

1 HB539
2 184884-2
3 By Representative Hill
4 RFD: Judiciary
5 First Read: 20-APR-17

2
3
4
5
6
7
8 SYNOPSIS: Under existing law, a minor who is a
9 resident of this state and who elects to obtain an
10 abortion must obtain parental consent to obtain an
11 abortion or seek a judicial waiver of the parental
12 consent requirement. Under existing law, the
13 requirements and procedure for consent and waiver
14 do not apply to a minor who is not a resident of
15 this state.

16 This bill would require both resident and
17 nonresident minors to obtain parental consent and
18 specify that the procedures for obtaining a waiver
19 from the consent requirement are available to both
20 residents and nonresidents.

21 Under existing law, the court may not
22 disclose the identity of a minor seeking a waiver
23 except to specified persons including a witness or
24 other party who has a need to know.

25 This bill would allow disclosure to
26 witnesses only if the court states on the record
27 why the particular disclosure is necessary to

1 promote its consideration of the petition without
2 unduly burdening the minor.

3 Under existing law, the court must rule on a
4 petition within 48 hours, subject to certain
5 circumstances authorizing the court to extend the
6 initial deadline.

7 This bill would expressly authorize an
8 extension of no more than 72 hours, except on
9 request of the minor making the request.

10 Under existing law, the court may subpoena
11 testimony or other evidence for the purpose of
12 obtaining evidence necessary to promote
13 consideration of and rule on a petition.

14 This bill would require a court, before
15 issuing a subpoena, to state on the record why the
16 evidence or testimony requested in the particular
17 subpoena is necessary to promote consideration of
18 the petition and why it does not unduly burden the
19 minor.

20
21 A BILL

22 TO BE ENTITLED

23 AN ACT

24
25 To amend Section 26-21-4 of the Code of Alabama
26 1975; to provide further for parental consent and judicial
27 waiver of consent for a minor to obtain an abortion.

1 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

2 Section 1. Section 26-21-4 of the Code of Alabama
3 1975, is amended to read as follows:

4 "§26-21-4.

5 "(a) A minor who elects not to seek or does not or
6 cannot for any reason, obtain consent from either of her
7 parents or legal guardian, may petition, on her own behalf,
8 the juvenile court, or the court of equal standing, in the
9 county in which the minor resides or in the county in which
10 the abortion is to be performed for a waiver of the consent
11 requirement of this chapter. Notice by the court to the
12 minor's parents, parent, or legal guardian shall not be
13 required or permitted. ~~The requirements and procedures under
14 this chapter shall apply and are available only to minors who
15 are residents of this state.~~

16 "(b) The minor may participate in proceedings in the
17 court on her own behalf. The court shall advise her that she
18 has a right to be represented by an attorney and that if she
19 is unable to pay for the services of an attorney one will be
20 appointed for her. If the court appoints an attorney to
21 represent her, such attorney shall be compensated as provided
22 in Section 15-12-21. If the minor petitioner chooses to
23 represent herself, such pleadings, documents, or evidence that
24 she may file with the court shall be liberally construed by
25 the court so as to do substantial justice.

26 "(c) The court shall insure that the minor is given
27 assistance in preparing and filing the petition. Such

1 assistance may be provided by court personnel including intake
2 personnel of juvenile probation services. The minor's identity
3 shall be kept confidential, but her identity may be made known
4 to the judge, ~~any guardian ad litem, the district attorney or~~
5 ~~any representative of the district attorney's office of the~~
6 ~~county where the minor is a resident or the county where the~~
7 ~~abortion is to be performed, any appropriate court personnel,~~
8 ~~any witness who has a need to know the minor's identity, or~~
9 ~~any other person determined by the court who needs to know.~~
10 participant pursuant to subsection (i) or subsection (j), and
11 any court personnel designated by the judge. On the court's
12 own initiative or by request of a participant pursuant to
13 subsection (i) or subsection (j), the minor's identity may
14 also be made known to any witness, but only after the court
15 states on the record why the particular disclosure is
16 necessary to promote its consideration of the petition without
17 unduly burdening the minor. Any person who is given the
18 identity of the minor ~~shall keep her~~ by the court or a
19 participant pursuant to subsections (i) and (j) shall be
20 apprised of his or her duty to keep the minor's name
21 confidential and shall not give it to any other person, unless
22 otherwise ordered by the court.

