Parental Involvement Laws
Protecting Minors and Parental Rights

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In 2011, Connecticut—one of 12 states without a law requiring parental consent or notification before a minor may obtain an abortion—drew national attention when legislative consideration of a bill that would require parental consent for the use of tanning parlors evolved into an abortion debate. One brave legislator confronted his colleagues with a disturbing fact: while the state requires parental consent for tattooing and body piercing, and now intended to extend that requirement to the use of tanning parlors, minors may obtain an abortion in Connecticut without any parental involvement. However, when the state senator tried to add a provision requiring parental consent for abortion to the bill, the legislature abandoned it altogether.¹

It is difficult to comprehend the Connecticut legislature’s strong opposition to a law requiring parental consent prior to a minor’s abortion, when parental consent laws boast a 71 percent nationwide approval rating,² protect the health and well-being of minors, respect parental rights, and save the lives of unborn babies. In fact, this popular type of legislation saw a rebirth in 2011, with at least twenty-four states considering one or more measures to enact new or strengthen existing consent or notification requirements. Six of these states were successful, and at least one additional state will have a parental notice law on the 2012 ballot.

Why the interest in and support for these laws? The medical, emotional, and psychological consequences of abortion are often serious and can be lasting, particularly when the patient is immature. Moreover, parents usually possess information essential to a physician’s exercise of his or her best medical judgment concerning the minor. Parents who are aware that their daughter has had an abortion may better ensure the best post-abortion medical attention. Further, minors who obtain “secret” abortions often do so at the behest of the older men who impregnated them, and then return to abusive situations. News stories frequently reveal yet another teen that has been sexually abused by a person in authority—a coach, teacher, or other authority figure. Daily, teens are taken to abortion clinics without the consent or even the knowledge of their parents. Minors are at risk in every state in which parental involvement laws have not been enacted or are easily circumvented.

In addition, parental involvement laws save the lives of unborn babies by reducing the demand...
for abortions by minors. For example, a 1996 study revealed that “parental involvement laws appear to decrease minors’ demands for abortion by 13 to 25 percent.” A 2008 study showed that parental consent laws reduce the minor abortion rate by 18.7 percent. With the loving support of their parents, many young women are able to bring their babies into the world and not face the physical risks and emotional devastation that an abortion can bring.

ISSUES

Parental Involvement

The U.S. Supreme Court has reviewed statutes requiring parental consent or notification before a minor may obtain an abortion on eleven occasions. The Court’s decisions in these cases provide state legislators with concrete guidelines on how to draft parental involvement laws that will be upheld by the courts.

Based upon Supreme Court precedent and subsequent lower federal court decisions, a parental involvement law is constitutional and does not place an undue burden on minors if it contains the following provisions:

- For consent, no physician may perform an abortion upon a minor or incompetent person unless the physician has the consent of one parent or legal guardian. For notice, no physician may perform an abortion upon a minor or incompetent person unless the physician performing the abortion has given 48 hours notice to a parent or legal guardian of the minor or incompetent person.

- An exception to the consent or notice requirement exists when there is a medical emergency or when notice is waived by the person entitled to receive the notice.

- A minor may bypass the requirement through the courts (i.e., judicial waiver or bypass).

AUL has drafted both a model “Parental Consent for Abortion Act” as well as a “Parental Notification of Abortion Act,” which are based upon Supreme Court precedent and take into consideration the following issues.

Judicial Bypass

In Bellotti v. Baird (Bellotti II), the Court held that a State which requires a pregnant minor to obtain one or both parents’ consent to an abortion must “provide an alternative procedure whereby authorization for the abortion can be obtained.” This procedure must include the following four elements:

1. An allowance for the minor to show that “she is mature enough and well enough informed to make her abortion
decision, in consultation with her phy-
sician, independently of her parents’
wishes”;

2. An allowance for the minor to alter-
atively show that “even if she is not
able to make this decision indepen-
dently, the desired abortion would be
in her best interests”;

3. The proceedings in which one of these
showings is made must be “completed
with anonymity”; and

4. The proceedings in which one of these
showings is made must be “completed
with . . . sufficient expedition to pro-
vide an effec-
tive oppor-
tunity for an
abortion to be
obtained.”

