RESEARCH ORGANIZATION focus report
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Parental Involvement in Minors' Abortion Decisions

When a pregnant girl who is a minor faces the decision of whether or not to have an abortion, what level of parental involvement in her decision should the state require? Texas lawmakers again are grappling with the complex legal and personal issues surrounding this question, as they have for the past several sessions.

The 1973 U.S. Supreme Court decision in the Texas case *Roe v. Wade,* 410 U.S. 113, generally established women's right to abortion. Female minors have the same right, but the high court has recognized that states may regulate minors' access to abortion by requiring some degree of parental involvement.

Parental consent laws in various states forbid the performance of an abortion on a minor without written consent from at least one parent. Such laws are designed to grant the parent final veto over whether a minor may go ahead with an abortion. However, the U.S. Supreme Court requires that parental consent laws include a provision by which the minor may bypass the parent by going through the court system.

Parental notification laws typically require the minor's physician or someone employed by the physician or clinic to notify at least one parent about the daughter's intent to have an abortion. Except in the case of a medical emergency, if the doctor performs the abortion without notifying the parent, the doctor may be subject to criminal or civil penalties. After notification there is a waiting period before the abortion may be performed, usually one or two days, to allow the parent to counsel the girl on her decision. After the waiting period, the girl may proceed with the abortion.

Most state laws on parental consent and notification provide at least one alternative under which the minor may choose not to involve her parents in her decision — usually by judicial bypass, i.e., going through the courts. Other means of bypass include authorization from a physician, a counselor, or an adult sibling or family member other than the parent.

Under the Texas Family Code, sec. 32.003, a pregnant minor may consent to any surgical treatment involving pregnancy except abortion. This statute has the effect of a parental consent law, but Texas does not enforce it as written because the law fails to provide any means of bypass, leaving it open to possible constitutional challenge. Bills introduced in the 1999 legislative session — such as SB 30 by Shapiro, which passed the Senate by 23-8 on March 18 — would require the physician of a minor seeking an abortion to notify one of her parents at least 48 hours before performing the procedure and would give the minor the option of a judicial bypass.

Supporters of parental involvement laws view the regulation of minors' access to abortion as a parental rights issue. They cite statistics showing that abortions performed on minors have decreased in states that have

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enacted parental involvement laws. Opponents view such regulation as chipping away at legal abortion rights. They say that making it harder for a pregnant minor to get an abortion is not the best way to lower the number of teen abortions and could endanger minors who would seek illegal or out-of-state abortions to avoid the restrictions of mandatory parental or judicial involvement.

Intense debate surrounds the issue of bypass. Many supporters of parental involvement laws would like to limit bypass options to judicial bypass. Opponents claim that judicial bypass is too complex and intimidating for many minors and that the law should provide other bypass options.

Judicial and Other Bypass Options

Judicial bypass allows a minor to go to court to receive authorization to have an abortion without notifying her parent or obtaining the parent's consent. If the judge refuses to grant a judicial bypass, the minor may appeal to a higher court.

In states with judicial bypass, the process generally works as follows. A pregnant minor goes to the county courthouse and tells the court personnel that she wants to obtain an abortion without notifying her parents or obtaining their consent. The minor may use a pseudonym to retain legal confidentiality, and the court documents are sealed. The court appoints a guardian or lawyer to help the girl through the judicial system. The judge hearing her request may ask her any questions that would help the judge make a decision. The judgment must rest on the answers to two questions: (1) Is the minor mature enough to make the abortion decision herself? (2) Is it in her best interest to have the abortion? If the judge answers yes to one of these questions, the judge must grant the bypass.

Laws in some states allow bypass by the girl's physician, a second physician, a counselor, an adult sibling or other family member, a member of the clergy, a psychologist, a social worker, a registered physician's assistant or nurse practitioner, a registered professional nurse, a licensed practical nurse, or a guidance counselor. (See page 6.)