23 "(d) The petition required in Section 26-21-3(d)
24 shall be made under oath and shall include all of the
25 following:

26 "(1) A statement that the petitioner is pregnant;

1 "(2) A statement that the petitioner is unmarried,
2 under 18 years of age, and unemancipated;

3 "(3) A statement that the petitioner wishes to have
4 an abortion without the consent of either parent or legal
5 guardian.

6 "(4) An allegation of either or both of the
7 following:

8 "a. That the petitioner is sufficiently mature and
9 well enough informed to intelligently decide whether to have
10 an abortion without the consent of either of her parents or
11 legal guardian.

12 "b. That one or both of her parents or her guardian
13 has engaged in a pattern of physical, sexual, or emotional
14 abuse against her, or that the consent of her parents, parent
15 or legal guardian otherwise is not in her best interest.

16 "(5) A statement as to whether the petitioner has
17 retained an attorney and the name, address, and telephone
18 number of her attorney.

19 "(e) Court proceedings shall be given such
20 precedence over other pending matters as is necessary to
21 insure that the court ~~may reach~~ reaches a decision ~~promptly,~~
22 ~~but in no case, except as provided herein, shall the court~~
23 ~~fail to rule~~ within 48 hours of the time the petition is
24 filed, Saturdays, Sundays, and legal holidays excluded.
25 Provided, however, this time requirement may be extended on
26 the request of the minor for any reason or any other
27 participant in the proceeding, or by order of the court for

1 the purpose of obtaining further testimony or evidence deemed
2 necessary by the court for it to make an informed decision and
3 to do substantial justice. Before extending the decision
4 deadline on its own initiative or on request of a participant
5 other than the minor, the court shall state on the record the
6 length of the extension, the evidence it deems necessary to
7 obtain, and the reasons why obtaining such evidence is
8 necessary to promote its consideration of the petition without
9 unduly burdening the minor. The court may not grant an
10 extension of more than 72 hours, Saturdays, Sundays, and legal
11 holidays included, unless on request of the minor. If a
12 juvenile court judge is not available for the hearing provided
13 herein, the clerk of the court in which the petition was filed
14 shall forthwith notify the presiding circuit court judge and
15 the presiding circuit court judge of the circuit shall
16 immediately appoint a district or circuit court judge to hear
17 the petition.

18 "(f) Except as otherwise required by the section,
19 this court shall adhere to the Rules of Juvenile Procedure,
20 the Rules of Civil Procedure and Rules of Evidence required of
21 Alabama courts. The court shall assure that it is presented
22 sufficient probative evidence upon which to make its findings,
23 either granting or denying the minor's petition. If the court
24 determines ~~at the initial hearing on the petition~~ that
25 additional evidence or testimony is necessary to promote its
26 consideration of the petition without unduly burdening the
27 minor, the court may ~~adjourn the hearing and issue instanter~~

1 ~~subpoenas or otherwise~~ permit any party or participant in the
2 hearing to bring before the court admissible evidence or
3 testimony either in support of or against the petition. No
4 subpoena shall issue on the court's own initiative or on
5 request of a participant under subsection (i), subsection (j),
6 or subsection (k) unless it is signed by the judge after the
7 court states on the record why the compelled evidence or
8 testimony is necessary to promote its consideration of the
9 petition without unduly burdening the minor.

10 "(g) The required consent shall be waived if the
11 court finds either:

12 "(1) That the minor is mature and well-informed
13 enough to make the abortion decision on her own; or

14 "(2) That performance of the abortion would be in
15 the best interest of the minor.

16 "(h) In determining if either of the requirements in
17 subsection (g) are met, the court shall require that the minor
18 provide probative and admissible evidence, which may include
19 hearsay evidence, that she has been informed and understands
20 the medical procedure of abortion and its consequences and
21 that she has been informed and counseled by a qualified person
22 as to the alternatives to abortion. She shall explain each of
23 the foregoing to the court and the court shall be satisfied
24 that she is making an informed judgment and shall document its
25 finding in its order. The minor shall present such additional
26 probative evidence to the court of her maturity that
27 demonstrates to the court that she has sufficient experience

1 with and understanding of life which enables her to make
2 mature and informed decisions. Further, the minor may provide
3 to the court a substantive explanation of why she cannot
4 consult with her parent, parents, or legal guardian to assist
5 her in making the decision. It shall not be sufficient that
6 the court find the minor mature because she has requested
7 relief from the court, but rather the totality of the evidence
8 must be probative and of such weight to prove that the minor
9 is mature and well-informed enough to make the abortion
10 decision on her own, or that the performance of the abortion
11 will be in her best interest. Uncorroborated legal conclusions
12 by the minor shall not be sufficient to support a
13 determination by the court to grant her petition. In the event
14 of a denial of the petition by the court, the minor may
15 re-file the petition once for a de novo hearing with the
16 court.

