



Requiring Parental Involvement in a Pregnant Minor's Abortion Decision: State Laws and Recent Developments

Jon O. Shimabukuro
Legislative Attorney

Cassandra L. Foley
Law Librarian

April 26, 2012

Congressional Research Service

7-5700

www.crs.gov

RL33625

Summary

State laws that require parental involvement in a pregnant minor's abortion decision have gained greater visibility in light of recent attempts by Congress to criminalize the interstate transport of a minor to obtain an abortion. At least forty-four states have enacted statutes that require a minor to seek either parental notification or parental consent before obtaining an abortion. This report discusses the validity of state parental involvement laws in the context of *Planned Parenthood of Southeastern Pennsylvania v. Casey*, *Ayotte v. Planned Parenthood of Northern New England*, and other U.S. Supreme Court cases that address a minor's right to choose whether to terminate her pregnancy. The report reviews the various state parental involvement laws, and discusses the availability of judicial bypass procedures and exceptions for medical emergencies. The report also highlights recent federal parental involvement legislation and provides a survey of current state parental involvement laws.

Contents

Introduction.....	1
<i>Planned Parenthood of Southeastern Pennsylvania v. Casey</i> and <i>Ayotte v. Planned Parenthood of Northern New England</i>	1
Parental Notification and Parental Consent	2
Judicial Bypass Procedure	3
Medical Emergency Exception.....	4
Federal Legislation in the 112 th Congress.....	4

Tables

Table 1. State Parental Involvement Statutes.....	5
---	---

Contacts

Author Contact Information.....	8
---------------------------------	---

Introduction

State laws that require parental involvement in a pregnant minor's abortion decision have gained greater visibility in light of recent attempts by Congress to criminalize the interstate transport of a minor to obtain an abortion.¹ At least forty-four states have enacted statutes that require a minor to seek either parental notification or parental consent before obtaining an abortion. This report discusses the validity of state parental involvement laws in the context of *Planned Parenthood of Southeastern Pennsylvania v. Casey*, *Ayotte v. Planned Parenthood of Northern New England*, and other U.S. Supreme Court cases that address a minor's right to choose whether to terminate her pregnancy.

In *Casey*, the Court upheld the right of a woman to choose whether to terminate her pregnancy, but permitted certain restrictions on a minor's ability to obtain an abortion, such as state parental consent requirements.² In *Ayotte*, the Court reiterated that a state may require parental involvement in a pregnant minor's abortion decision.³

In addition to examining the relevant abortion decisions, this report reviews the state parental involvement laws, and discusses the availability of judicial bypass procedures and exceptions for medical emergencies. The report also highlights recent federal parental involvement legislation and provides a survey of current state parental involvement laws.

Planned Parenthood of Southeastern Pennsylvania v. Casey and Ayotte v. Planned Parenthood of Northern New England

In *Roe v. Wade*, the U.S. Supreme Court held that a woman has a constitutional right to choose whether to terminate her pregnancy.⁴ The Court in subsequent cases has affirmed the basic right to an abortion, but has also permitted restrictions on a woman's access to an abortion. *Casey* established, for example, that a state may require parental involvement in a pregnant minor's abortion decision if the involvement does not unduly burden the minor's right to choose whether to obtain an abortion. In that 1992 case, the Court considered a constitutional challenge to five provisions of the Pennsylvania Abortion Control Act of 1982. One provision required a pregnant minor seeking an abortion to obtain consent from one parent or guardian before the procedure would be performed.⁵ The Court upheld the parental consent provision and also concluded that a

¹ See Child Interstate Abortion Notification Act, S. 1241/H.R. 2299, 112th Cong. (2011); Child Custody Protection Act, S. 167, 112th Cong. (2011).

² 505 U.S. 833 (1992).

³ 546 U.S. 320 (2006).

⁴ 410 U.S. 113 (1973). For additional information on abortion, see CRS Report RL33467, *Abortion: Judicial History and Legislative Response*, by Jon O. Shimabukuro.

