

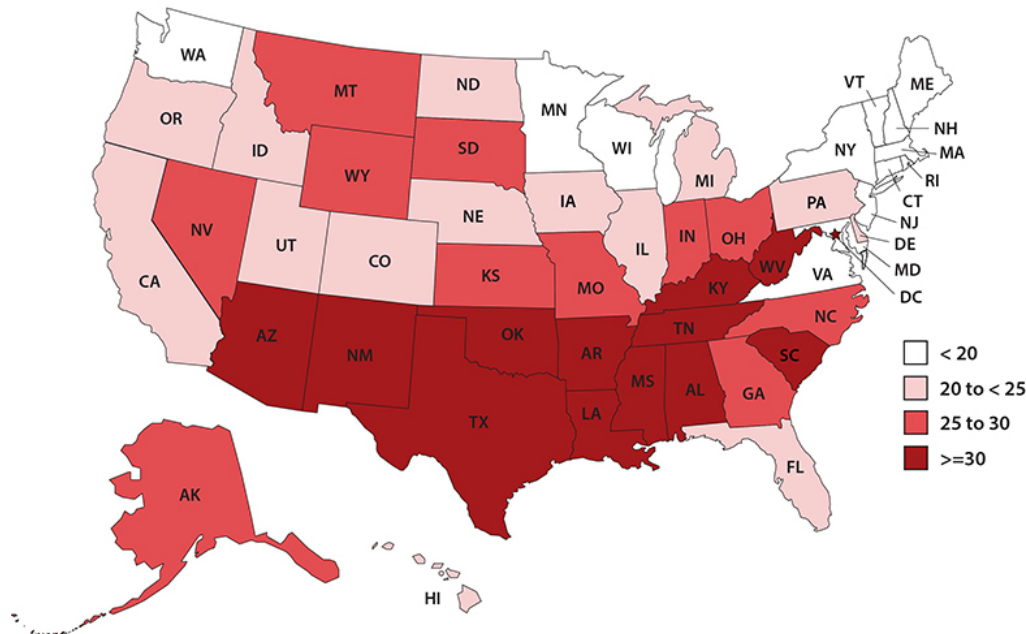
Contact: hhs@usc.edu

Judicial Bypass for Abortion for Minors

What's the Problem?

The majority of U.S. states require parental involvement in a minor's decision to have an abortion—either by notification or consent. Since the Supreme Court ruled that states may not give parents a veto over a daughter's choice, 36 states allow a minor to petition a judge to waive the requirement to notify parents or obtain one or both parents' permission.

But the judicial bypass process for minors is fraught with difficulties, such as taking longer than time limits for an abortion permit, requiring notarized documents, or a judge's bias against abortion. The various restrictions and requirements in different states can be complicated and unclear, and make the procedure a humiliating or risky experience.



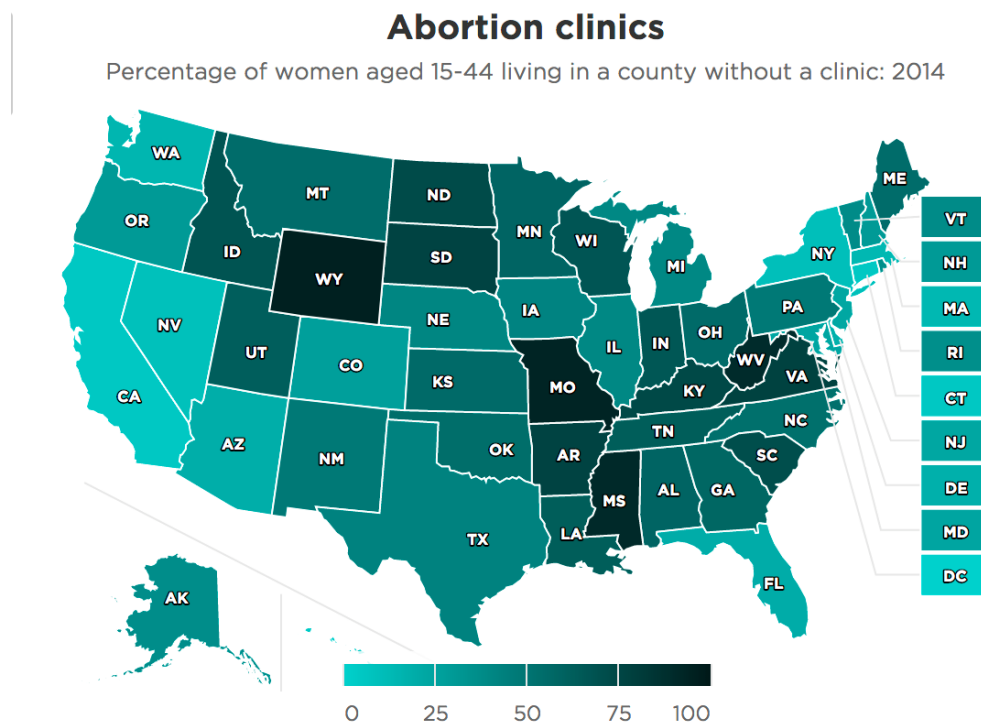
United States map with state teen birth rates (births per 1,000 females ages 15-19) by quartile.

