

**19 GCA PERSONAL RELATIONS**  
**CH. 4A PARENTAL OR GUARDIAN CONSENT REQUIRED FOR ABORTION**

**CHAPTER 4A**  
**PARENTAL OR GUARDIAN CONSENT REQUIRED FOR ABORTION**

**SOURCE:** Chapter added as §§ 4401-4411 by P.L. 31-155:2 (Jan. 4, 2012).  
Renumbered by Compiler to harmoniously fit this title.

- § 4A101. Definitions.
- § 4A102. Consent of One (1) Parent Required.
- § 4A103. Alternate Consent.
- § 4A104. Exceptions.
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- § 4A106. Reports.
- § 4A107. Procedure for Judicial Waiver of Consent.
- § 4A108. Appeal Procedure.
- § 4A109. Penalties.
- § 4A110. Construction.
- § 4A111. Severability.

**§ 4A101. Definitions.**

As used in this Chapter:

(a) *Abortion* means the act of using or prescribing any instrument, medicine, drug, or any other substance, device, or means with the intent to terminate the clinically diagnosable pregnancy of a woman with knowledge that the termination by those means will with reasonable likelihood cause the death of the unborn child. Such use, prescription, or means is *not* an abortion if done with intent to:

- (1) save the life or preserve the health of an unborn child;
- (2) remove a dead unborn child caused by spontaneous abortion; or
- (3) remove an ectopic pregnancy.

(b) *Coercion* means restraining or dominating the choice of a minor female by force, threat of force, or deprivation of food and shelter.

(c) *Consent* means a written statement signed by the mother, father, or legal guardian (or alternate person as described in § 4A103)

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of the minor declaring that the affiant has been informed that the minor intends to seek an abortion and that the affiant consents to the abortion.

(d) *Department* means the Department of Public Health and Social Services.

(e) *Emancipated minor* means any person under eighteen (18) years of age who is *or* has been married, *or* who has been legally emancipated.

(f) *Incompetent* means any person who has been adjudged a disabled person and has had a guardian appointed for her pursuant to judicial proceeding and determination.

(g) *Medical emergency* means a condition that, on the basis of the physician's good-faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death *or* for which a delay will create serious risk of substantial and irreversible impairment of a bodily function.

(h) *Neglect* means the failure of a parent or legal guardian to supply a child with necessary food, clothing, shelter, or medical care when reasonably able to do so, *or* the failure to protect a child from conditions or actions that immediately and seriously endanger the child's physical or mental health when reasonably able to do so.

(i) *Physical abuse* means any physical injury intentionally inflicted by a parent or legal guardian on a child.

(j) *Physician or attending physician* means any person licensed to practice medicine on Guam. The term includes medical doctors and doctors of osteopathy.

(k) *Sexual abuse* means any sexual contact or sexual penetration as defined in § 25.10(a)(8) and (9) of Chapter 25, Title 9, Guam Code Annotated, and committed against a minor by an adult family member as defined in this Act, or a family member as defined in Chapter 13 of Division 1, Title 19, Guam Code Annotated, and as further provided for in Chapter 25, Title 9, Guam Code Annotated.

**§ 4A102. Consent of One (1) Parent Required.**

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*Except* in the case of a medical emergency, or *except* as provided in §§ 4A103, 4A104, or 4A107, if a pregnant female is less than eighteen (18) years of age and not emancipated, or if she has been adjudged an incompetent person pursuant to judicial proceeding and determination, no person shall perform an abortion upon her unless, in the case of a female who is less than eighteen (18) years of age, he or she first obtains the-written consent of both the pregnant female and one (1) of her parents or a legal guardian; or, in the case of a female who is an incompetent person, he or she first obtains the written consent of her guardian. In deciding whether to grant such consent, a pregnant female's parent or guardian *shall* be advised of the risks involved in the abortion procedure, the risks of post-partum syndrome, and alternative to the abortion, and *shall* consider only the child's or ward's best interests.

