

Parental involvement laws: How good are the alternatives to involving a parent?

ABSTRACT

Parental Involvement laws require parental permission or notice prior to a minor obtaining an abortion. Given the potential barriers to services that these laws may present, it is critical to consider their affect on minors and on the safety of the abortion procedure. Here, we review literature on a particular group of minors: those who cannot or do not want to involve a parent. For these minors, there are some alternatives to involving a parent, including: obtaining a medical exemption, involving a guardian or other adult relative, seeking judicial bypass, and travelling to another state. Yet, these alternatives may entail significant roadblocks. For example, although these laws mandate expediency in the judicial bypass process, some courts are not prepared or willing to hear judicial bypass cases. The geographic location or configuration of states without parental involvement laws can make interstate travel challenging or impossible. Indeed, the literature reveals that some minors nearing their 18th birthday wait until they turn 18 so they can avoid the parental involvement requirement. Thus, despite alternatives to parental involvement, delays can occur. Delayed procedures limit which abortion procedure is available, may increase the risk of complications, and may limit access to abortion altogether. Thus, while teens who choose not to involve a parent do have alternatives, the quality of these alternatives is questionable.

BACKGROUND

The majority of states now have parental involvement (PI) laws in effect. Parental involvement law is an umbrella term for both parental consent and parental notification laws. Parental consent laws require one or both parents to give permission, in most cases written, for their daughter to obtain an abortion. Parental notification laws require one or both parents to be informed prior to their daughter obtaining abortion services.

Minors living in states with PI laws who do not want to or cannot involve a parent in their abortion decision may

still obtain an abortion, but delays may result. Thus, it is important to consider the effect of these laws on the abortion timing because of the potential harms that can be caused by delay.

Abortion is a safe medical procedure, however, abortion complications increase with gestational age. With each week of gestation beyond eight weeks, the risk of mortality of abortion increases by 38%.¹ After nine weeks gestation, medical abortion is no longer an option.² In many counties, access to surgical abortion is limited; in

addition, there are some counties in which medical abortion is the only option.² Thus, abortion delays carry consequences.

This policy brief provides information on the main alternatives available to minors living in states with parental involvement laws who want to obtain an abortion without parental involvement. It examines the evidence on delay in obtaining an abortion associated with these alternatives.

PARENTAL INVOLVEMENT LAWS

Currently, 34 states enforce parental consent, notification, or both types of laws: 20 states enforce a consent law, 10 states enforce a notification law, and four states enforce both types of laws.^{3,4} These laws vary in form from state to state.

Seven other states – Alaska, California, Illinois, Montana, Nevada, New Jersey, and New Mexico – have PI laws that were enacted by their legislatures but were later enjoined by court order and, as a result, are currently not enforced.³

ALTERNATIVES TO PARENTAL INVOLVEMENT

Exemptions to Parental Involvement

Among the 34 states with PI laws, 31 include a medical emergency exemption such that if the minor's life is in immediate danger, parental involvement is not required. Three states - Missouri, Ohio, and Rhode Island - do not waive consent in the case of medical emergency. Only 14 of the 34 states with PI laws permit a minor to have an abortion without parental involvement in cases of assault, incest, rape, or neglect.³

Involvement of Guardian

Among the 34 states with PI laws, 29 allow a guardian to give consent or be notified about the abortion instead of a parent. In three of the remaining five states (Massachusetts, Pennsylvania and Rhode Island) guardians can consent to the procedure only if the minor's parents are deceased or unavailable to the physician in a reasonable amount of time.⁵

Involvement of other Adult Relatives

Among the 34 states with PI laws, six allow a minor to notify or obtain consent from another adult relative (e.g., grandparent, aunt) in lieu of her parent(s). These six states differ on which adult relative can be notified or give consent and under what circumstances (e.g., some states require the adult relative to be living with the minor while other states do not).^{3,5}