- 21 states require parental consent (in some states both parents)
- 15 states require judges use “clear and convincing evidence” that a minor is mature and abortion is in her best interest
- 7 states require the court determine a minor’s intelligence, emotional stability, and her understanding of the consequences of an abortion

Who is affected?

Minors are vulnerable when notification and permission is required but a parent is dead, unavailable, in prison, or it poses a risk for their safety (i.e.: victims of sexual abuse or violence in the home). Thirty percent of minors seeking a bypass have expressed a fear of violence or worry that they will be kicked out of the house if they tell their parent(s). Only 15 states permit a minor to obtain an abortion in cases of abuse, assault, incest or neglect.

While 7 states allow a grandparent or other adult to be involved in the minor’s decision to terminate the pregnancy instead of parents, several states make it difficult for a minor to obtain a judicial bypass with restrictions on which courts can grant waivers, requirements for a lawyer to file the request, judge’s unavailability, and calling parents to testify. In Alabama, for instance, the District Attorney is notified of minors’ petitions, allowing the state to defend the interests of the fetus. If a request for a waiver is denied, a minor could incur increased costs for travel to a state where parental involvement is not required, face a forced pregnancy or an illegal abortion.



Population counts are for July 1, 2014.

Bottom line

Young people deserve the right to access affordable reproductive and sexual health services, and as well as the right to confidentiality.

Teen pregnancy, birth and abortion rates have reached historic lows, having fallen 51% in the U.S. since the early 1990s, across ethnic and racial groups. The primary reasons for the decline in teen pregnancy is contraceptive use and fewer unintended pregnancies. 60% of the reduced number of abortions occurred in states without new restrictions.

Case study

Kristin stared at the positive result on her drugstore pregnancy test. The 17-year-old lived in Florida, a state where a minor can't have an abortion without at least one of her parents being notified. But she was afraid of her mom. Since her parents divorced and her dad left town, her mom drank more and was quick to anger and violent outbursts.

Kristin saved every dollar from babysitting and waitressing for an abortion, hiding the cash in case her mom found it. Her mom volunteered for an anti-abortion group and if she learned about the pregnancy, Kristin was scared she'd get kicked out of the apartment. She confided in a school counselor who told her about the option to ask a judge for a waiver.

Kristin scrambled to call courthouses but got contradictory responses about the correct procedure. Over three weeks, she called between classes and missed return calls or got mixed messages about which form to file. Some insisted, "There are no bypasses allowed here;" or "You need your parent's permission." One warned of medical risks, dangers for future pregnancies, and risk of infertility. Another referred her to an adoption agency.

Finally, she filed the paperwork at the county courthouse and got a hearing with a judge. Kristin was now 10 weeks along. She wasn't prepared for the judge's questions: "Did you discuss this with your church pastor? Won't your mom be more upset when she learns you had a secret abortion? Won't you regret having an abortion in the future?" and "Are you dating the father of your baby?" She grew nervous when he questioned her maturity.

Kristin explained she was a straight-A student and had been offered college scholarships. She spoke about her mom's alcoholism and showed bruises on her arms from the attacks, fighting back tears. Her counselor advised her to not get upset. Kristin was terrified the judge would deny her petition and she wouldn't have time to appeal it. When she did get permission to proceed with the abortion without her mom knowing, she felt relief.

Resources

- An Overview of Minor's Consent Law: <https://www.guttmacher.org/state-policy/explore/overview-minors-consent-law>
- Parental Involvement in Minor's Abortions: <https://www.guttmacher.org/state-policy/explore/parental-involvement-minors-abortions>

- State Policies on Teens: <https://www.guttmacher.org/united-states/teens/state-policies-teens>
- U.S. Abortion Rate Reaches Record Low Amidst Onslaught Against Reproductive Health <https://www.guttmacher.org/gpr/2017/01/us-abortion-rate-reaches-record-low-amidst-looming-onslaught-against-reproductive-health>
- Judicial Bypass in Texas: <https://janesdueprocess.org/>
- The Adolescent's Right to Confidential Care When Considering Abortion <http://pediatrics.aappublications.org/content/pediatrics/139/2/e20163861.full.pdf>