**§ 4A103. Alternate Consent.**

If the minor patient declares in a signed written statement that she is a victim of sexual abuse, neglect, or physical abuse by either of her parents or legal guardian(s), then the attending physician *shall* obtain the written consent required by this Act from a brother or sister of the minor who is over twenty-one (21) years of age, or from a stepparent or grandparent specified by the minor. The physician who intends to perform the abortion must certify in the patient's medical record that he or she has received the written declaration of abuse or neglect. Any physician relying in good faith on a written statement under this Section *shall not* be civilly or criminally liable under any provisions of this Act for failure to obtain consent.

**§ 4A104. Exceptions.**

Consent *shall not* be required under § 4A102 or § 4A103 of this Act if:

- (a) the attending physician certifies in the patient's medical record that a medical emergency exists and there is insufficient time to obtain the required consent; *or*
- (b) consent is waived under § 4A107 of this Chapter.

**§ 4A105. Coercion Prohibited.**

A parent or any other person *shall not* coerce a minor to have an abortion performed. If a minor is denied financial support by the minor's parents, guardian, or custodian due to the minor's refusal to have an abortion performed, the minor *shall* be deemed emancipated for the purposes of

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eligibility for public-assistance benefits, *except* that such benefits may *not* be used to obtain an abortion.

**§ 4A106. Reports.**

(a) A monthly report indicating the number of consents obtained pursuant to this Act, the number of times in which exceptions were made to the consent requirement under this Act, the type of exception, the minor's age, and the number of prior pregnancies and prior abortions of the minor *shall* be filed by any physicians performing any abortion or procedures to induce abortions with the Department of Public Health and Social Services on forms prescribed by the Department. A compilation of the data reported *shall* be made by the Department on an annual basis and *shall* be available to the public.

Specific names of minors or of incompetent persons covered by this Act *shall not* be included in the monthly report or any similar report generated by the Department of Public Health and Social Services and/or any other instrumentality of the government of Guam.

(b) The Department of Public Health and Social Services *shall* develop the forms necessary to gather the information required by this Section within sixty (60) days of the enactment of this Act.

**§ 4A107. Procedure for Judicial Waiver of Consent.**

(a) The requirements and procedures under this Section are available to minors and incompetent persons whether or not they are residents of Guam.

(b) The minor or incompetent person may petition the Superior Court of Guam for a waiver of the consent requirement and may participate in proceedings on her own behalf. The petition *shall* include a statement that the complainant is pregnant and unemancipated. The petition *shall* also include a statement that consent has *not* been waived, that the pregnant minor has been advised by her attending physician of the risks involved in an abortion and the risk of post-partum syndrome, and that the complainant wishes to abort without obtaining consent, as provided pursuant to this Chapter. The court *shall* appoint a guardian *ad litem* for her. Any guardian *ad litem* appointed under this Act *shall* act to maintain the confidentiality of the proceedings.

The court *shall* advise her that she has a right to court-appointed counsel, and *shall* provide her with counsel upon her request.

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(c) Court proceedings under this Section *shall* be confidential and *shall* ensure the anonymity of the minor or incompetent person. All court proceedings under this Section *shall* be sealed. The minor or incompetent person *shall* have the right to file her petition in the court using a pseudonym, *or* using solely her initials. All documents related to this petition *shall* be confidential and *shall not* be available to the public. These proceedings *shall* be given precedence over other pending matters to the extent necessary to ensure that the court reaches a decision promptly. The court *shall* rule, and issue written findings of fact and conclusions of law, within forty-eight (48) hours of the time the petition was filed, *except* that the forty-eight (48)-hour limitation may be extended at the request of the minor or incompetent person. If the court fails to rule within the forty-eight (48)-hour period and an extension was *not* requested, then the petition *shall* be deemed to have been granted, and the consent requirement *shall* be waived.