Most parental notification and consent bills before the 1999 Texas Legislature feature two alternatives to notifying the minor's parents: medical emergency and judicial bypass. In a medical emergency, the doctor could determine the need for an abortion and would not be required to notify a parent. Under judicial bypass, a minor could appeal to a judge to allow an abortion. The court would have to hear and decide the case within a set period, probably 24 or 48 hours. If the court delayed past a specific window of time, the abortion would be authorized automatically. The minor would be guaranteed anonymity and provided with legal consultation at the state's expense. Most proposals would require that a probate, county, district, or appeals court judge, rather than a justice of the peace or municipal court judge, hear the minor's petition.

Some bills would allow the minor to seek an evaluation by a licensed mental health professional, who could authorize an abortion. This independent party would determine, using the same standards as the courts, if the minor was mature and well-informed or if there were reasons not to notify a parent.

Supporters of parental involvement say that judicial bypass is a good option for a girl who is mature enough to make an informed decision on her own. The state has a particular interest in allowing a girl to bypass her parent in the case of parental abuse or of rape or incest, if the parent is involved. The state is compelled to look after the child's "best interest," and judicial bypass would enable the state to do this on a case-by-case basis.

Opponents maintain that most judges are not trained to counsel youth and that a judge could ask unfair questions about a girl's sexual history. Many minors would be too intimidated or embarrassed to go to the courthouse to seek special permission to have an abortion.

Legal Status of Parental Involvement Laws

Family Code, sec. 32.003 states that a pregnant and unmarried minor may consent to surgical treatment related to the pregnancy, other than abortion, without parental consent, and may consent to medical treatment for sexually transmitted diseases and drug abuse. Minors may consent to any medical care associated with pregnancy except abortion, including prenatal care, labor and delivery services, and Caesarian section.

Several U.S. Supreme Court decisions have defined the parameters within which parental involvement laws are constitutional. In 1976, in *Missouri v. Danforth*, 428 U.S. 52, the court held that parental consent was unconstitutional because a third party, not the state or the minor, would receive absolute veto power. In 1983, Missouri brought a second parental consent case before the Supreme Court, and this time the court ruled the law constitutional because it included judicial bypass (*Missouri v. Ashcroft*, 462 U.S. 476).

Also in 1976, a Massachusetts parental consent case, *Bellotti v. Baird*, 428 U.S. 132, came before the Supreme Court for the first time. The court found that the law's judicial bypass wording needed interpretation and sent the case back to a lower court with instructions to interpret the statute definitively. The Massachusetts lower court did interpret the law, and the case was appealed back up to the Supreme Court in 1979 and now is known as *Bellotti II*, 443 U.S. 622. In *Bellotti II*, the court struck down the state's definition of judicial bypass and established that a court bypass must satisfy four criteria. First, the court hearing the young woman's request must authorize the abortion if she possesses the maturity to make her decision, regardless of her best interest. Second, regardless of her maturity, her abortion must be permitted if it is in her best interest. The third and fourth requirements of the court proceedings are confidentiality and expediency. The judge then has a limited role in a minor's decision making that does not include counseling.

Since *Bellotti II*, the Supreme Court has upheld or struck down state parental consent laws according to whether or not those laws included a *Bellotti II* judicial bypass. In a 1992 case, *Planned Parenthood v. Casey*, the court found that Pennsylvania's law, requiring the consent of at least one parent for performance of an abortion on a minor, was constitutional. The court did not rule on the constitutionality of judicial bypass specifically but noted that "a state may require a minor seeking an abortion to obtain the consent of a parent or guardian, provided there is an adequate judicial bypass procedure." [505 U.S. 833] All of the 16 states that enforce parental consent laws contain judicial bypass as required.

The Supreme Court decided two significant cases involving parental notification in 1990. In *Ohio v. Akron Center for Reproductive Health* (*Akron II*), 497 U.S. 502, the court upheld Ohio's one-parent notification law, which included judicial bypass, but did not rule specifically on whether a parental notification law does or does not have to include judicial bypass. The second parental notification case that year was *Hodgson v. Minnesota*, 497 U.S. 417, in which the court upheld only the section of that state's two-parent notification law that provided for judicial bypass. Among the 14 states that enforce parental notification laws, all but Idaho, Maryland, and Utah allow judicial bypass. Maryland allows the primary physician to waive notice, while Idaho and Utah have no bypass.

