
PARENTAL NOTIFICATION OF ABORTION ACT

Model Legislation & Policy Guide
For the 2013 Legislative Year



Changing Law to Protect Human Life, State by State

INTRODUCTION

In February 1994, 15-year-old “Sarah”¹ visited abortion provider Moshe Hachamovitch’s “A to Z Women’s Services” clinic in Houston, Texas.² Without her parents’ involvement, Hachamovitch performed an abortion on Sarah, tearing the right side of her cervix. Unaware of this complication, Sarah suffered blood poisoning, fever, chills, abdominal pain, and nausea for four days before finally being admitted to a hospital. When hospital personnel discovered the tear and a post-abortion infection, they placed Sarah in the intensive care unit, but the infection was far too advanced and Sarah died on March 2, 1994. Hospital physicians reported that had Sarah received prompt medical care, she would have survived.

Sadly, Sarah’s story is not unique. Minors are at risk in every state in which parental involvement laws—either parental consent or parental notification—have not been enacted or are easily circumvented.

The U.S. Supreme Court has reviewed statutes requiring parental consent or notification before a minor may obtain an abortion on eleven occasions.³ 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 notification law is constitutional and does not place an undue burden on minors if it contains the following provisions:

- 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 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).

¹ The true identity of the minor is concealed in court records.

² See, e.g., Steckner et al., *Clinic Head Faces Complaints*, ARIZONA REPUBLIC, July 15, 1998, for facts related to this story.

³ *Bellotti v. Baird* (Bellotti I), 428 U.S. 132 (1976); *Planned Parenthood v. Danforth*, 428 U.S. 52 (1976); *Bellotti v. Baird* (Bellotti II), 443 U.S. 622 (1979); *H.L. v. Matheson*, 450 U.S. 398 (1981); *City of Akron v. Akron Center for Reproductive Health* (Akron I), 462 U.S. 416 (1983); *Planned Parenthood v. Ashcroft*, 462 U.S. 476 (1983); *Hodgson v. Minnesota*, 497 U.S. 417 (1990); *Ohio v. Akron Center for Reproductive Health* (Akron II), 497 U.S. 502

The purpose behind parental involvement laws is clear. Immature minors often lack the ability to make fully informed choices that take into account both immediate and long-range consequences. Yet 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. As such, parental consultation is usually desirable and in the best interest of the minor. For these reasons, parental involvement laws protect the health and welfare of minors, as well as foster family unity and protect the constitutional rights of parents to rear their children.

For more information, please contact AUL’s Legislative Coordinator at (202) 741-4907 or Legislation@AUL.org.

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(1990); *Planned Parenthood v. Casey*, 505 U.S. 833 (1992); *Lambert v. Wicklund*, 520 U.S. 292 (1997); *Ayotte v. Planned Parenthood*, 546 U.S. 320 (2006).

PARENTAL NOTIFICATION OF ABORTION ACT

HOUSE/SENATE BILL No. _____
By Representatives/Senators _____

Section 1. Short Title.

This Act may be cited as the “Parental Notification of Abortion Act.”

Section 2. Legislative Findings and Purposes.

(a) The [*Legislature*] of the State of [*Insert name of State*] finds that:

- (1) Immature minors often lack the ability to make fully informed choices that take into account both immediate and long-range consequences.
- (2) The medical, emotional, and psychological consequences of abortion are sometimes serious and can be lasting, particularly when the patient is immature.
- (3) The capacity to become pregnant and the capacity for mature judgment concerning the wisdom of an abortion are not necessarily related.
- (4) Parents ordinarily possess information essential to a physician's exercise of his or her best medical judgment concerning their child.
- (5) Parents who are aware that their minor daughter has had an abortion may better ensure that she receives adequate medical attention after her abortion.
- (6) Parental consultation is usually desirable and in the best interests of the minor.