In the 1992 case *Planned Parenthood v. Casey*,
a plurality of the United States Supreme Court
reaffirmed that a state may constitutionally
“require a minor seeking an abortion to obtain
the consent of a parent or guardian, provided
that there is an adequate judicial bypass pro-
cedure.” The Court further held that an excep-
tion to the parental consent requirement for a
“medical emergency” was sufficient to protect
a woman’s health, and imposed “no undue bur-
den” on a woman’s access to abortion.

The Court noted that the lower court construed
the phrase “serious risk” in the definition of
“medical emergency” to include serious condi-
tions that would affect the health of the minor.
The Court of Appeals stated, “We read the
medical emergency
exception as intended
by the Pennsylvania
legislature to assure
that compliance with
its abortion regula-
tions would not in any
way pose a significant
threat to the life or
health of a woman.” Based on this reading,
the Court in *Casey* held that the medical emer-
gency definition “imposes no undue burden on
a woman’s abortion right.”

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**Parental Involvement Enhancements**

Tragically, it is often easy for abortion provid-
ers to sidestep a law requiring parental consent
or notice by claiming they were “duped” into
accepting consent from or providing notice to
individuals fraudulently representing them-
selves as the parents of minors. Other potential
loopholes in parental consent or notice statutes
include the inappropriate use of an emergency
exception by an abortion provider, exploitation of the judicial bypass system through “forum shopping,” a low burden of proof for a minor to show that she is mature enough to make her abortion decision on her own or that parental consent or notice is not in her best interest, and a lack of guidance to courts on how to evaluate a minor’s maturity or best interest.

To assist states in better protecting minors and parental rights, AUL has drafted a model “Parental Involvement Enhancement Act” to reinforce existing parental involvement laws with the enhancements discussed below.

Identification and Proof of Relationship

In parental consent states, a consenting parent or guardian should be required to present government-issued identification before a minor obtains an abortion. In parental notice states, a parent or guardian should be required to present identification when waiving the right to notice. In addition to providing identification, a parent or guardian should provide documentation proving that they are the parent or legal guardian of the minor seeking an abortion. Copies of the identification and proof of relationship must then be kept by the abortion clinic in the minor’s medical records. When such actions are required, ignorance of an adult’s true identity is no excuse for failing to follow the law.

Notarized Consent or Waiver of Notice

Another method states may utilize to ensure that the appropriate person is providing consent or waiving notice is to require either the notarization of parental consent forms in consent states, or the notarization of notice waivers in notice states. Like the identification and proof of relationship requirements discussed above, notarization requirements help ensure that the correct person has consented to or has been made aware of plans to perform an abortion on a minor. Further, it is challenging for abortion providers to subvert this requirement.

Venue

Some judges or courts are more inclined to grant judicial waiver requests than others. Undoubtedly, abortion providers know which judges or courts are “friendly” to subverting parental rights, and may guide minors to seek a bypass in their chambers. To prevent this and better protect minors, states may require a minor to seek a bypass in a court of jurisdiction within her home county.

Burden of Evidence

States may require courts to find “clear and convincing evidence”—evidence showing a high probability of truth of the factual matter at issue—that a minor is either (1) sufficiently mature and well-informed to consent to an abortion without parental involvement, or (2) that an abortion without parental involvement is in her best interest. “Clear and convincing evidence” is an intermediate standard of proof—higher than “preponderance of the evidence” (more likely than not), but lower than “beyond a reasonable doubt” (used in criminal cases). While judges have broad discretion under most parental involvement laws, with their decision to grant a bypass not subject to review, the “clear and convincing evidence” standard better ensures that judges carefully examine and weigh the facts presented to them in a bypass proceeding.
Judicial Bypass Standards and Mental Health Evaluations

Courts benefit from the provision of specific standards for judicial review in evaluating judicial bypass petitions. Currently, most consent and notice requirements contain very basic criteria, simply requiring that the minor be mature enough to make the decision, or requiring that the abortion be in the minor’s “best interest.”