In its most recent decision related to parental involvement, *Lambert v. Wicklund*, 520 U.S. 592 (1997), the Supreme Court upheld Montana's one-parent notification statute, which has a judicial bypass in which the court decides whether notification, rather than the abortion itself, is or is not in the minor's best interest. The court rejected the lower court's interpretation of *Bellotti II* that a court's determination of the best interests of a minor must include more than just considering the consequences of failure to notify one parent. As in *Akron II*, the court specifically declined to decide whether parental notification statutes must include some sort of judicial bypass to be constitutional. In February 1999, a state lower court struck down Montana's parental notification law, ruling that the state constitution's equal-protection clause required a more compelling justification for treating minors seeking abortion differently from minors who carry their pregnancy to term.

Also in February 1999, the Supreme Court refused to hear a Virginia case, *Planned Parenthood of the Blue Ridge v. Camblos*, 155 F.3d 352 (4th Cir. 1997), letting stand a 4th U.S. Circuit Court of Appeals decision that upheld Virginia's one-parent notification law. The 4th Circuit determined that the Supreme Court never has required that a one-parent notification statute include a judicial bypass nor that a judicial bypass of parental notification must follow all the *Bellotti II* requirements for a parental consent judicial bypass. The issue in the Virginia case involved whether, under a parental notification law, a judge who had found a minor to be mature enough to make her own decision still could deny a judicial bypass and require notification. In upholding the law, the 4th Circuit noted a distinction between notice and consent laws. It decided that a minor's right to an abortion would not be burdened unduly if a court exercised its discretion in denying a bypass request because when a state law requires only parental notification, the minor still can have the abortion without the parent's consent.

The 5th U.S. Circuit Court of Appeals, which covers Texas, Louisiana, and Mississippi, has struck down only one parental involvement statute. In *Causeway Medical Suite v. Ieyoub*, 109 F.3d 1096 (5th Cir. 1997), the 5th Circuit found that Louisiana's one-parent consent law was unconstitutional for failing to follow *Bellotti II* standards for judicial bypass because it allowed, rather than required, a judge to waive consent if the judge found the minor to be mature or well-informed or that an abortion would be in her best interest. The court also decided that by not including a specific deadline for the judge to rule, the law violated *Bellotti II*'s requirement that the judicial bypass procedure be expeditious. Finally, the court struck down as violating *Bellotti II* anonymity requirements the law's requirement that the judge had to notify the parents when a minor asked for a judicial bypass if such notice was in the child's best interest.

In *Barnes v. Mississippi*, 992 F.2d 1335 (5th Cir. 1993), cert. den. 510 U.S. 976, the 5th Circuit upheld Mississippi's two-parent consent law, finding that the judicial bypass complied with *Bellotti II*.

Issues Surrounding Parental Notification and Consent

Would a parental involvement law reduce the number of abortions performed on minors?

Supporters say:

As shown in Minnesota, Massachusetts, and other states, abortion rates have dropped for girls under age 18 after the enactment of parental notification or consent laws. From 1981 to 1986, when Minnesota's parental notification law was in effect, the abortion rate for minors fell by one-third. Although abortion rates also fell in age groups unaffected by the law, those rates declined much less than for minors.

Teen pregnancy and teen birth rates also fell in Minnesota during the same period. Minors had fewer abortions because the pregnancy rate decreased, which in turn occurred because minor females and their sexual partners knew about the notification law and behaved more responsibly. Minors who did not want to tell their parents about their sexual activity took precautions to avoid getting pregnant.

Opponents say:

The number of in-state legal abortions may drop after a state enacts a parental involvement law, but pregnant minors who are ashamed or afraid to tell their parents will find a way around the law either by using the bypass procedure or by obtaining illegal or out-of-state abortions.