⁵ The other provisions required spousal consent, a 24-hour waiting period, the pregnant woman's informed consent before she could obtain an abortion, and certain reporting for facilities that provide abortions. The plurality upheld the informed consent, waiting period, and reporting requirement provisions, finding that they did not impose undue burdens. It struck down the spousal consent provision, however, holding that it gave husbands too much control over (continued...)

state law that banned abortion completely would be unconstitutional. In its holding, the Court shifted away from the trimester-based strict scrutiny standard of judicial review it used in *Roe* and articulated a new “undue burden” analysis. Courts will now invalidate a government-imposed abortion restriction if it imposes an “undue burden” on a woman’s right to obtain an abortion.⁶ Applying the new standard, the *Casey* Court held that the parental consent provision did not unduly burden a pregnant minor’s right to obtain an abortion because it included exceptions in the event of a medical emergency and when the minor demonstrates to a court that parental consent is not in her best interests.⁷

In January 2006, the Court confirmed the validity of state laws that place certain restrictions on a pregnant minor’s right to obtain an abortion. In *Ayotte*, the Court considered a constitutional challenge to a state statute requiring parental notification before a minor may obtain an abortion. The plaintiffs argued that the New Hampshire Parental Notification Prior to Abortion Act violated the right of a woman to obtain an abortion because it did not contain an exception to allow a pregnant minor to obtain an abortion without parental notification when the procedure was necessary to preserve the minor’s health. In writing for an unanimous Court, Justice O’Connor stated explicitly that the holding did not revisit Court precedent regarding abortion.⁸ Rather, the Court addressed the relatively narrow issue of remedies. It held that only certain applications of the act would violate a woman’s constitutional right to an abortion, and remanded the case with orders for the lower courts to consider whether the act could be interpreted in a manner consistent with the judicial precedent that a state may not restrict access to an abortion when the health of the woman seeking the abortion is at issue.⁹

Despite its narrow holding, the Court in *Ayotte* expressly affirmed two legal propositions relating to pregnant minors’ access to abortions: states have the right to require parental involvement in a minor’s abortion decision, and a state may not restrict access to an abortion that is necessary to protect the life or health of a woman seeking an abortion.¹⁰

Parental Notification and Parental Consent

Twenty-two state parental involvement statutes require the consent of at least one parent or another adult relative before a pregnant minor may obtain an abortion, while 17 state statutes require only that the minor notify one or both parents that she intends to obtain an abortion. As

(...continued)

their wives and could contribute to spousal abuse, thus imposing an undue burden on a woman’s abortion decision.

⁶ The plurality opinion defined an “undue burden” as a “substantial obstacle in the path of a woman seeking an abortion of a nonviable fetus.” *Casey*, 505 U.S. at 877. *Casey* was not the first judicial instance in which the Supreme Court held that a state cannot place a parental involvement restriction on a minor’s right to obtain an abortion so that her parent or parents have absolute veto power over the decision. In *Planned Parenthood of Central Missouri v. Danforth*, 428 U.S. 52 (1976), the Court held that a state may not require the consent of a parent or guardian of a pregnant minor seeking an abortion if such consent will unduly burden the minor’s right to seek an abortion.

⁷ *Casey*, 505 U.S. at 899.

⁸ *Ayotte*, 546 U.S. at 323.

⁹ On February 1, 2007, a federal district court in New Hampshire entered a procedural order that stayed consideration of the case while a bill to repeal the Parental Notification Prior to Abortion Act was pending in the state legislature. The Act was subsequently repealed by the legislature, effective June 29, 2007. See *Planned Parenthood of Northern New England v. Ayotte*, 571 F.Supp.2d 265 (D. N.H. 2008).

¹⁰ *Ayotte*, 546 U.S. at 326-27.

discussed, the Court has held that a state law that requires parental involvement in a minor's abortion decision is unconstitutional if it unduly burdens the minor's right to terminate her pregnancy.