Judicial Bypass

In order to ensure a minor's constitutional right to medical care, the Supreme Court has mandated that parental *consent* laws must include a judicial bypass provision.^{1,6} The bypass provision allows a minor to obtain a court order waiving the parental involvement requirement if the judge concludes that she is both mature and sufficiently well informed to make the decision to have an abortion, or that the abortion would be in her best interest. If the judge concludes that the minor is mature and informed, the petition must be granted. If the judge concludes that the minor is not mature and informed, the judge must then decide if the abortion is nonetheless in the minor's best interest.⁹ Thus, for minors who choose judicial bypass, judges have the power to approve or overrule the minor's decision to obtain an abortion.

Interstate Travel

Minors who cannot or do not want to involve a parent in their abortion decision may also choose to travel to a state without a PI law in effect. Currently, 16 states (including Alaska and Hawaii) and the District of Columbia do not enforce a PI law.^{3,10}

ABORTION DELAY ASSOCIATED WITH JUDICIAL BYPASS AND INTERSTATE TRAVEL

A review of the research literature, revealed no studies examining the association between exemptions to parental

¹ In *Bellotti v. Baird* (1979), the Supreme Court first held that a law mandating parental consent but allowing minors to go to court to obtain a judicial waiver for this requirement was constitutional.⁶ The Court has not addressed the question of whether a law mandating parental notification *must* have a similar "bypass" procedure, but has consistently upheld laws that do.^{7,8}

involvement, guardianship, or other adult relative alternatives and abortion delay. Thus, here we focus on judicial bypass and interstate travel.

Judicial Bypass and Requests Granted

The judicial bypass process has been described as creating burden, stress, and humiliation for minors.¹¹ Yet, a 1987 study that investigated the impact of a Minnesota parental notification law found that 32.4% of minors who lived in Minnesota and sought abortion services chose judicial bypass over parental involvement or interstate travel.¹² While national statistics on outcomes of judicial bypass hearings do not exist, studies from two states, Minnesota and Massachusetts, found that virtually all bypass petitions that came before judges were granted. In Minnesota, only nine of 3,573 petitions were denied.^{ii,13} In Massachusetts, only 13 of 15,000 bypass petitions were denied, and 11 of these denials were eventually reversed on appeal.¹⁴ These data suggest that in these states the vast majority of minors who participate in a judicial bypass hearing are judged to meet the standard for a bypass waiver. However, lack of data from other states makes it difficult to generalize these findings.

Judicial Bypass and Delay

Undergoing the judicial bypass process by its very nature delays abortion, but to what degree is unclear. There are some data suggesting that not all courts are willing or prepared to handle judicial bypass petitions. A 1983 study found abortions for minors were delayed because judges refused to hear cases or hearings for bypass petitions were not handled expeditiously. These cases routinely resulted in two-to-four day waiting periods with some being delayed as long as one week.¹⁵ In a 2001 study of how preparedⁱⁱⁱ Alabama courts were to implement the state's parental consent law, court employees responsible for handling judicial bypass waiver petitions in six of the state's 67 counties indicated that a minor must petition

for the bypass waiver elsewhere due to the juvenile court judges' views on abortion and the bypass waiver option.¹⁶

Even when the courts are given ample time to prepare for cases, findings from studies since the late 1990s indicate that minors may have limited access to judicial bypass in some states. Indeed, some states that implemented involvement laws more than 20 years after *Roe v. Wade* were woefully unprepared to implement or handle bypass hearings, thereby delaying abortion procedures for minors. In a 1997 study of Pennsylvania counties' response to judicial bypass procedure inquiries three years after the state's parental consent law went into effect, only 10 of the 60 state judicial districts were prepared to initiate a bypass procedure or supply an inquiring party with a third-party referral^{iv} who could start processing the bypass petition.¹⁷