(b) The [*Legislature*]'s purposes in enacting this parental notice law are to further the important and compelling State interests of:

- (1) Protecting minors against their own immaturity;
- (2) Fostering family unity and preserving the family as a viable social unit;
- (3) Protecting the constitutional rights of parents to rear children who are members of their household;
- (4) Reducing teenage pregnancy and abortion; and

- (5) In light of the foregoing statements of purpose, allowing for judicial bypasses of parental notification to be made only in exceptional or rare circumstances.

Section 3. Definitions.

For purposes of this Act only:

(a) “**Abortion**” means the act of using or prescribing any instrument, medicine, drug, or any other substance, device, or means with the intent to terminate the clinically diagnosable pregnancy of a woman with knowledge that the termination by those means will with reasonable likelihood cause the death of the unborn child. Such use, prescription, or means is not an abortion if done with the intent to:

- (1) Save the life or preserve the health of the unborn child;
- (2) Remove a dead unborn child caused by spontaneous abortion; or
- (3) Remove an ectopic pregnancy.

(b) “**Actual notice**” means the giving of notice directly, in person or by telephone.

(c) “**Constructive notice**” means notice by certified mail to the last known address of the parent or guardian with delivery deemed to have occurred forty-eight (48) hours after the certified notice is mailed.

(d) “**Coercion**” means restraining or dominating the choice of a minor by force, threat of force, or deprivation of food and shelter.

(e) “**Department**” means the Department of [*Insert appropriate title*] of the State of [*Insert name of State*].

(f) “**Emancipated minor**” means any person under eighteen (18) years of age who is or has been married or who has been legally emancipated.

(g) “**Incompetent**” means any person who has been adjudged a disabled person and has had a guardian appointed for her under the [*State Probate Act or other appropriate state law*].

(h) “**Medical emergency**” means a condition that, on the basis of the physician's good-faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function.

(i) “**Neglect**” means the failure of a parent or legal guardian to supply a minor with necessary food, clothing, shelter, or medical care when reasonably able to do so or the failure to protect a minor from conditions or actions that imminently and seriously endanger the minor’s physical or mental health when reasonably able to do so.

(j) “**Physical abuse**” means any physical injury intentionally inflicted by a parent or legal guardian on a minor.

(k) “**Physician,**” “**attending physician,**” or “**referring physician**” means any person licensed to practice medicine in this State. The term includes medical doctors and doctors of osteopathy.

(l) “**Pregnant woman**” means a woman who is pregnant and is less than (18) years of age and is not emancipated, or who has been adjudged an incompetent person under [*Insert citation(s) or other reference(s) to state statute(s) relating to petition and hearing; independent evaluation, etc.*].

(m) “**Sexual abuse**” means any sexual conduct or sexual penetration as defined in [*Insert citation(s) or other reference(s) to appropriate section(s) of the state criminal code or other appropriate law(s)*] and committed against a pregnant woman by a parent or legal guardian.

Section 4. Notice of One Parent Required.

[Drafter’s Note: Please refer to AUL’s “Parental Involvement Enhancement Act” for additional language to strengthen notice requirements.]

No person shall perform an abortion upon a pregnant woman unless that person has given at least forty-eight (48) hours actual notice to one parent or the legal guardian of the pregnant woman of his or her intention to perform the abortion. The notice may be given by a referring physician. The person who performs the abortion must receive the written statement of the referring physician certifying that the referring physician has given notice to the parent or legal guardian of the pregnant woman who is to receive the abortion. If actual notice is not possible after a reasonable effort, the person or his or her agent must give forty-eight (48) hours constructive notice.

[Section 4.1. Alternate Notification.

[Drafter's Note: Because this model includes a judicial bypass provision through which a court may permit a minor to bypass parental notice when she is the victim of abuse, it is not necessary to include this provision.]