Several Court cases preceding *Casey* and *Ayotte* expressly established that a state parental involvement statute that permits a parent to unilaterally prohibit a minor from obtaining an abortion would be unconstitutional. In *Planned Parenthood of Central Missouri v. Danforth*, the Court held that a state parental involvement statute must provide an alternate procedure for a minor to obtain authorization for an abortion.¹¹ In *Belotti v. Baird*, the Court reiterated the *Danforth* holding and stated that such an alternative must provide a pregnant minor the opportunity to demonstrate that she is "mature enough and well enough informed" to make an abortion decision without parental involvement, or that the abortion is in her best interests.¹²

Judicial Bypass Procedure

Thirty-seven state laws that require parental involvement in a pregnant minor's abortion decision provide for a judicial bypass procedure as the alternate means for a minor to obtain permission for an abortion. A judicial bypass procedure allows a minor who seeks an abortion to obtain permission from a court to waive the relevant parental involvement requirement. In cases preceding *Casey*, the Court held that adequate judicial bypass procedures are constitutional alternatives to state parental involvement statutes. Both *Danforth* and *Belotti*, for example, involved judicial bypass procedures that the Court upheld as valid safeguards of a pregnant minor's right to obtain an abortion.

While the Court has invalidated state parental *consent* laws that do not include judicial bypass procedures, it has not determined whether a state law that requires parental *notification* must contain a judicial bypass procedure. In *Ohio v. Akron Center for Reproductive Health, et al.*, the Court held that the Ohio parental notification statute at issue was constitutional, suggesting that the statute's judicial bypass procedure adequately protected a pregnant minor's right to obtain an abortion.¹³ The Court expressly declined, however, to decide whether a state parental notification law that did not include a judicial bypass procedure would *per se* violate the Constitution. In *Lambert v. Wicklund*, the Court similarly declined to reach the question of whether a state parental notification law must contain a judicial bypass procedure.¹⁴ Rather, the Court held narrowly that the Montana parental notification law at issue, which contained a judicial bypass procedure, did not place an undue burden on a pregnant minor's right to obtain an abortion.¹⁵

Although the Court has refused to address directly whether a state parental notification law must contain a judicial bypass procedure, Court precedent appears to suggest that a parental notification law would be unconstitutional if it did not provide a pregnant minor with some alternative to parental notification. In *H.L. v. Matheson*, the Court upheld a state statute that

¹¹ 428 U.S. 52 (1976). Massachusetts and Mississippi have laws that require the parental consent of both parents before a pregnant minor may obtain an abortion. The Court has held that a state law that contains a two-parent consent provision is unconstitutional unless it contains an alternative for parental consent, such as a judicial bypass procedure.

¹² 443 U.S. 622, 642 (1979).

¹³ 497 U.S. 502 (1990).

¹⁴ 520 U.S. 292 (1997).

¹⁵ *Id.* at 295.

requires an unemancipated minor who lives with her parents to notify them, “if possible,” before she obtains an abortion, but also includes exceptions for a minor who demonstrates that notification is not in her best interests.¹⁶ Moreover, in *Belotti*, the Court indicated that a parental notification law would be unconstitutional if it did not provide an alternative to notification for a “mature” minor or when notification would not be in a minor’s best interests.

The Court has declined to establish specific parameters for the adequacy of judicial bypass procedures in the context of state parental involvement laws. In writing for the majority in *Akron*, Justice Kennedy rejected the dissenting opinion’s call to articulate specific procedural thresholds for the constitutionality of a judicial bypass alternative, such as whether it must be anonymous or only confidential, or how quickly a state must provide a pregnant minor with the opportunity for a court proceeding. He stated only that the Ohio judicial bypass procedure contained “reasonable steps” to protect the identity of pregnant minors seeking a judicial bypass and that the procedure included adequate provisions to expedite a pregnant minor’s request for a proceeding.¹⁷ The Court majority also held that a state may validly require a pregnant minor to establish “by clear and convincing evidence” during a judicial bypass hearing that she is mature enough to make an abortion decision without parental involvement.¹⁸

