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## **The Vermont Legislative Research Shop**

### **Parental Involvement Abortion Legislation**

Parental consent and notification for minors' abortions are complex issues decided on a state-by-state basis under the guidelines of Supreme Court decisions. As of 2005, there exist two types of parental notification. The first is termed parental consent, requiring a parent or guardian of the minor to give written consent for the abortion. Some states require that both parents provide consent for the minor's procedure. The second is parental notification, which mandates that the parent or guardian sign a waiver indicating that they have been notified of the pending abortion. Notification of either one or both parents can be mandated. Typically parental notification is made 24 to 48 hours preceding the scheduled abortion.<sup>1</sup>

There exist exceptions to the parental notification and consent rules as mandated by *Planned Parenthood v. Danforth*, 428 U.S. 52 (1976). In the thirty-two states that require parental notification, exceptions are provided for certain situations where in a minor can obtain an abortion without the consent or notification of the parent. The exceptions can be divided into two groups: alternatives to parental involvement and exceptions to parental involvement. The exceptions to parental involvement include abuse, assault, incest, neglect or emergency situations. In these cases, as determined by the court or the doctor, abortions can be preformed without the notification or consent of the parent. Alternatives include judicial bypass and notification of other adult relatives.<sup>2</sup>

In practice, judicial bypass varies greatly from state to state and judges hearing these petitions have a great deal of discretion under the Supreme Court's jurisprudence. Therefore, according to Katz, "judges are free to make rulings based on unarticulated factors, including jurists' views on adolescent sexuality, the need for babies to supply the adoption market, the protection of fetal life or assumptions about parental wisdom and benign control"<sup>3</sup>. Others state that the difficulty in obtaining a judicial bypass is compounded by a lack of knowledge of legal procedures, inability to attend legal

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<sup>1</sup> The Allan Guttmacher Association "State Policy in Brief: Parental Involvement of Minors' Abortions" [http://www.guttmacher.org/statecenter/spibs/spib\\_PIMA.pdf](http://www.guttmacher.org/statecenter/spibs/spib_PIMA.pdf) viewed 04/21/05.

<sup>2</sup> The Allan Guttmacher Association "State Policy in Brief: Parental Involvement of Minors' Abortions" [http://www.guttmacher.org/statecenter/spibs/spib\\_PIMA.pdf](http://www.guttmacher.org/statecenter/spibs/spib_PIMA.pdf) 04/21/05.

<sup>3</sup> Katz, Katheryn D. 1999. "The Pregnant Child's Right to Self-Determination (Symposium on Abortion)." *The Albany Law Review* v.62, i.3 (Spring 1999) p. 1119.

proceedings scheduled during school hours, and concern that confidentiality may be compromised if the minor is recognized by people at the courthouse<sup>4</sup>. Although judicial bypass cases are supposed to take precedence over all other cases, they are at times delayed a week or more, thereby increasing the health risks of the minor (*Hodgson v. Minnesota*, 648 F. Supp. 756, 763-64).

Thirty-two states have laws requiring parental notification or consent. Eighteen require parental consent and fourteen require parental notification. Ohio, Oklahoma, Virginia, and Wyoming require both parental notification and parental consent. Twelve states have parental consent or notification laws whose enforcement has been permanently enjoined by court order. Six states, Connecticut, Hawaii, New York, Oregon, Vermont and Washington have no specific laws regarding abortion specifically pertaining to minors. See Figures 1 and 2.<sup>5 6</sup>

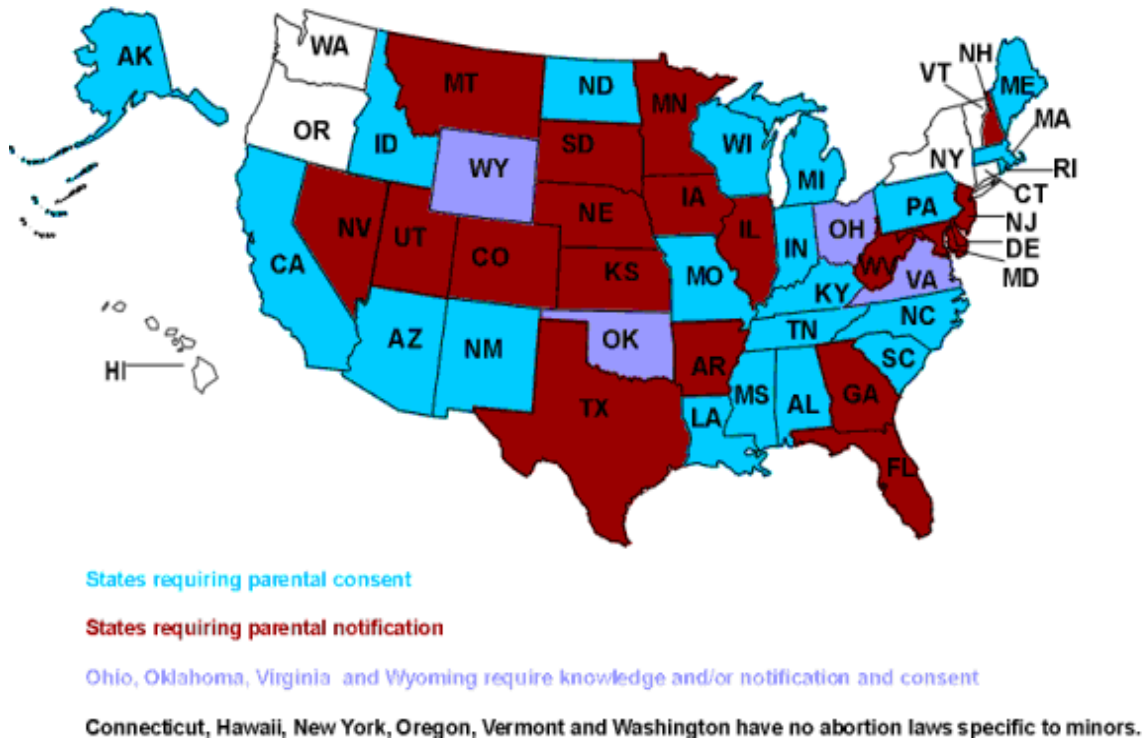
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<sup>4</sup> Bach, Amy. "No Choice for Teens." 1999. *The Nation* v.269, i.11 (October 11). pp. 7-9.