If the pregnant woman declares in a signed written statement that she is a victim of sexual abuse, neglect, or physical abuse by either of her parents or her legal guardian, then the attending physician shall give the notice required by this Act to a brother or sister of the pregnant woman who is over twenty-one (21) years of age, or to a stepparent or grandparent specified by the pregnant woman. The physician who intends to perform the abortion must certify in the pregnant woman's medical record that he or she has received the written declaration of abuse or neglect, and must report the abuse or neglect pursuant to [insert appropriate statute]. Any physician relying in good faith on a written statement under this Section shall not be civilly or criminally liable under any provisions of this Act for failure to give notice.]

Section 5. Exceptions.

[Drafter's Note: Please refer to AUL's "Parental Involvement Enhancement Act" for additional language to prevent abuse of the "medical emergency" and waiver exceptions.]

Notice shall not be required under Section 4 [or 4.1] of this Act if:

- (a) The attending physician certifies in the pregnant woman's medical record that a medical emergency exists and there is insufficient time to provide the required notice; or
- (b) Notice is waived in writing by the person who is entitled to notice; or
- (c) Notice is waived under Section 8.

Section 6. Coercion Prohibited.

A parent, legal guardian, or any other person shall not coerce a pregnant woman to have an abortion performed. If a pregnant woman is denied financial support by the pregnant woman's parents or legal guardian due to the pregnant woman's refusal to have an abortion performed, the pregnant woman shall be deemed emancipated for the purposes of eligibility for public-assistance benefits, except that such benefits may not be used to obtain an abortion.

[Drafter's Note: Please refer to AUL's "Coercive Abuse Against Mothers Prevention Act" for more detail regarding coercion and abortion.]

Section 7. Reports.

A monthly report indicating the number of notices issued under this law, the number of times in which exceptions were made to the notice requirement under this Act, the type of exception, the pregnant woman's age, and the number of prior pregnancies and prior abortions of the pregnant woman shall be filed with the [*Department of Public Health*] on forms prescribed by the Department. No patient names are to be used on the forms. A compilation of the data reported shall be made by the Department on an annual basis and shall be available to the public.

Section 8. Procedure for Judicial Waiver of Notice.

[Drafter's Note: Please refer to AUL's "Parental Involvement Enhancement Act" for enhancements to judicial bypass provisions.]

- (a) The requirements and procedures under this Section are available to a pregnant woman whether or not she is a resident of this State.
- (b) The pregnant woman may petition any [*circuit*] court for a waiver of the notice requirement and may participate in proceedings on her own behalf. The petition shall include a statement that the pregnant woman is pregnant and is unemancipated. The petition shall also include a statement that notice has not been waived and that the pregnant woman wishes to abort without giving notice under this Act. The court shall appoint a guardian *ad litem* for her. Any guardian *ad litem* appointed under this Act shall act to maintain the confidentiality of the proceedings.

[Drafter's Note: Because of concern for confidentiality, unless a judicial decision or other state law requires it, it might be better to say: "the court may appoint a guardian ad litem for her."]

The [*circuit*] court shall advise her that she has a right to court-appointed counsel and shall provide her with counsel upon her request.

- (c) Court proceedings under this Section shall be confidential and shall ensure the anonymity of the pregnant woman. All court proceedings under this Section shall be sealed. The pregnant woman shall have the right to file her petition in the [*circuit*] court using a pseudonym or using solely her initials. All documents related to this petition shall be confidential and shall not be available to the public. These proceedings shall be given precedence over other pending matters to the extent necessary to ensure that the court reaches a decision promptly. The court shall rule, and issue written findings of fact and conclusions of law, within forty-eight (48) hours of the time that the petition was filed, except that the 48-hour limitation may be extended at the request of the pregnant woman. If the court fails to rule within the 48-hour period and an extension was

not requested, then the petition shall be deemed to have been granted, and the notice requirement shall be waived.

(d) If the court finds, by clear and convincing evidence, that the pregnant woman is both sufficiently mature and well-informed to decide whether to have an abortion, the court shall issue an order authorizing the pregnant woman to consent to the performance or inducement of an abortion without the notification of a parent or guardian and the court shall execute the required forms. If the court does not make the finding specified in this Subsection or Subsection (e) of this Section, it shall dismiss the petition.