After Minnesota enacted its parental notification law, the number of abortions declined for all women of childbearing age, not only for minors. The decrease in abortions for minors may have occurred in part because girls seeking abortions traveled to other states, obtained illegal abortions, or lied about their age. Also, the birth rate did not go up after enactment of the law. Minnesota began a statewide sex education program at the same time the law took effect, and that program deserves some credit for reducing the number of teen pregnancies, thereby reducing both birth and abortion rates.

Could a parental notification law with judicial bypass increase medical risk for pregnant girls?

Supporters say:

By involving parents in a medical procedure performed on their children, parental notification laws can reduce the medical risk to minors. Parents are a key source of important medical information that may be relevant to surgery, such as allergies, medical conditions, and medical histories. After a minor has an abortion, a parent who has been notified can watch for and react to any possible negative consequences, such as infection or depression.

If the minor chooses to use judicial bypass, the process will be expeditious. The judge who hears the minor's case must decide within several days. The short delay caused by judicial bypass will not make the abortion more dangerous and may serve the minor well if she needs time to become more informed or reflect on her decision.

Opponents say:

Parental involvement laws endanger young women's health by forcing some to turn to illegal or self-induced abortions or by requiring a waiting period that delays the procedure, increasing the medical risk. If parental notification is mandatory, some minors, even those who have close relationships with their parents, will seek "back-alley" abortions, which can kill young women, maim them for life, or render them infertile. A mandatory waiting period solely to allow the girl to do more soul-searching or to seek more information presumes that she has not done this already, and it is insulting.

Many young women who are pregnant wait as long as possible before seeking medical care and are likely to put off their decisions even longer if required to notify or get consent from parents. Any delay increases the medical risk for a pregnant girl, and the risk grows as the pregnancy progresses. Judicial bypass usually delays access to abortion by a period between four days and several weeks, because a girl must travel to the county courthouse and at least twice to the abortion provider, and she may have to appeal to a higher court.

Does a parent's right to know supersede a minor's right to privacy?

Supporters say:

A parent is responsible for a minor child's health care, including care in pregnancy. The parent should have a right to know about, and consent to, any medical procedure the child engages in. Even legal abortion can be harmful, so parents should have the right to prevent their children from obtaining one. Also, a parental consent law empowers parents to veto the procedure if they believe it is morally wrong. The waiting period built into a parental notification law gives the parent time to communicate moral objections

to the child.

For purposes of liability insurance, some school districts require notification of the parent before giving children aspirin in school, and some ear-piercing businesses also notify the parent. The state at least should require parental notification for the much more serious procedure of abortion.

Opponents say:

Although some parents may believe that a parental involvement law establishes their right to know, such a law does not prevent a pregnant minor from obtaining an abortion. If the minor is assured of confidentiality, as now is the case, she will be more likely to seek a safe, clean, legal abortion rather than resort to an illegal and unregulated one.

In Texas and most other states, minors are assured of confidentiality when they seek sensitive medical services such as pregnancy and delivery, treatment of sexually transmitted disease, and therapy for drug abuse. These conditions often entail greater health risk than abortion, yet the decision is left to the minor and remains confidential.

Mandatory parental notification for abortion cannot be compared to parental notification for receiving aspirin in school or to ear piercing, because school districts have adopted those policies voluntarily to protect themselves from liability concerns.

Would mandated parental involvement improve communication between parents and daughters?

Supporters say:

A parental involvement law gives parents who otherwise might be left out of their daughters' life choices a chance to counsel and advise them. Although young girls may fear that their parents will react abusively, parents often are supportive in these situations. Obviously, the state cannot force a girl to talk to her parents if the groundwork of their relationship is not firm. That is why the alternative of judicial bypass exists. According to the Texas Department of Health, national statistics show that in 1991, four out of ten girls in a sample pool of 1,500 girls who had had an abortion did not involve at least one parent in their decisions. The reason that girls cited most often for not telling their parents was the desire to preserve their relationship with their parents.

In many cases, when a girl under 15 becomes pregnant, she reports having had sex forced on her. If the pregnancy has occurred because of statutory rape, rape, incest, or sexual abuse, the parent needs to know about this to take steps to end the daughter's detrimental relationship and to prosecute if necessary. Also, an older boy friend may coerce the pregnant minor into having an abortion she does not want. A parental notification law would enable the parent to intervene against any negative influence by a boy friend.