17 "(i) The court shall immediately notify the district
18 attorney's office of the county in which the minor is a
19 resident, or the county where the petition was filed of the
20 filing of the petition on the day of such filing and the
21 district attorney or his or her representative shall
22 participate as an advocate for the state to examine the
23 petitioner and any witnesses, and to present evidence for the
24 purpose of providing the court with a sufficient record upon
25 which to make an informed decision and to do substantial
26 justice.

1 "(j) In the court's discretion, it may appoint a
2 guardian ad litem for the interests of the unborn child of the
3 petitioner who shall also have the same rights and obligations
4 of participation in the proceeding as given to the district
5 attorney's office. The guardian ad litem shall further have
6 the responsibility of assisting and advising the court so the
7 court may make an informed decision and do substantial
8 justice. The guardian ad litem shall be compensated as
9 provided in Section 15-12-21.

10 "~~(k) Either the district attorney or his or her~~
11 ~~representative, or any other party in the proceeding may~~
12 ~~request the court for additional time either before the~~
13 ~~hearing has begun or during the hearing, if justice requires,~~
14 ~~to obtain evidence, subpoena witnesses, or to obtain and~~
15 ~~present any evidence or information which will be necessary~~
16 ~~and appropriate for the court to make an informed decision. In~~
17 ~~any event, any such delay shall not be more than one business~~
18 ~~day for which the applicable court is open to the public,~~
19 ~~unless justice requires an extension thereof. The length of~~
20 ~~time for any such delay and the information, evidence, or~~
21 ~~subpoena sought shall be within the sound discretion of the~~
22 ~~trial court subject to the time constraints of the petitioner~~
23 ~~related to her medical condition.~~

24 "~~(l)~~(k) Although the court shall not be required or
25 permitted to contact the minor's parent, parents, or legal
26 guardian, in the event that the minor's parent, parents, or
27 legal guardian are otherwise aware of the by-pass proceeding,

1 they, he, or she shall be given notice of and be permitted to
2 participate in the proceeding and be represented by counsel
3 with all of the rights and obligations of any party to the
4 proceeding.

5 "~~(m)~~ (l) A court that conducts proceedings under this
6 section shall issue written and specific factual findings and
7 legal conclusions supporting its decision and shall order that
8 a confidential record of the evidence be maintained for at
9 least four years. A transcript of the proceedings shall be
10 recorded and if there is an appeal as provided in subsection
11 (n), a transcript of the proceedings shall be prepared
12 forthwith.

13 "~~(n)~~ (m) An expedited confidential and anonymous
14 appeal shall be available to any minor to whom the court
15 denies a waiver of consent, the district attorney's office,
16 and any guardian ad litem, or the parent, parents, or legal
17 guardian of the minor. If notice of appeal is given, the
18 record of appeal shall be completed and the appeal shall be
19 perfected within five days from the filing of the notice of
20 appeal. Briefs shall not be required but may be permitted.
21 Because time may be of the essence regarding the performance
22 of the abortion, the Alabama Supreme Court shall issue
23 promptly such additional rules as it deems are necessary to
24 insure that appeals under this section are handled in an
25 expeditious, confidential and anonymous manner.

1 "~~(o)~~ (n) All proceedings under this chapter shall be
2 confidential and anonymous. In all pleadings or court
3 documents, the minor shall be identified by initials only.

4 "~~(p)~~ (o) No fees or costs shall be required of any
5 minor who avails herself of the procedures provided by this
6 section.

7 "~~(q)~~ (p) In proceedings under this section and with
8 the consent of the minor for whom such proceedings are
9 conducted, the court may refer for prosecution any criminal
10 charge that may be known to the court, including, but not
11 limited to, statutory rape."

12 Section 2. This act shall become effective on the
13 first day of the third month following its passage and
14 approval by the Governor, or its otherwise becoming law.