



## **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

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>

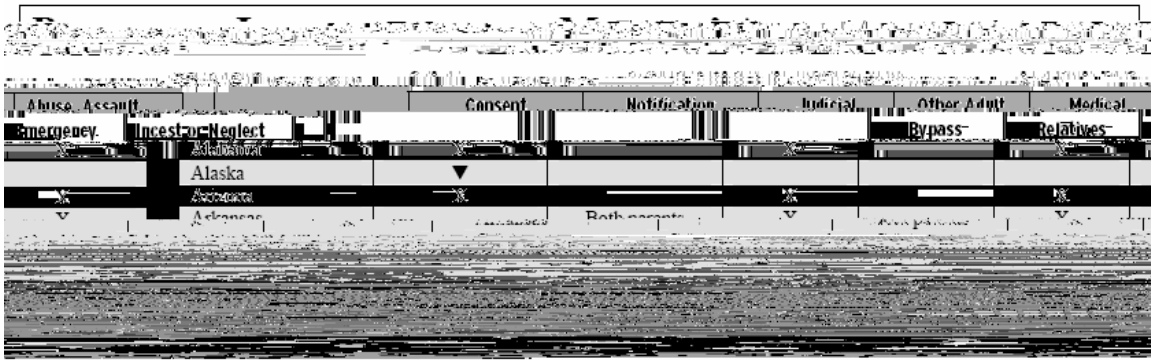
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<sup>4</sup> Bach, Amy. "No Choice for Teens." 1999. *The Nation* v.269, i.11 (October 11). pp. 7-9.

<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/program>





**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

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 neighbori

## References

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