Medical Emergency Exception

State parental involvement statutes in 10 states do not provide an exception to their consent or notification requirements during a medical emergency. In *Ayotte*, the Court expressly reiterated its prior holdings in *Roe* and *Casey* that a state may not restrict access to an abortion that is necessary to preserve the life or health of the pregnant woman.¹⁹ The Court also stated the factual proposition that in a small number of cases a pregnant minor requires an immediate abortion to prevent serious health consequences.²⁰ Therefore, a state statute that restricts a pregnant minor’s access to an abortion likely must include an exception for medical emergencies involving the minor’s health or life.

Federal Legislation in the 112th Congress

Legislation that would prohibit the knowing transport of a minor across state lines with the intent that the minor obtain an abortion has been introduced in both chambers. On January 25, 2011, Senator John E. Ensign introduced S. 167, the Child Custody Protection Act (CCPA). Under the CCPA, an individual who knowingly transports a minor across state lines with the intent that the minor obtain an abortion will be fined in accordance with Title 18 of the U.S. Code, imprisoned for not more than one year, or both. The CCPA would not prohibit the transport of a minor across state lines if the abortion is necessary to save the life of the minor because her life is endangered

¹⁶ 450 U.S. 398 (1981).

¹⁷ *Akron*, 497 U.S. at 513.

¹⁸ *Akron*, 497 U.S. at 515.

¹⁹ *Ayotte*, 546 U.S. at 327. In *Doe v. Bolton*, 410 U.S. 179 (1973), the Court held that, to determine whether an abortion is necessary to protect a woman’s “health,” a doctor may exercise his or her judgment based on various factors, such as a woman’s physical, emotional, psychological, and familial well-being, as well as her age.

²⁰ *Ayotte*, 546 U.S. at 328.

by a physical disorder, physical injury, or physical illness, including a life endangering physical condition caused by or arising from the pregnancy.

The Child Interstate Abortion Notification Act (CIANA), introduced as S. 1241 by Senator Marco Rubio on June 21, 2011, and as H.R. 2299 by Representative Ileana Ros-Lehtinen on June 22, 2011, would also prohibit the knowing transport of a minor across state lines with the intent that the minor obtain an abortion. Unlike the CCPA, however, the CIANA would also prohibit a physician from knowingly performing or inducing an abortion on a minor who is a resident of another state unless actual notice is provided to a parent of the minor at least 24 hours before performing the procedure. A physician who violated the notification requirement would be fined in accordance with Title 18 of the U.S. Code, imprisoned for not more than one year, or both. The notification requirement would not apply in certain specified situations, including instances where the minor declared in a signed written statement that she was the victim of sexual abuse, neglect, or physical abuse by a parent.

The following table provides citations to state parental involvement statutes. Information concerning whether the applicable statute requires parental consent or notification is included in the table. Statutes that include judicial bypass provisions, medical emergency exceptions, and/or exceptions for a pregnant minor who is the victim of parental abuse or neglect are marked accordingly.

Table I. State Parental Involvement Statutes

State and Statute	Parental Involvement Required	Judicial Bypass Available	Medical Emergency Exception	Abuse/Incest Exception
Alabama , Ala. Code §§ 26-21-1 to 26-21-8 (2011)	Consent: one parent.	X	X	
Alaska , Alaska Stat. §§ 18.16.020, 18.16.030 (2012)	Consent or notification: one parent.	X	X	X
Arizona , Ariz. Rev. Stat. § 36-2152 (2011)	Consent: one parent.	X	X	X
Arkansas , Ark. Code Ann. §§ 20-16-801 to 20-16-809 (2012)	Consent: one parent.	X	X	X
California , Cal. Health & Safety Code § 123450 (2012)	Consent: one parent (Not enforced: enjoined by judicial order).			
Colorado , Colo. Rev. Stat. §§ 12.37.5-101 to 12.37.5-108 (2011)	Notification: one parent.	X	X	X
Connecticut	No statute found.			
Delaware , Del. Code Ann. tit. 24, §§ 1780 to 1787 (2011)	Notification: one parent or adult relative.	X	X	
District of Columbia	No statute found.			
Florida , Fla. Stat. § 390.01114 (2012)	Notification: one parent.	X	X	

