
Parental Consent for Abortion Act

Model Legislation & Policy Guide



*Advancing the Human Right to Life
in Culture, Law, and Policy*

INTRODUCTION

“I was 15, afraid, ashamed and I felt like I had no choice. . . .The abortion caused me emotional, physical, and spiritual harm that I was never told could or would result. I was never given a pregnancy test, told about the procedure or told the real truth about abortion: risks such as death, breast cancer, endometriosis, and infertility. . . . No one was there to hold my hand. . . . They took my money and my baby! . . .I was distant and empty and contemplated suicide. . . . We never told our parents. . . . I could not forgive myself. I was NEVER able to conceive a child after my abortion and I am 50 years old now. The pain is still there. Abortion scarred me!” – Nicole Peck, Connecticut.¹

Unfortunately, the testimony above is not unique. In those states that do not have laws requiring parental involvement in a minor’s abortion decision, abortion providers perform abortions everyday without adequately and accurately informing minors about the short-term and long-term risks. In fact, the medical, emotional, and psychological consequences of abortion are often serious and can be lasting, particularly when the patient is immature. Parental consent is critical, given that 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. News stories frequently reveal yet another teen that has been sexually abused by a person in authority: a coach, a teacher, or other authority figure. Teens are routinely taken to abortion clinics without the consent or even the knowledge of their parents. Minors are at risk in every state in which parental involvement laws have not been enacted or are easily circumvented.

Importantly, parental involvement laws save the lives of unborn babies by reducing the demand for abortions by minors. For example, a 1996 study revealed that “parental involvement laws appear to decrease minors’ demands for abortion by 13 to 25 percent.”² A 2008 study showed that parental consent laws reduce the minor

¹ Silent No More Awareness, Testimonies, *available at* <http://www.silentnomoreawareness.org/testimonies/testimony.aspx?ID=2915> (last visited June 29, 2015).

² D. Haas-Wilson, *The Impact of State Abortion Restrictions on Minors' Demand for Abortions*, J. HUMAN RESOURCES 31(1):140, 155 (1996).

abortion rate by 18.7 percent.³ With the loving support of their parents, many young women are able to bring their babies into the world and not face the physical risks and emotional devastation that abortions can bring.

The U.S. Supreme Court has reviewed statutes requiring parental consent or notification before a minor may obtain an abortion on 11 occasions.⁴ The Court's decisions in these cases provided state legislators with concrete guidelines on how to draft parental involvement laws that would have been upheld by the courts. Based upon Supreme Court precedent and subsequent lower federal court decisions, a parental consent law was constitutional and did not place an undue burden on minors if it contained the following provisions:

- No physician may perform an abortion upon a minor or incompetent person unless the physician has the consent of one parent or legal guardian.
- An exception to the consent requirement exists when there is a medical emergency.
- A minor may bypass the requirement through the courts (*i.e.*, the law provides for judicial waiver or bypass).

However, the Court lifted the burdensome undue burden standard when it also overturned *Roe v. Wade*.⁵ The pathway is now open for each State to draft parental consent laws in accordance with new Supreme Court jurisprudence and state law. Where appropriate, parental consent 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. AUL's *Parental Consent for Abortion Act* meets these requirements.

For more information on AUL's *Parental Consent for Abortion Act*, or for drafting assistance, please contact AUL's Legislative Team at Legislation@aul.org.

³ Michael J. New, *The Effect of Parental Involvement Laws on the Incidence of Abortion Among Minors*, INSIGHT 16-18 (Sept 24, 2008).

⁴ *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 (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).

⁵ *Dobbs v. Jackson Women's Health Organization*, 597 U.S. ____ (2022).

PARENTAL CONSENT FOR ABORTION ACT

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

Section 1. Title.

This Act may be cited as the “Parental Consent for 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 the 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) Based on the findings in subsection (a), the *[Legislature]*'s purposes in enacting this parental consent 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 the parental consent requirement only in exceptional or rare circumstances.

