and a full signature on the final page of
3 the form.

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

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

9 N. A PHYSICIAN OR COUNSELOR WHO PROVIDES PREGNANCY INFORMATION AND
10 COUNSELING UNDER THIS SUBSECTION SHALL, IN A MANNER THAT WILL BE UNDERSTOOD
11 BY THE MINOR:

12 1. EXPLAIN THAT THE INFORMATION BEING GIVEN TO THE MINOR IS BEING
13 GIVEN OBJECTIVELY AND IS NOT INTENDED TO COERCE, PERSUADE OR INDUCE THE MINOR
14 TO CHOOSE TO EITHER HAVE AN ABORTION OR CARRY THE PREGNANCY TO TERM.

15 2. EXPLAIN THAT THE MINOR MAY WITHDRAW A DECISION TO HAVE AN ABORTION
16 AT ANY TIME BEFORE THE ABORTION IS PERFORMED OR MAY RECONSIDER A DECISION NOT
17 TO HAVE AN ABORTION AT ANY TIME WITHIN THE TIME PERIOD DURING WHICH AN
18 ABORTION MAY LEGALLY BE PERFORMED.

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

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

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

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

25 (d) HAVING AN ABORTION.

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

29 5. DISCUSS THE POSSIBILITY OF INVOLVING THE MINOR'S PARENT, GUARDIAN
30 OR OTHER ADULT FAMILY MEMBER IN THE MINOR'S DECISION MAKING CONCERNING THE
31 PREGNANCY AND EXPLORE WHETHER THE MINOR BELIEVES THAT INVOLVEMENT WOULD BE IN
32 THE MINOR'S BEST INTERESTS.

33 6. PROVIDE ADEQUATE OPPORTUNITY FOR THE MINOR TO ASK ANY QUESTIONS
34 CONCERNING THE PREGNANCY, ABORTION, CHILD CARE AND ADOPTION, AND PROVIDE THE
35 INFORMATION THE MINOR SEEKS OR, IF THE PERSON CANNOT PROVIDE THE INFORMATION,
36 INDICATE WHERE THE MINOR CAN RECEIVE THE INFORMATION.

37 O. AFTER PROVIDING THE INFORMATION AND COUNSELING TO A MINOR AS
38 REQUIRED BY SUBSECTION N OF THIS SECTION THE PHYSICIAN OR COUNSELOR SHALL:

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

40 (a) THAT THE MINOR HAS RECEIVED INFORMATION ON PRENATAL AND POSTNATAL
41 CARE AND ALTERNATIVES TO ABORTION AND THAT THERE ARE AGENCIES THAT WILL
42 PROVIDE ASSISTANCE.

43 (b) THAT THE MINOR HAS RECEIVED AN EXPLANATION THAT THE MINOR MAY
44 WITHDRAW AN ABORTION DECISION OR RECONSIDER A DECISION TO CARRY A PREGNANCY
45 TO TERM.

1 (c) THAT THE ALTERNATIVES AVAILABLE FOR MANAGING THE PREGNANCY HAVE
2 BEEN CLEARLY AND FULLY EXPLORED WITH THE MINOR.

3 (d) THAT THE MINOR HAS RECEIVED AN EXPLANATION ABOUT AGENCIES
4 AVAILABLE TO PROVIDE BIRTH CONTROL INFORMATION.

5 (e) THAT THE MINOR HAS DISCUSSED WITH THE PHYSICIAN OR COUNSELOR THE
6 POSSIBILITY OF INVOLVING THE MINOR'S PARENT, GUARDIAN OR OTHER ADULT FAMILY
7 MEMBER IN THE MINOR'S DECISION MAKING ABOUT THE PREGNANCY.

8 (f) THE REASONS FOR NOT INVOLVING THE MINOR'S PARENT, GUARDIAN OR
9 OTHER ADULT FAMILY MEMBER, IF APPLICABLE.

10 (g) THAT THE MINOR HAS BEEN GIVEN AN ADEQUATE OPPORTUNITY TO ASK
11 QUESTIONS.

12 2. SIGN AND DATE THE FORM AND INCLUDE THAT PERSON'S ADDRESS AND
13 TELEPHONE NUMBER. THE PERSON SHALL KEEP A COPY FOR THAT PERSON'S FILES AND
14 SHALL GIVE THE FORM TO THE MINOR OR, IF THE MINOR REQUESTS AND IF THE PERSON
15 PROVIDING THE INFORMATION IS NOT THE ATTENDING PHYSICIAN, TRANSMIT THE FORM
16 TO THE MINOR'S ATTENDING PHYSICIAN.