An Arizona appellate court case\(^{13}\) delineated criteria that a judge should use in evaluating the maturity of a minor petitioning for judicial bypass. It is an excellent example of how, based upon Supreme Court precedent, the more basic judicial bypass requirements can be enhanced.

To further assist courts with their evaluation, states may permit a court to refer a minor for a mental health evaluation. This type of measure protects minors from their own immaturity or from coercion or abuse by others.

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**KEY TERMS**

- **Parental involvement** laws are those laws requiring parental consent or notification prior to the performance of an abortion on a minor. **Parental consent** laws require that a parent or legal guardian consent to the abortion, while **parental notification** laws require a parent or legal guardian to be notified that a minor will be having an abortion.

- A **medical emergency** occurs when a patient has a condition which, on the basis of the physician’s good faith medical judgment, so complicates the medical condition of the patient as to necessitate an immediate abortion in order to avert the patient’s death. A medical emergency also exists if a delay will create a serious risk of substantial or irreversible impairment of a major bodily function.

- **Judicial bypass** is the means by which a minor can petition a circuit court for waiver of the parental consent or notice requirements. Such court pro-
ceedings are confidential and expeditious. If a court finds that the minor is sufficiently mature and well-informed to decide on her own whether to have an abortion, the court issues an order authorizing the minor to have the abortion without parental consent or notice. A court may also issue such an authorization if it finds one of the following, depending on how the state law is written: (a) an abortion is in the best interest of the minor; (b) an abortion without consent or notice is in the best interest of the minor; or (c) consent or notice is not in the best interest of the minor.

**MYTHS & FACTS**

**Myth:** Some teens do not even live with their parents. Involving the parents of these teens will be impossible and totally unrelated to the teen’s health.

**Fact:** Parental involvement legislation recognizes that many family situations are less than ideal. Alternative procedures are available through judicial bypass.

**Myth:** Mandatory parental involvement laws will force many teens to go out of state to obtain an abortion.

**Fact:** As more states enact and enforce parental involvement laws, the option to go out of state will cease to exist, and parental rights and protections for minors’ health will continue to expand. Migration to other states is a reason to pass parental involvement laws, not to avoid them.

**Myth:** Parental involvement laws simply delay teens from getting abortions until the second trimester, when abortion is more dangerous.

**Fact:** This myth is directly contrary to data from both Minnesota and Missouri.

**Myth:** Parental involvement laws force teens to obtain dangerous illegal abortions.

**Fact:** The majority of states have working parental involvement laws. Only one case—that of Becky Bell in Indiana—has been suggested to involve an unsafe abortion, and even that case is wholly undocumented. The autopsy report failed to show any induced abortion. It is terrible public policy to fail to enact a law on the basis of an isolated, unproven case.

**Myth:** Parental involvement laws expose teens to the anger of abusive parents.

**Fact:** Minors who fear abuse have the option of utilizing the judicial bypass procedure; further, in some states a teen who tells a physician that she has been abused or neglected is exempt from the law’s requirements entirely. In addition, parental involvement laws make it more likely that a minor who is being abused or neglected will get the help she needs; in most states, physicians who become aware of abuse claims must report the abuse allegation to public officials who conduct an anonymous investigation.

**Myth:** Most teens are mature enough to make their own decisions.

**Fact:** Young teens often have difficulty assessing long-term consequences and generally have narrow and egocentric views of their problems. Parental involvement is needed to give teenagers some perspective. Moreover, the question is not simply of maturity, but of responsibility. As long as a teenager is not emancipated, a parent or guardian is responsi-
ble for her medical care and upbringing. When a teen is injured by an abortion, it is the parent or guardian—not the teen—who is responsible for the teen’s care and health costs.

Endnotes
6 The Supreme Court held in Lambert v. Wicklund that a “judicial bypass procedure requiring a minor to show that parental notification is not in her best interests is equivalent to a judicial bypass procedure requiring a minor to show that abortion without notification is in her best interests.” Lambert, 520 U.S. at 297 (emphasis added).
7 Id. at 291.
8 Akron II, 497 U.S. 511; See also Hodgson, 497 U.S. at 461; Lambert, 520 U.S. at 295.
9 Casey, 505 U.S. at 899.
10 Id. at 879-80.
11 Id.
12 Id.