

# FACT SHEET: PARENTAL INVOLVEMENT LAWS & JUDICIAL BYPASS

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## WHAT ARE PARENTAL INVOLVEMENT LAWS?

37 states require some sort of parental involvement in a minor's decision to obtain an abortion.<sup>1</sup> The two most common types of these laws are: parental consent, which requires consent from one or both parent(s) before a minor obtains an abortion, and parental notification, which requires one or both parent(s) to be notified in advance (typically 24 to 48 hours). Currently in the Southeast, Alabama, Arkansas, Kentucky, Louisiana, North Carolina, South Carolina (applying to minors younger than 17), and Tennessee require consent of at least one parent; Mississippi requires consent of both parents. Virginia requires notification and consent of at least one parent, and Florida and Georgia require notification of at least one parent.<sup>1</sup> Some states, including North Carolina, South Carolina, and Virginia allow other adult relatives to give consent.<sup>1</sup>

## WHAT IS JUDICIAL BYPASS? HOW DOES IT WORK?

The judicial bypass is court hearing at which minors ask permission from a judge to seek an abortion without notifying or obtaining consent from their parent(s). The Supreme Court ruled in *Bellotti v. Baird* (1979) that state parental involvement requirements are constitutional only if the law includes an alternative process that is confidential and expedient.<sup>2</sup> Upholding *Bellotti*, the Court in *H.L. v. Matheson* (1981) affirmed that parental involvement laws are constitutional so long as they provide an alternative to parental consent or notice for minors who demonstrate they are either mature enough to make the decision themselves or that it is in their best interest to bypass parental approval.<sup>3-4</sup> Procedures may vary by state, but most state statutes provide minors access to court-appointed counsel or guardian ad litem. For example, in Georgia, a minor may file a petition in any juvenile court. Court proceedings are "sealed" to protect the anonymity of the minor. A Georgia court's decision must be given within 24 hours of the hearing. If the bypass is granted, the minor will present documentation from the court to their abortion provider.<sup>5</sup>

## WHAT ARE THE CHALLENGES ASSOCIATED WITH JUDICIAL BYPASS?

### Time and transportation challenges

In order to receive a judicial bypass, a minor must research what judicial bypass is, potentially seek legal counsel to represent them, file a petition, and appear before a court to obtain an abortion from a healthcare provider. The minor must also take time off of school, work, or other commitments as well as find transportation to clinics, the court hearing and any meetings with their lawyers, all without the knowledge of their parents, friends, or others they do not want to know about their decision to seek an abortion.<sup>6-7</sup> Minors must also seek funding for abortion, without federal assistance and often without state help, erecting a further obstacle to care.<sup>8-9</sup>

## **Gaps in information and judge recusals**

The process of learning about and obtaining the papers necessary to proceed with a judicial bypass hearing can be difficult. Additionally, judges may recuse themselves from these cases based on moral, religious, or other grounds; judicial schedules can also make the timing of hearings complicated. This creates an extra barrier where, if permitted by law, the minor must travel to a judge in a neighboring county who is willing to accept the case. For example, researchers found that the majority of judges in Memphis, Tennessee refused to hear cases, while in Alabama, 25 out of 67 counties were ill prepared to handle judicial bypass cases and six were completely unwilling to hear them. In fact, most courts in Alabama did not inform minors of their state right to court-appointed counsel, one of the most important provisions of the bypass statute.<sup>10</sup>

## **WHAT ARE THE IMPLICATIONS OF PARENTAL INVOLVEMENT LAWS?**

### **Minors travel to states with less strict or no parental involvement laws**

Some studies have shown that after implementation of parental involvement laws, the abortion rate among young people remains relative to adults or older teens for whom the requirement does not apply (ages 18 to 19). Research indicates that this is due to minors traveling out of state to obtain an abortion.<sup>11-12</sup> This is particularly the case when minors live in states with parental involvement laws that are bordered by states that have a less restrictive or no parental involvement laws.

### **Gestational age at time of abortion may increase**

Studies have shown that parental involvement laws cause delays in accessing abortion care and increase the average gestational age at time of abortion among minors.<sup>13-14</sup> Minors of all ages are more likely to present to clinics seeking abortion services on average one week later than adults.<sup>15</sup> While minors who obtained parental consent received their abortion on average 8.6 days after initial contact with a clinic, those who used judicial bypass waited 14.8 days.<sup>14</sup> Delays mean minors are also more likely to present to clinics in the second trimester of pregnancy than adults and have a higher odds of becoming ineligible for a medication abortion.<sup>14-15</sup> For example, following implementation of Missouri's parental involvement law, the proportion of second-trimester abortions among minors increased by 17%.<sup>6</sup>

## **WHY PARENTAL INVOLVEMENT LAWS ARE UNNECESSARY**

### **Young people may consent to prenatal and childbirth care, but not abortion**

Every state allows minors to consent to at least one or more types of medical services, which may include: contraceptives, prenatal care, childbirth and delivery services, diagnosis and treatment of STIs or contagious diseases, HIV-related care, and inpatient or outpatient mental health care.<sup>16</sup> For instance, in some states a minor who was denied a judicial bypass (meaning they couldn't seek an abortion without involving one or both parents) could later be able to legally consent to prenatal and childbirth services, and also to provide consent to their infant's medical care, all without their own parents' involvement.<sup>16</sup>

## Youth are confident in their abortion decisions

Minors are confident in their decision to pursue an abortion. A survey showed that 81% had high confidence in their decision. The most important reasons cited by minors for seeking an abortion were that continuing the pregnancy would cause economic hardship (80%) and interfere with school or employment (82%).<sup>15,17</sup> A qualitative study found that more than two-thirds of minors interviewed gave more than one reason for choosing to have an abortion, including feeling unprepared to raise a child and concerns about disrupting future plans such as attending college.<sup>18</sup>

## Most young people already consult with their parents or trusted adults before an abortion

Parental involvement laws seek to facilitate communication between parents and minors. However, the majority of minors who become pregnant already communicate with a parent about abortion, even in states without parental involvement laws.<sup>15,16,19</sup> In fact, among minors who indicated their mother was aware of their decision to obtain an abortion, 93% indicated maternal support for their decision.<sup>19</sup> Among the minority that do not wish to involve their parent, some cite family trauma, substance abuse, adverse childhood experiences or fears that disclosing pregnancy or abortion could put them at risk.<sup>15</sup> Additionally, even when minors do not involve their parent in their abortion decision, most at least involve another adult.<sup>12,17</sup>

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