(d) If the court finds, by clear and convincing evidence, that the minor is sufficiently mature or well-informed to decide whether to have an abortion, the court *shall* issue an order authorizing the minor to consent to the performance or inducement of an abortion without the consent of a parent or guardian, and the court *shall* execute the required forms. If the court does *not* make the finding specified in this Subsection or Subsection (e) of this Section, it *shall* dismiss the petition.

(e) If the court finds evidence that there is an incidence of physical, sexual, or emotional abuse of the complainant by one (1) or both of her parents, her guardian, or her custodian, or by a male person regardless of the family relationship, if any, who has physically, sexually, or emotionally abused her or caused her pregnancy, or that the notification of a parent, guardian or custodian is *not* in the best interest of the complainant, the court *shall* issue an order authorizing the minor to consent to the performance or inducement of an abortion without the consent of the parent guardian, or custodian. If the court does *not* make a finding specified in this Subsection or Subsection (d) of this Section, it *shall* dismiss the petition.

(f) A court that conducts proceedings under this Section *shall* issue written and specific factual findings and legal conclusions supporting its decision, and *shall* order that a confidential record of the evidence and the judge's findings and conclusions be maintained. At the hearing, the court

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*shall* hear evidence relating to the emotional development, maturity, intellect, and understanding of the minor.

(g) An expedited confidential appeal *shall* be available, as the Supreme Court of Guam provides by rule, to any minor or incompetent person to whom the [circuit] court denies a waiver of consent. An order authorizing an abortion without consent *shall not* be subject to appeal.

(h) No filing fees shall be required of any pregnant minor who petitions the court for a waiver of parental consent pursuant to this Act at either the trial or appellate level.

**§ 4A108. Appeal Procedure.**

The Unified Judiciary of Guam is respectfully requested to establish rules to ensure that proceedings under this Act are handled in an expeditious and confidential manner, and to satisfy the requirements of the federal courts. The rules promulgation process rules *shall* begin within one hundred twenty (120) days from the date of enactment of this Act.

**§ 4A109. Penalties.**

(a) Any person who intentionally performs an abortion with knowledge that or with reckless disregard as to whether the person upon whom the abortion is to be performed is an unemancipated minor or an incompetent person without obtaining the required consent is guilty of a felony of the 3<sup>rd</sup> degree.

It is a defense to prosecution under this Section that the minor falsely represented her age or identity to the physician to be at least eighteen (18) years of age by displaying an apparently valid governmental record of identification such that a careful and prudent person under similar circumstances would have relied on the representation. The defense *does not* apply if the physician is shown to have had independent knowledge of the minor's actual age or identity or failed to use due diligence in determining the minor's age or identity.

(b) Failure to obtain consent from person(s) from whom consent is required under this Act is *prima facie* evidence of failure to obtain consent and of interference with family relations in appropriate civil actions. Such *prima facie* evidence *shall not* apply to any other issue other than failure to inform the parents or legal guardian and interference with family relations in appropriate civil actions. The civil action may be based on a claim that the

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act was a result of simple negligence, gross negligence, wantonness, willfulness, intention, or other legal standard of care. The laws of Guam *shall not* be construed to preclude the award of exemplary damages in any appropriate civil action relevant to violations of this Act. Nothing in this Act shall be construed to limit the common law rights of the parents or legal guardians.

(c) Any person *not* authorized to provide consent under this Act who provides consent is guilty of a felony of the 3<sup>rd</sup> degree.

(d) Any person who coerces a minor to have an abortion is guilty of a misdemeanor.

**§ 4A110. Construction.**

(a) Nothing in this Chapter shall be construed or interpreted as making the conduct of an abortion illegal, when conducted pursuant to applicable law, this Chapter, and performed by a licensed medical physician.

**§ 4A111. Severability.**

If any provision of this law or its application to any person or circumstance is found to be invalid or contrary to law, such invalidity shall *not* affect other provisions or applications of this law which can be given effect without the invalid provisions or applications, and to this end the provisions of this Act are severable.

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