Opponents say:

National data indicate that the great majority of all pregnant girls who obtain an abortion involve at least one parent in the decision before doing so. The younger the minor, the more likely she is to notify her parents. Many girls who do not consult a parent talk instead with a trusted adult such as an older sibling, an adult family member, or a teacher. Even a girl who has an open, honest relationship with her mother may not want to discuss sexuality, and especially pregnancy and abortion. While family relationships generally benefit from voluntary and open communication, forcing a girl to notify a parent could prove harmful if the parent is abusive.

When a pregnant minor's boyfriend or other male partner is involved in her decision whether or not to have an abortion, he generally has more influence in keeping the baby, according to a study reported in *Family Planning Perspectives,* September/October 1992. In cases where the minor has become pregnant through statutory rape, rape, incest, or sexual abuse, Texas Family Code, sec. 261.109 already requires the doctor to report this to law enforcement or child protective enforcement officials, who may then elect to involve the parents or may protect the minor from the parent.

— by Heather Brandon

Parental Involvement Laws in Other States

To date, 39 states have enacted some form of parental involvement law, although in nine of those states, courts have enjoined the law or the state does not enforce it. The majority of these nine state laws either have been found to violate the state constitution or have been suspended under permanent or preliminary court injunction.

States may require consent from or notification of one or both parents before the abortion can occur. Some states have expanded the definition of the notified or consenting adult to include grandparents, an adult family member, a step-parent, or an adult sibling.

Among states surrounding Texas, Louisiana requires the minor to obtain one parent's consent for an abortion. New Mexico also requires one parent's consent, but the state's pre-*Roe* law is unenforced because the attorney general determined there is no constitutionally required bypass. Arkansas requires the notification of two parents. Oklahoma has no law addressing parental involvement.

Minnesota is often a case study for abortion issues because the state has collected and released thorough data on abortions since 1975. Because of the on-again, off-again nature of Minnesota's parental notification law, researchers can examine the statistics on teen birth and abortion rates for evidence of the effects of having and not having the law.

In 1981, Minnesota enacted a two-parent notification law that remained in effect until 1986, when a lower court enjoined it. In 1990, the U.S. Supreme Court upheld the version of the law that included judicial bypass, and the law, with judicial bypass added, took effect again.

In 1997, the *American Journal of Public Health* reported a study of Minnesota's rates of birth, in-state abortion, interstate travel of minors for abortion, and late abortion for minors from 1977 to 1990. The study found that birth rates did not rise when parental notice laws were in effect, nor did they fall when the laws were enjoined. In-state abortion rates declined in periods when parental notice was required, interstate travel for abortions increased somewhat, and in-state abortions for minors "were probably delayed into the second month of pregnancy, although probably not into the second trimester."

Minnesota recently enacted new reporting rules for all abortions. Doctors must use a checklist to pinpoint women's motives for obtaining abortions. Reporting requirements include the number of abortions performed by individual doctors, post-abortion complications, and form of payment. Supporters of this new law hope the required information will reveal why women have abortions and how abortions might be prevented. Opponents call the questionnaire a harassment technique and fear that release of the information could put doctors' lives in danger.

Connecticut requires neither parental consent nor notification for an abortion, but requires every minor under age 16 who seeks an abortion to receive counseling. Counselors are defined broadly to include psychiatrists, psychologists, social workers, therapists, members of the clergy, physician's assistants, midwives, guidance counselors, and nurses. The counseling must address specific topics, including the possibility that the minor could include one or both parents in her decision.

Maryland's one-parent notice law does not allow judicial bypass, but assigns the bypass decision to the primary physician, who may waive the notification requirement upon determining that the minor is mature and capable of giving informed consent to an abortion or that notifying a parent would not be in her best interest.

Massachusetts enforces a one-parent consent law that includes judicial bypass. According to a 1996 report by the *American Journal of Public Health*, a study of this state's abortion statistics after the law took effect found that abortions performed on minors dropped by around 40 percent, while abortions performed on minors in states surrounding Massachusetts rose by the same percentage. The study stated that "Massachusetts minors continue[d] to conceive, abort, and give birth in the same proportions as before the law was implemented."