State and Statute	Parental Involvement Required	Judicial Bypass Available	Medical Emergency Exception	Abuse/Incest Exception
Georgia , Ga. Code Ann. §§ 15-11-110 to 15-11-118 (2011)	Notification: one parent.	X	X	
Hawaii	No statute found.			
Idaho , Idaho Code Ann. § 18-609A (2012)	Consent: one parent.	X	X	X
Illinois , ch. 750, Ill. Comp. Stat. §§ 70/1 to 70/99 (2012)	Notification: one parent (Not enforced: enjoined by judicial order).			
Indiana , Ind. Code § 16-34-2-4 (2012)	Consent: one parent.	X	X	
Iowa , Iowa Code §§ 135L.1 and 135L.3 (2011)	Notification: one parent or grandparent.	X	X	X
Kansas , Kan. Stat. Ann. § 65-6705 (2011)	Notification: one parent.	X	X	X
Kentucky , Ky. Rev. Stat. Ann. § 311.732 (2012)	Consent: one parent.	X	X	
Louisiana , La. Rev. Stat. Ann. §§ 40:1299.35.5, 40:1299.35.7, 40:1299.35.12 (2012)	Consent: one parent or tutor.	X	X	X
Maine , Me. Rev. Stat. tit. 22, § 1597-A (2011)	Consent: one parent or adult family member.	X		
Maryland , Md. Code Ann., Health-Gen. § 20-103 (2012)	Notification: one parent.			X
Massachusetts , Mass. Gen. Laws ch. 112, §§ 12S, 12F (2011)	Consent: both parents.	X		
Michigan , Mich. Comp. Laws §§ 722.902 to 722.908 (2012)	Consent: one parent.	X	X	
Minnesota , Minn. Stat. § 144.343 (2011)	Notification: both parents.	X	X	X
Mississippi , Miss. Code Ann. §§ 41-41-51 to 41-41-63 (2012)	Consent: both parents.	X	X	
Missouri , Mo. Rev. Stat. § 188.028 (2012)	Consent: one parent.	X		
Montana , Mont. Code Ann. §§ 50-20-202 to 50-20-215 (2011)	Notification: one parent (Not enforced: enjoined by judicial order).			
Nebraska , Neb. Rev. Stat. §§ 71-6901 to 71-6901 (2012)	Consent: one parent. If abuse declared, consent is required from a grandparent.	X	X	

State and Statute	Parental Involvement Required	Judicial Bypass Available	Medical Emergency Exception	Abuse/Incest Exception
Nevada , Nev. Rev. Stat. §§ 442.240 to 442.257 (2011)	Notification: one parent (Not enforced: enjoined by judicial order).			
New Hampshire , Nev. Rev. Stat. §§ 132:32 to 132:36 (2012)	Notification: one parent.	X	X	
New Jersey , N.J. Stat. Ann. §§ 9:17A-1.1 to 9:17A-1.12 (2012)	Notification: one parent (Not enforced: enjoined by judicial order).			
New Mexico , N.M. Stat. Ann. § 30-5-1 (2012)	Consent: one parent (Not enforced: enjoined by judicial order).			
New York	No statute found.			
North Carolina , N.C. Gen. Stat. §§ 90-21.6 to 90-21.10 (2012)	Consent: one parent or grandparent.	X	X	
North Dakota , N.D. Cent. Code §§ 14-02.1-02, 14-02.1-03, 14-02.1-03.1 (2011)	Notification: both parents before the period of pregnancy when the unborn child may reasonably be expected to have reached viability. Consent: one parent when the unborn child may reasonably be expected to have reached viability. ²¹	X	X	
Ohio , Ohio Rev. Code Ann. §§ 2151.85, 2919.121 (2012)	Consent: one parent.	X	X	
Oklahoma , Okla. Stat. tit. 63, § 1-740.2 (2012)	Notification and consent: one parent.	X	X	X
Oregon	No statute found.			
Pennsylvania , 18 Pa. Cons. Stat. § 3206 (2012)	Consent: one parent.	X	X	
Rhode Island , R.I. Gen. Laws §§ 23-4.7-1 to 23-4.7-8 (2012)	Consent: one parent.	X	X	
South Carolina , S.C. Code Ann. §§ 44-41-10, 44-41-30 to 44-41-36 (2011)	Consent: one parent or grandparent.	X	X	X