<sup>5</sup> The Allan Guttmacher Association "State Policy in Brief: Parental Involvement of Minors' Abortions" [http://www.guttmacher.org/statecenter/spibs/spib\\_PIMA.pdf](http://www.guttmacher.org/statecenter/spibs/spib_PIMA.pdf) viewed 04/21/05.

<sup>6</sup> National Conference of State Legislatures. "Parental Consent or Notification for Abortion." <http://www.ncsl.org/programs/health/adolabor.htm> viewed 04/21/05.

## Parental Consent or Notification for Abortion



**Figure 1:** Parental Consent or Notification as Prepared by National Conference of State Legislatures as of February 2004<sup>7</sup>

<sup>7</sup> National Conference of State Legislatures. "Parental Consent or Notification for Abortion." <http://www.ncsl.org/programs/health/adolabor.htm> viewed 04/21/05.

PARENTAL INVOLVEMENT IN MINORS' ABORTIONS						
STATE	REQUIRED PARENTAL INVOLVEMENT		ALTERNATIVES		EXCEPTIONS	
	Consent	Notification	Judicial Bypass	Other Adult Relatives	Medical Emergency	Abuse, Assault, Incest or Neglect
Alabama	X		X		X	X
Alaska	▼					
Arizona	X		X		X	X
Arkansas		Both parents	X		X	X
California	▼					
Colorado		X	X		X	
Delaware		X <sup>†</sup>	X <sup>†</sup>	X <sup>†</sup>	X <sup>†</sup>	
Florida		▼				
Georgia		X	X		X	
Idaho	▼					
Illinois		▼				
Indiana	X		X		X	
Iowa		X	X	X	X	X
Kansas		X	X		X	X
Kentucky	X		X		X	
Louisiana	X		X			
Maryland		X*	X <sup>†</sup>			
Massachusetts	X		X			
Michigan	X		X		X	
Minnesota		Both parents	X		X	X
Mississippi	Both parents		X		X	
Missouri	X		X			
Montana		▼				
Nebraska		X	X		X	X
Nevada		▼				
New Hampshire		▼				
New Jersey		▼				
New Mexico	▼					
North Carolina	X		X	X	X	
North Dakota	Both parents		X		X	
Ohio	▼	X	X		X	X
Oklahoma		▼ <sup>‡</sup>				
Pennsylvania	X		X		X	
Rhode Island	X		X			
South Carolina	X <sup>†</sup>		X <sup>†</sup>	X <sup>†</sup>	X <sup>†</sup>	X <sup>†</sup>
South Dakota		X	X		X	
Tennessee	X		X		X	X
Texas		X	X		X	
Utah		X			X	
Virginia	X		X	X	X	X
West Virginia		X*	X <sup>†</sup>		X	
Wisconsin	X*		X <sup>†</sup>	X	X	X
Wyoming	X		X		X	
<b>TOTAL</b>	<b>18</b>	<b>14</b>	<b>31</b>	<b>6</b>	<b>27</b>	<b>12</b>

Note: Except where indicated, policies require the involvement of one parent.

▼ Enforcement permanently enjoined by court order; policy not in effect.

\* Allows specified health professionals to waive parental involvement if judge is unavailable.

† While most states laws apply to minors under 18, South Carolina's law applies to women under 17 and Delaware's law applies to women under 16.

‡ Any person who performs an abortion on a minor without parental consent or knowledge shall be liable for damages.

