

DSS

Serving Children and Families

V. SUSAN ALFORD
STATE DIRECTOR

NIKKI R. HALEY
GOVERNOR

October 23, 2015

VIA E-MAIL and U.S. MAIL

The Honorable Gary E. Clary
Ad Hoc Committee Chair
South Carolina House of Representatives
Post Office Box 11867
Columbia, South Carolina 29211

Dear Chairman Clary:

Thank you for extending the South Carolina Department of Social Services (hereinafter “the Department” or “DSS”) the courtesy of an extension to respond to your letter dated September 30, 2015, in light of the historic flooding in South Carolina. We appreciate the opportunity to provide the Committee with additional information regarding the judicial bypass procedure in South Carolina and look forward to continuing to work with you during the legislative oversight process.

Under South Carolina Code Section 44-41-31, subject to the exceptions outlined below, an abortion may not be performed on a minor without consent of one of the minor’s parents, a legal guardian of the minor, a grandparent of the minor, or any person who has been standing in loco parentis to the minor for a period not less than sixty days. S.C. CODE ANN. § 44-41-31(A)(1)(a) – (d)(1990). The consent requirement contained in this provision is often referred to collectively as the “parental consent” requirement. There are two exceptions to the requirement of parental consent. The first is that such consent is not required if the minor is emancipated and the attending physician or his agent has received the informed, signed, and written consent of the minor. S.C. CODE ANN. § 44-41-31(A)(2)(1990).

The second exception is a procedure referred to as a “judicial bypass.” Under South Carolina law, an attending physician may perform an abortion on a minor, without parental consent, if the attending physician obtains both the consent of the minor and has received an order from the Court. S.C. CODE ANN. § 44-41-31(A)(3)(1990). Under South Carolina law, “[e]very minor has the right to petition the court for an order granting her the right to obtain an abortion without the consent required in Section 41-41-31(1).” S.C. CODE ANN. § 44-41-32(1990)(emphasis added). The minor may file the petition under the name of “Jane Doe” to protect her identity and maintain anonymity of the minor. S.C. CODE ANN. § 44-41-32(1)(1990).

Therefore, the right to petition for a judicial bypass to the requirement of parental consent exists for every minor in the state and not just those within the custody of DSS or foster care. In particular, the law provides that the “[t]he minor may prepare and file a petition in either the circuit or family court” to obtain judicial consent to an abortion. The petition for a judicial bypass is a one-page petition, a copy of which is enclosed, and can be found online. Therefore, a minor may complete and file the petition without the assistance or knowledge of DSS.

However, under South Carolina law, the “Adoption and Birth Parent Services Division of the Department of Social Services, upon request of the minor, must provide assistance to the minor in preparing and filing the petition” for judicial bypass. S.C. CODE ANN. § 44-41-32(2)(1990)(emphasis added). Pursuant to this provision of the Code, any minor in South Carolina, regardless of whether she is within the custody of DSS or not, may seek the assistance of DSS in preparing and filing the petition and the Department is legally obligated to assist the minor. However, DSS does not provide legal representation for minors seeking a judicial bypass. Rather, once a petition is filed, the Court must appoint a guardian ad litem for the minor and must advise her of her right to court-appointed counsel and provide her counsel upon her request.

According to information obtained from the Court Administration of South Carolina on October 14, 2015, below is the total number of petitions for judicial bypass filed in the last five years:

- FY2011: 8 filings for judicial bypass
- FY2012: 5 filings for judicial bypass
- FY2013: 15 filings for judicial bypass
- FY2014: 9 filings for judicial bypass
- FY2015: 9 filings for judicial bypass
- FY2016: 3 filings for judicial bypass*

*As of September 30, 2015

According to Court Administration, it does not have information regarding the outcome of the filings. Rather, that information is in the possession of the Clerk of Court for each County. However, Court Administration was able to provide the total dispositions that resulted from petitions for judicial bypass filed in the last five years:

- FY2011: 9 dispositions
- FY2012: 6 dispositions
- FY2013: 10 dispositions
- FY2014: 12 dispositions
- FY2015: 11 dispositions
- FY2016: 2 dispositions*
- *As of September 30, 2015

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Disposition is the term used by Court Administration to denote that the filing was resolved by the Court. Under South Carolina law, upon consideration of a filing for a judicial bypass, a Court must issue a written order stating its findings of fact and conclusions of law to support one of three possible resolutions by the Court: (1) Grant the minor the right on her own behalf to consent to the abortion if the court finds that the minor is mature and well-informed enough to make the abortion decision on her own; (2) Grant consent for the abortion if the court finds the performance of the abortion would be in the minor's best interest; or (3) Deny the petition if the court finds that the minor is immature and that performance of the abortion would not be in the minor's best interest. S.C. CODE ANN. § 44-41-33(1990).

Please note that the disposition count may be higher than the number of filings for judicial bypass in a fiscal year due to cases that may still be pending at the beginning or end of the fiscal year.

If you need any additional information regarding judicial bypasses, please let me know.

Sincerely,



V. Susan Alford
State Director

VSA:klw

Enclosure

STATE OF SOUTH CAROLINA

COUNTY OF _____

A JUVENILE

A Child under Seventeen (17) Years of Age

IN THE FAMILY COURT

____ JUDICIAL CIRCUIT

**PETITION FOR ORDER
CONCERNING ABORTION FOR MINOR
UNDER THE AGE OF
SEVENTEEN (17) YEARS**

Docket No. _____

NOTICE TO THE CLERK OF COURT: THIS PETITION, AS WELL AS ALL PAPERS RELATED TO THIS PETITION, MUST BE FILED UNDER SEAL IMMEDIATELY AND KEPT UNDER SEAL AT ALL TIMES PURSUANT TO CODE SECTION 44-41-34 (D).

1. I am under seventeen (17) years of age and unemancipated (I have never been married and I do not have a court order of emancipation).
2. I am pregnant and I wish to have an abortion.
3. I do not have the consent for an abortion from one of my parents, my legal guardian, one of my grandparents, or another person who is at least 18 years of age who has been acting as my parent for more than 60 days.
4. I request a hearing within 72 hours of filing this petition.
5. I am unable to pay filing fees or any other cost associated with this action, and I request that I not be required to pay such costs.
6. I understand that the court will appoint a Guardian ad Litem for me; and, (check one)
☐ a. I would like the following person, who is at least 18 years of age be my Guardian ad Litem: _____, whose address is _____, South Carolina, telephone number _____.
☐ b. I do not have a preference as to who should be my Guardian ad Litem.
7. I understand that I have a right to have a court-appointed lawyer assist me free of charge as I am not able to pay an attorney, and (check one):
☐ a. I request that the court assign a lawyer to represent me.
☐ b. I do not want the court to assign a lawyer to me.
8. I would like any court papers to be sent to my Guardian ad Litem, to any attorney who may represent me, and [check any that apply]:
☐ a. to me, personally, at this address: _____
☐ b. to _____ at this address: _____
☐ c. to no one other than my Guardian ad Litem, and any attorney who may represent me.
9. I understand that my name and identity will be kept secret and that all my records will be sealed.
10. I am filing a sealed declaration with this Petition, which contains information which identifies me.
11. I ask that the court grant me the right to consent to an abortion because I am mature and well- informed enough to make the abortion decision on my own or to grant consent for the abortion if the court finds that performance of the abortion would be in my best interest.

Date: _____, 20____

Signature (Note: You may use the name "Jane Doe")

_____, S.C.