(e) If the court finds, by clear and convincing evidence, that the pregnant woman is the victim of physical or sexual abuse by one or both of her parents or her legal guardian, or that the notification of a parent or guardian is not in the best interest of the pregnant woman, the court shall issue an order authorizing the pregnant woman to consent to the performance or inducement of an abortion without the notification of a parent or guardian. If the court does not make the finding specified in this Subsection or Subsection (d) of this Section, it shall dismiss the petition.

(f) A court that conducts proceedings under this Section shall issue written and specific factual findings and legal conclusions supporting its decision and shall order that a confidential record of the evidence and the judge's findings and conclusions be maintained. At the hearing, the court shall hear evidence relating to the emotional development, maturity, intellect, and understanding of the pregnant woman.

(g) An expedited confidential appeal shall be available, as the Supreme Court provides by rule, to any pregnant woman to whom the [circuit] court denies a waiver of notice. An order authorizing an abortion without notice shall not be subject to appeal.

(h) No filing fees shall be required of any pregnant woman who petitions a court for a waiver of parental notification under this Act at either the trial or the appellate level.

Section 9. Appeal Procedure.

The Supreme Court is respectfully requested to establish rules to ensure that proceedings under this Act are handled in an expeditious and confidential manner and to satisfy the requirements of federal courts.

[Drafter's Note: This section should be drafted to comport with whatever procedure the State uses to establish appeals procedures. If the legislature has this authority, those procedures should be included in the legislation.]

Section 10. Penalties.

(a) Any person who intentionally performs an abortion with knowledge that or with reckless disregard as to whether the person upon whom the abortion is to be performed is an unemancipated minor or an incompetent female without providing the required notice is guilty of a [*Insert appropriate penalty/offense classification*]. In this Section, “**intentionally**” is defined by Section [*Insert section number*] of the [*State penal/criminal code*].

It is a defense to prosecution under this section that the minor falsely represented her age or identity to the physician to be at least eighteen (18) years of age by displaying an apparently valid governmental record of identification such that a careful and prudent person under similar circumstances would have relied on the representation. The defense does not apply if the physician is shown to have had independent knowledge of the minor’s actual age or identity or failed to use due diligence in determining the minor’s age or identity. In this Subsection, “**defense**” has the meaning and application assigned by Section [*Insert section number*] of the [*State penal/criminal code*].

(b) Failure to provide person(s) with the notice required under this Act is *prima facie* evidence of failure to provide notice and of interference with family relations in appropriate civil actions. Such *prima facie* evidence shall not apply to any issue other than failure to inform the parents or legal guardian and interference with family relations in appropriate civil actions. The civil action may be based on a claim that the act was a result of simple negligence, gross negligence, wantonness, willfulness, intention, or other legal standard of care. The law of this State shall not be construed to preclude the award of exemplary damages in any appropriate civil action relevant to violations of this Act. Nothing in this Act shall be construed to limit the common law rights of parents or legal guardians.

(c) Any person not authorized to receive notice under this Act who signs a waiver of notice under Subsection (b) of Section 6 is guilty of a [*Insert appropriate penalty/offense classification*].

(d) Any person who coerces a pregnant woman to have an abortion is guilty of a [*Insert appropriate penalty/offense classification*].

Section 11. Construction.

(a) Nothing in this Act shall be construed as creating or recognizing a right to abortion.

(b) It is not the intention of this law to make lawful an abortion that is currently unlawful.

Section 12. Severability.

Any provision of this Act held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, shall be construed so as to give it the maximum effect permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which event such provision shall be deemed severable herefrom and shall not affect the remainder hereof or the application of such provision to other persons not similarly situated or to other, dissimilar circumstances.