**Figure 2:** Parental Involvement in Minors' Abortions: Prepared by Allan Guttmacher as of April 1, 2005<sup>9</sup>

<sup>9</sup> The Allan Guttmacher Association "State Policy in Brief: Parental Involvement of Minors' Abortions" [http://www.guttmacher.org/statecenter/spibs/spib\\_PIMA.pdf](http://www.guttmacher.org/statecenter/spibs/spib_PIMA.pdf) viewed 04/21/05.

## Constitutionality

In *Planned Parenthood v. Danforth*, 428 U.S. 52 (1976) the United States Supreme Court held with respect to the Missouri abortion statute that:

“the parental consent provision was unconstitutional, since the state (Missouri) did not have the constitutional authority to give a third party an absolute, and possibly arbitrary, veto over the decision of a physician and his patient to terminate the patient's pregnancy, regardless of the reason for withholding the consent.”

The Supreme Court in 1990 also held that Minnesota's two-parent notification law was unconstitutional, since it lacked a judicial bypass provision and the absence of such a provision failed to further any legitimate state interest *Hodgson v. Minnesota*, 497 U.S. 417, (1990). Five justices did agree, however, that a law requiring two-parent notification that includes a judicial bypass provision is constitutionally permissible. The state of Arizona's parental consent law was overturned in October of 1999 in *Planned Parenthood vs. Lawall*, [No. 98-15862, 1999 WL 962024 (9<sup>th</sup> cir. Oct. 22, 1999)]. The Court cited the Arizona parental consent law was unconstitutional due to a lack of specific time limits for judicial bypass and "open-ended medical emergency provisions." An amended version of the parental consent law was passed in 2000, and was eventually upheld by the 9<sup>th</sup> Circuit Court of Appeals (307 F.3d 783 2002).

In order for parental involvement statutes to stand up to scrutiny, they must include a judicial bypass provision as set forth in *Bellotti v. Baird*, 443 U.S. 622 (1979). There are four criterion required for a valid bypass provision:

1. Allow the minor to bypass the consent or notification requirement if she establishes that she is mature enough and well enough informed to make the abortion decision independently;
2. Allow the minor to bypass the consent or notification requirement if she establishes that the abortion would be in her best interests;
3. Ensure the minor's anonymity;
4. Provide for expeditious bypass procedures.

### **The American Medical Association Weighs In**

The report submitted by the Council on Ethical and Judicial Affairs of the American Medical Association entitled "Mandatory Parental Consent to Abortion," examines the importance of confidential health care for minors. The report concludes that "...while parental involvement in the medical care of children is always important and is generally necessary for significant medical procedures...in certain circumstances parental

involvement can be counterproductive and, unless required by law, should not be mandatory."<sup>10</sup>

The report states that a waiver for minors who have reported abuse by their parents is not sufficient to protect their interests, citing that minors are often reluctant to reveal abuse, the pregnancy may precipitate the first incident of abuse, or psychological/ emotional abuse may result. The AMA Council concludes that physicians should encourage minors to involve their parents, should counsel them objectively on all their options, and should make sure that they are fully informed about the issues involved. The AMA Council also cites that, although minors may not exhibit the same maturity as adults, their medical decision making process, in terms of abortion, does not differ from adults' aged 22-25. The AMA stresses that a minor's need for privacy may be so compelling as to drive them to desperate measures such as running away from home or "back alley" or self-induced abortion.<sup>11</sup>

### **Effects of Parental Notification Legislation**

In Massachusetts, a study found that the parental consent law reduced the number of abortions for minors by half. This reduction was explained by the increase in minor residents traveling to neighboring states for their abortions. There was a small increase in the number of minors who bore children, but the study was unable to determine whether the parental consent law caused any of this data."<sup>12</sup> Abortion rates for 15- to 17-year-olds are higher in cases of pregnancy without parental involvement, 1.82 percent, than in cases of pregnancy with parental involvement, 1.24 percent.<sup>13</sup>

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<sup>10</sup> American Medical Association's Council on Ethical and Judicial Affairs. 1993. "Mandatory Parental Consent to Abortion." *JAMA, The Journal of the American Medical Association* v.269, n.1. (January 6) pp. 82-86.

<sup>11</sup> American Medical Association's Council on Ethical and Judicial Affairs. 1993. "Mandatory Parental Consent to Abortion." *JAMA, The Journal of the American Medical Association* v.269, n.1. (January 6) pp. 82-86.

<sup>12</sup> American Medical Association's Council on Ethical and Judicial Affairs. 1993. "Mandatory Parental Consent to Abortion." *JAMA, The Journal of the American Medical Association* v.269, n.1. (January 6) pp. 82-86.

<sup>13</sup> Altman-Palm, Nancy and Carol Horton Tremblay. 1998. "The Effects of Parental Involvement Laws and the AIDS Epidemic on the Pregnancy and Abortion Rights of Minors." *Social Science Quarterly* v.79, n.4. (December 1998) pp. 846-862.

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**Disclaimer:**

This report has been compiled by undergraduate students at the University of Vermont under the supervision of Professor Anthony Gierzynski. The material contained in the report does not reflect the official policy of the University of Vermont.