²¹ See N.D. Cent. Code § 14-02.1-03(2) (2011) (“Subsequent to the period of pregnancy when the unborn child may reasonably be expected to have reached viability, no abortion, other than an abortion necessary to preserve her life, or because the continuation of her pregnancy will impose on her a substantial risk of grave impairment of her physical or mental health, may be performed upon any woman in the absence of: a. The written consent of her husband unless her husband is voluntarily separated from her; or b. The written consent of a parent, if living, or the custodian or legal guardian of the woman, if the woman is unmarried and under eighteen years of age.”).

State and Statute	Parental Involvement Required	Judicial Bypass Available	Medical Emergency Exception	Abuse/Incest Exception
South Dakota, S.D. Codified Laws §§ 34-23A-7, 34-23A-7.1 (2011)	Notification: one parent.	X	X	
Tennessee, Tenn. Code Ann. §§ 37-10-301 to 37-10-308 (2012)	Consent: one parent.	X	X	X
Texas, Tex. Fam. Code Ann. §§ 33.002 to 33.011 (2012)	Notification: one parent.	X		
Utah, Utah Code Ann. §§ 76-7-304, 76-7-304.5 (2012)	Notification and consent: one parent.	X (consent requirement) ²²	X (consent and notification requirement)	X (notification requirement) ²³
Vermont	No statute found.			
Virginia, Va Code. Ann. § 16.1-241(V) (2012)	Consent: one parent or other adult relative.	X	X	X
Washington	No statute found.			
West Virginia, W. Va. Code §§ 16-2F-1 to 16-2F-9 (2011)	Notification: one parent.	X	X	
Wisconsin, Wis. Stat. § 48.375 (2011)	Consent: one parent or other adult relative.	X	X	X
Wyoming, Wyo. Stat. Ann. § 35-6-118 (2012)	Notification and consent: one parent.	X	X	

Source: Information compiled by CRS using the LexisNexis State Statutes database

Author Contact Information

Jon O. Shimabukuro
Legislative Attorney
jshimabukuro@crs.loc.gov, 7-7990

Cassandra L. Foley
Law Librarian
cfoley@crs.loc.gov, 7-4179

²² See Utah Code Ann. § 76-7-304.5(5)(b) (2012) (“After considering the evidence presented at the hearing, the court shall order that the minor may obtain an abortion without the consent of a parent or guardian of the minor if the court finds by a preponderance of the evidence that: (i) the minor: (A) has given her informed consent to the abortion; and (B) is mature and capable of giving informed consent to the abortion; or (ii) an abortion would be in the minor’s best interest.”).

²³ See Utah Code Ann. § 76-7-304(4)(b) (2012). A physician is not required to notify a parent or guardian of a minor that the minor intends to have an abortion if the minor is either pregnant as a result of incest to which the parent or guardian was a party or the parent or guardian has abused the minor, and the physician reports the incest or abuse to the Division of Child and Family Services within the Utah Department of Human Services.