In a 2001 study of Alabama counties' response to judicial bypass petition inquiries 14 years after the state's parental consent law went into effect, 25 of the state's 67 counties were unprepared to handle a judicial bypass petition inquiry (i.e., the juvenile court was unfamiliar with the bypass waiver option or responded to an inquiry by stating it does not handle bypass petitions).¹⁶ A study of the courts in three states with PI laws (Alabama, Tennessee, and Pennsylvania) concluded that just over half (51%) of the courts "proved absolutely or materially ignorant of their responsibilities under their state's judicial bypass provision."¹⁸

Interstate Travel Use

Early studies (conducted when fewer states had PI laws in effect) consistently found that minors who lived in states with PI laws would travel to neighboring states (without PI laws) for an abortion.¹⁹⁻²² In Massachusetts, for example, the number of in-state abortions among resident minors fell by 43% in the 20-month period after its 1981 consent law went into effect. During the eight months after the law went into effect, the number of out-of-state

ⁱⁱ Six of the 3,573 petitions were withdrawn.

ⁱⁱⁱ Researchers defined prepared as "courts that acknowledge their responsibility to hear waiver petitions and at least note the availability of court-appointed counsel or other assistance in the petition filing process."¹⁶

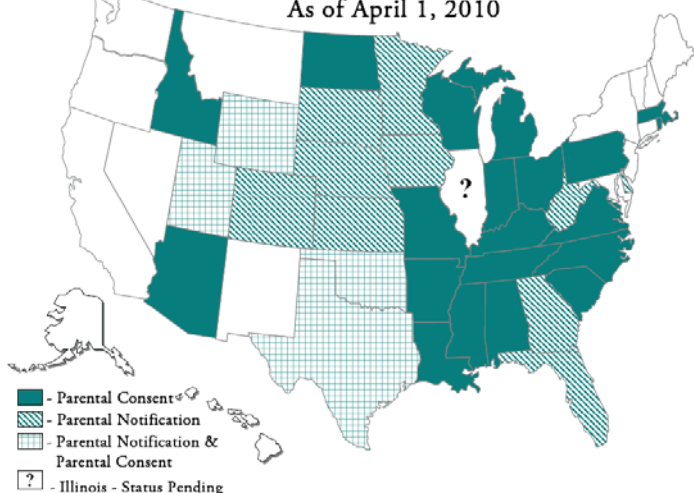
^{iv} Court personnel referring the inquiring party to a physician or organization (e.g., Planned Parenthood) that can assist the minor in finding her way to a judicial bypass hearing.¹⁷

abortions among minors living in Massachusetts increased by 300%.¹⁹

Interstate Travel and Delay

The number of states with PI laws has tripled over the past 20 years. Although one-third of states still do not enforce consent or notification laws, those states that do are geographically situated or configured in a way that limits interstate travel as an option for many minors seeking an abortion (see Figure 1).²³

Figure 1: Parental Involvement Laws in Effect
As of April 1, 2010



Texas, for example, is a geographically large state, so travel to a neighboring state without a PI law is difficult. Studies from Texas suggest that when travel distances become longer, PI laws can affect the timing of a minor's abortion.

A 2006 study assessed changes in the timing of minors' abortions before and after the enforcement of the 2000 Texas parental notification law.²⁴ The study reported that some minors waited until their 18th birthday to avoid involving their parents or the courts, placing some within the second trimester of pregnancy at the time of surgery. Specifically, those who were 17.50 to 17.74 years of age at the time of conception were more likely to have a second trimester procedure compared to women 18 years of age.²⁴ Because this study did not directly measure whether this increase was the result of the minor's conscious decision to wait until her 18th birthday, the

authors extended this analysis.²⁵ They considered the case of minors nearing their 18th birthday and examined the 30 months prior and the 36 months after the January 2000 Texas parental notification law took effect. The likelihood of delaying abortion increased significantly between the pre- and post-law periods for those nearing their 18th birthday.^{v,25} In addition, the second trimester abortion rate increased for those nearing their 18th birthday (17 years and 8-9 months old) but decreased for those further from the legal age (17 years and 6-7 months old).^{vi,25}

