

Texas Joins Majority Requiring Parental Consent for Abortion

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Parental involvement statutes are currently hot topics for most state legislatures and their citizens. Texas recently joined the majority of states that now require more than parental notification for minors to obtain an abortion. On September 1, 2005, an amended law took effect in Texas, which now requires a minor's physician to obtain the consent of one of the minor's parents before proceeding with an abortion procedure.¹ The law, like those of most states that require notification or consent, allows for a judicial bypass where the judge determines whether obtaining parental consent would be detrimental to the physical or emotional health of the minor.

Laws requiring parental consent or notification vary from state to state and range from requiring consent from both parents to notifying a grandparent of the minor's decision to obtain an abortion at least 48 hours before the procedure. According to Planned Parenthood, 35 states have enacted legislation involving parental involvement in abortion.² Only a handful of states lack laws detailing the parent's role in a minor's abortion, but many of these states have supporters fighting for the promulgation of such legislation. For example, California presently lacks a law requiring parental notification or consent, but there was an initiative on the November 2005 ballot that would require parental notification for a minor seeking an abortion. Thus, for the District of Columbia and the five states that do not have parental involvement laws, the issue remains a major topic for discussion. For states that have already enacted such laws, like Texas, the laws are subject to continuous debate and change.

Parental notification informs parents of a minor's intent to abort a fetus prior to the procedure so that parents can offer counseling and input on the decision and, in consent cases, prevent the abortion. Legislatures passing legislation regarding this topic claim the goal is to reduce teen pregnancy and abortions; however, some believe that parental consent for an abortion is designed to protect the rights of the unborn fetus. The actual design of particular legislation is difficult to pinpoint, but statistics have shown that states passing this legislation have experienced a decrease in teen pregnancy and abortion.³

Abortion legislation, particularly in the case of minors, raises certain constitutional issues regarding the rights of minors. Issues arise such as when a minor's right to individual integrity outweighs that of a parent's fundamental right to raise children, whether such a law is so unduly burdensome as to restrict the minor's right to an abortion, and whether the safety of the minor is in fact increased by parental involvement legislation. Thus,

¹ S.B. 419. The prior law required an abortion provider to notify the parents of the procedure at least 48 hours before performing the abortion.

² Planned Parenthood, *Laws Requiring Parental Consent or Notification for Minors' Abortions*, at <http://www.plannedparenthood.org/pp2/portal/files/portal/medicalinfo/abortion/fact-parental-consent.xml> (last visited Dec. 5, 2006).

³ These statistics have been questioned, with opponents saying that those in favor of such legislation have skewed numbers for failure to account for external factors.

consent or notification for a minor's abortion is a highly contested issue for those states without such laws but also for those that have enacted the legislation.

Legislation of this nature falls in line with the traditional reasoning that parents are the principal decision maker for issues concerning their children. For example, the United States Supreme Court held that a child's parents have the right and duty to determine the child's upbringing.⁴ Parents must provide consent for a plethora of activities regarding their minor children including ear piercing and invasive medical procedures. Thus, proponents of parental involvement legislation in the abortion context ask why parents should not be involved in such a crucial decision in their child's life, as that is their right and duty.

On the other side, some argue that a minor girl has a great interest in determining the outcome of a medical decision that affects her individual bodily integrity. When a parent denies a minor's request for an abortion, the decision will result in an outcome that will affect the rest of the minor's life. Other questions also arise, such as who will feed and clothe the minor's child, and does the minor also need to parental consent to place the child up for adoption.

Parental notification legislation containing judicial bypass clauses has been deemed to meet the necessary constitutional requirements of being rationally related to the state's interests and not unduly burdensome. Without the judicial bypass provision, it is likely that a court would find such a restraint on a minor's right to an abortion as "unduly burdensome," which is the test used to determine whether a state is restricting a woman's right to an abortion. Most minors petitioning the court for a judicial bypass are granted an abortion.

One problem with the necessity of a judicial bypass clause to protect the constitutional rights of the minor is that obtaining judicial bypass takes time. State courts, especially where parental involvement statutes are new, are not equipped to handle matters in a speedy manner and can take up to three weeks to grant permission for an abortion. The longer it takes for a court to allow for the minor to obtain an abortion, the complications from the procedure increase.

Another possible unduly burdensome aspect of the legislation is the ripple effect that parental involvement statutes have on other legislation. For example, Missouri passed legislation on September 15, 2005, that allows suits for individuals aiding minors in violating their parental consent statute. Also, the new legislation prevents individuals or clinics with a pecuniary interest in the abortion from aiding minors in obtaining the judicial bypass. Thus, parental involvement statutes spawn legislation impacting aspects of abortion other than those concerning parental consent and notification.

Safety is a key issue pertaining to the parental involvement legislation. Many fear that a minor's safety will be compromised by requiring parental consent or notification to

⁴ *Pierce v. Society of Sisters*, 268 U.S. 535, 45 S. Ct. 573.

obtain an abortion. In an ideal situation, a minor would be able to approach her parents with her pregnancy and talk openly about her options. This, however, is not always the case. Some minors come from abusive homes where such a situation would result in physical and emotional abuse. Also, even seemingly supportive homes sometimes fail to offer an option for open, honest communication about abortion. Thus, minors wait until late in their pregnancy to discuss the situation with their parents even though the risks increase when an abortion is performed later in a pregnancy.

Parental involvement laws are not perfect in creation or application, but the goals they are designed to obtain are worthwhile. Different factions in the abortion debate see various problems and hidden objectives, but in reality it appears that these laws are here to stay. All we can do is hope the legislation will help minors more than it injures them.

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