In 1986, **Mississippi** enacted a two-parent consent law that included judicial bypass. The law allowed consent by one parent if the other was not available in a reasonable time and manner. The law was challenged the same year it was enacted and was unenforced until 1993. That year, the 5th U.S. Circuit Court of Appeals upheld the law because it contained judicial bypass, and the U.S. Supreme Court refused to hear the appeal. A study reported in *Family Planning Perspectives* in June 1995 found that the number of abortions obtained by minors in Mississippi declined after the law was enacted

Parental Involvement Laws by State, January 1999

State	1 Parent	2 Parent	Consent	Notice	Judicial Bypass	Alternate Bypass	Enjoined/Not Enforced	No Law
Alabama	✔		✔		✔			
Alaska	✔		✔		✔		✔	
Arizona	✔		✔		✔		✔	
Arkansas		✔		✔	✔			
California	✔		✔		✔		✔	
Colorado		✔		✔			✔	
Connecticut	(requires the minor to receive counseling)							
Delaware	✔			✔	✔	✔		
Florida								✔
Georgia	✔			✔	✔			
Hawaii								✔
Idaho		✔		✔				
Illinois	✔			✔	✔		✔	
Indiana	✔		✔		✔			
Iowa	✔			✔	✔			
Kansas	✔			✔	✔			
Kentucky	✔		✔		✔			
Louisiana	✔		✔		✔			
Maine	✔		✔		✔	✔		
Maryland	✔			✔		✔		
Massachusetts	✔		✔		✔			
Michigan	✔		✔		✔			
Minnesota		✔		✔	✔			
Mississippi		✔	✔		✔			
Missouri	✔		✔		✔			
Montana	✔			✔	✔		✔	
Nebraska	✔			✔	✔			
Nevada	✔			✔	✔		✔	
New Hampshire								✔
New Jersey								✔
New Mexico	✔		✔				✔	
New York								✔
North Carolina	✔		✔		✔	✔		
North Dakota		✔	✔		✔			
Ohio	✔			✔	✔	✔		
Oklahoma								✔
Oregon								✔
Pennsylvania	✔		✔		✔			
Rhode Island	✔		✔		✔			
South Carolina	✔		✔		✔	✔		
South Dakota	✔			✔	✔			
Tennessee	✔		✔		✔		✔	
Texas								✔
Utah		✔		✔				
Vermont								✔
Virginia	✔			✔	✔			
Washington								✔
West Virginia	✔			✔	✔	✔		
Wisconsin	✔		✔		✔	✔		
Wyoming	✔		✔		✔			
U.S. Total	**32**	**7**	**21**	**18**	**34**	**8**	**9**	**10**

Source: National Abortion and Reproductive Rights Action League.

Teen Pregnancy and Abortion

The Alan Guttmacher Institute, a nonprofit research corporation with offices in New York and Washington, provides the following statistics about teen pregnancy and abortion in the U.S.

- Each year, almost 1 million teenage women become pregnant.
- Between three-quarters and four-fifths of teen pregnancies are unplanned, accounting for about one-quarter of all unplanned pregnancies annually.
- About 13 percent of births occur to teenage mothers. Of those, three-quarters occur to teens outside of marriage.
- Teen pregnancy rates are much higher in the U.S. than in many other developed countries — twice as high as in England and Canada, nine times as high as in the Netherlands and Japan.
- Nearly four in 10 teen pregnancies end in abortion, excluding miscarriages.
- In 1994, about 55 percent of teen pregnancies ended in birth, 32 percent ended in abortion, and 14 percent ended in miscarriage.
- One-quarter of all teenage mothers have a second child within two years of their first.
- Teens who give birth are much more likely to come from poor or low-income families (83 percent) than are teens who have abortions (61 percent) or teens in general (38 percent).
- Fathers of babies born to teenage mothers are likely to be older than the women. About one in five births to unmarried minors are fathered by men at least five years older than the mother.

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