Interstate Travel, Illinois, and Delay

Illinois is the most recent state to act on parental involvement laws. On March 29, 2010, a Cook County Circuit Court judge dismissed a lawsuit challenging the constitutionality of the state's parental notification law, but left the temporary restraining order in place blocking the state from enforcing the law while the dismissal is appealed.^{vii}

All states surrounding Illinois have PI laws in effect (see Figure 1).²³ The current map shows that if Illinois' parental notification law goes into effect, the remaining one-third of states without PI laws will be primarily concentrated in either the Northeast corridor or the West

^v Between the pre- and post-law period, the percentage of minors who delayed abortion increased from 9.9% to 16.3% for those 17 years and 8 months old and from 30.8% to 43.4% for those 17 years and 9 months old.²⁵

^{vi} Relative to those aged 17 years and 10-11 months, the Texas law was associated with a 21% increase in the second trimester abortion rate for those 17 years and 8-9 months old and an 18% decline for those 17 years and 6-7 months old. Minors who were 17 years and 10-11 months old at conception would still be in the 1st trimester once they turned 18 and, therefore, would not affect the 2nd trimester abortion rate. As a result, they were used as the youngest comparison group.²⁵

^{vii} On July 14, 2009, the Seventh Circuit Court of Appeals dissolved the permanent injunction prohibiting enforcement of the 1995 Illinois Parental Notice of Abortion Act.²⁶ Although the law was set to go into effect on August 5, 2009, the Illinois Department of Financial and Professional Regulation granted a temporary grace period to allow physicians time to prepare for enforcement. Near the end of that grace period, and in response to a new lawsuit challenging the Act, on November 4, 2009, a state court entered a temporary restraining order blocking the state from enforcing the law.

Coast. As a result, minors living in states close to Illinois will have fewer options for avoiding PI laws.^{viii} They can travel longer distances or navigate the judicial bypass process, both of which could result in delay.

KEY FINDINGS

This policy brief describes the main alternatives available to minors who live in states with PI laws who cannot or do not want to involve a parent in their abortion decision. It summarizes the literature on delays in abortion associated with these alternatives.

Key findings include:

- (1) 31 of the 34 states with PI laws waive consent in case of medical emergency, whereas only 14 states waive consent in case of assault, incest, rape, or neglect. 29 states allow a guardian to give consent or to be notified, whereas only six allow other adult relatives to do so.
- (2) We found no literature examining an association between exemptions, involvement of a guardian or other adult relative and abortion delay.
- (3) Although the Supreme Court has mandated expediency in the judicial bypass process, some courts are not prepared or willing to hear judicial bypass cases thereby causing delays.
- (4) Although approximately one-third of states do not have PI laws in effect, the geographic location or configuration of states with these laws limits interstate travel as an alternative for minors seeking an abortion.

- (5) In one state (Texas), the travel distance to a state without PI laws meant that some youth waited until they turned 18 to have an abortion, placing the procedure in the second trimester.
- (6) If Illinois' parental notification law goes into effect, minors living in the Midwest who cannot or do not want to give notice, would be forced to travel outside of the Midwest or navigate the judicial bypass process to avoid PI laws.

CONCLUSION

Our review suggests that, even though minors have alternatives to informing their parents, some of these alternatives (bypass and interstate travel) can result in abortion delay. As the prevalence of PI laws increases, it will be critical to know whether these delays affect the safety of abortion procedures for minors.

^{viii} Minors living in states close to Illinois may still choose to have a procedure in Illinois if the 1995 parental notification law goes into effect because under the law, minors have the option of notifying, in addition to a parent, other adult family members (i.e., grandparent, legal guardian, or step-parent living in the same household) over 21 years old.²⁶ Iowa is the only nearby state with a notification law (rather than a consent law) and the only nearby state that allows a minor to notify an adult relative other than a parent.³

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