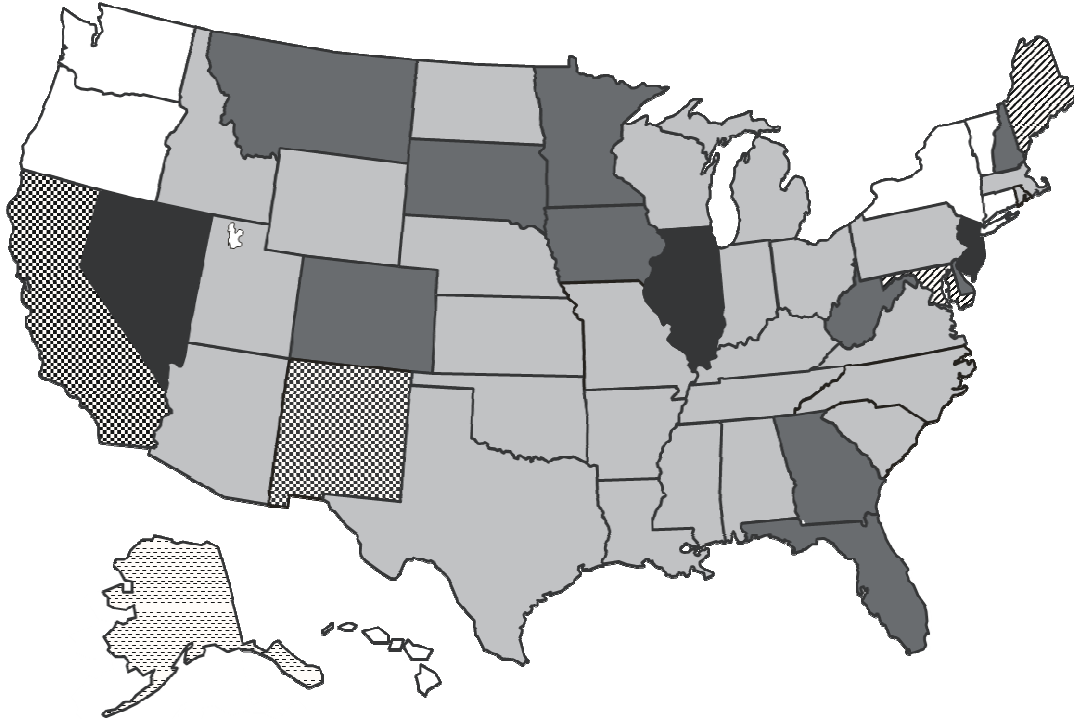
Section 13. Right of Intervention.

The [*Legislature*], by joint resolution, may appoint one or more of its members who sponsored or co-sponsored this Act, as a matter of right and in his or her official capacity, to intervene to defend this law in any case in which its constitutionality is challenged.




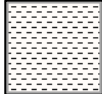
Section 14. Effective Date.

This Act takes effect on [*Insert date*].

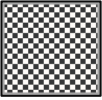

STATE OF THE STATES: WHERE ARE WE NOW? PARENTAL INVOLVEMENT LAWS



Thirty-nine state parental involvement laws are currently in effect.

-  Twenty-six states require parental consent for minors seeking abortion: AL, AZ, AR, ID, IN, KS, KY, LA, MA, MI, MS, MO, NE, NC, ND, OH, OK, PA, RI, SC, TN, TX, UT, VA, WI, and WY.
-  Ten states require parental notice for minors seeking abortion: CO, DE, FL, GA, IA, MN, MT, NH, SD, and WV.
-  Two states permit an abortion provider to override parental consent or notification: ME and MD.
-  One state law requires parental notice for minors seeking abortion and is in effect while in litigation: AK.

Five state parental involvement laws are enjoined, in litigation, or not enforced:

-  Two states have parental consent laws that are enjoined or the state's Attorney General has issued an opinion against enforcement: CA and NM.
-  Three states have parental notice laws that are enjoined or not enforced: IL, NV, and NJ.

More detailed information about the need and justification for parental notification laws can be found in AUL's annual publication *Defending Life 2012: Building a Culture of Life, Deconstructing the Abortion Industry*.

Defending Life 2012 is available online at AUL.org.

For further information regarding this or other AUL policy guides, please contact:

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