Section 3. Definitions.

As used in 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) “**Coercion**” means restraining or dominating the choice of a pregnant woman by force, threat of force, or deprivation of food and shelter.
- (c) “**Consent**” means, in the case of a pregnant woman who is less than eighteen (18) years of age, a notarized written statement signed by the pregnant woman and her mother, father, or legal guardian [*or alternate person as described in Section 5*] declaring that the pregnant woman intends to seek an abortion and that her mother, father, or legal guardian [*or alternate person as described in Section 5*] consents to the abortion; or, in the case of a pregnant woman who is an incompetent person, a notarized written statement signed by the pregnant woman’s guardian declaring that the guardian consents to the performance of an abortion upon the pregnant woman.
- (d) “**Department**” means the Department of [*Insert appropriate title*] of the State of [*Insert name of State*].
- (e) “**Emancipated minor**” means any person less than eighteen (18) years of age who is or has been married or who has been legally emancipated.
- (f) “**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*].

(g) “**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.

(h) “**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.

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

(j) “**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.

(k) “**Pregnant woman**” means a woman who is pregnant and is less than eighteen (18) years of age and 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.]*.

(l) “**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 minor by a parent or legal guardian.

Section 4. Consent of One Parent Required.

[Drafter’s Note: *Please refer to AUL’s Parental Involvement Enhancement Act for additional language to strengthen parental consent requirements.*]

No person shall perform an abortion upon a pregnant woman unless, in the case of a woman who is less than eighteen (18) years of age, he or she first obtains the notarized written consent of both the pregnant woman and one of her parents or her legal guardian; or, in the case of a woman who is an incompetent person, he or she first obtains the notarized written consent of her guardian. In deciding whether to grant such consent, a pregnant woman's parent or guardian shall consider only the pregnant woman’s best interests.

[Section 5. Alternate Consent.

[Drafter's Note: *Because this model language includes a judicial bypass provision through which a court may permit a minor to bypass parental consent 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 parent(s) or her legal guardian(s), then the attending physician shall obtain the notarized written consent required by this Act from a brother or sister of the pregnant woman who is over twenty-one (21) years of age, or from 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 reference(s) or citation(s) to appropriate legal authority]. 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 obtain consent.]

Section [6]. Exceptions.

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

Consent shall not be required under Section 4 [or 5] of this Act if:

- (a) The attending physician certifies in the pregnant woman's medical record that a medical emergency exists and that there is insufficient time to obtain the required consent; or
- (b) Consent is waived under Section [9] of this Act.

Section [7]. Coercion Prohibited.

A parent, 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 because of 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 [8]. Reports.

A monthly report indicating the number of consents obtained under this law, the number of times exceptions were made to the consent 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 on forms prescribed by it. 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 [9]. Procedure for Judicial Waiver of Consent.

[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 consent 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 consent has not been waived, and that the pregnant woman wishes to abort without obtaining consent 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 preferable to provide that "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 two (2) business days of the time that the petition was filed, except that the two (2) business day limitation may be extended at the request of the pregnant woman. If the court fails to rule

within the two (2) business day period and an extension was not requested, then the petition shall be deemed to have been granted, and the consent 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 consent 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 obtaining the consent of a parent or legal 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 consent 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 *[Insert name of State]* Supreme Court provides by rule, to any pregnant woman to whom the *[circuit]* court denies a waiver of consent. An order authorizing an abortion without consent 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 consent under this Act at either the trial or the appellate level.

Section [10]. Appeal Procedure.

The *[Insert name of State]* 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 procedures for legal appeals. If the legislature has this authority, those procedures should be included in this legislation.*]

Section [11]. Criminal Penalties and Civil Remedies.

(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 person without obtaining the required consent is guilty of a [Insert appropriate offense/penalty classification]. In this Section, “**intentionally**” is defined by [Section] [Insert section number] of the [state criminal/penal 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) Any person not authorized to provide consent under this Act who provides consent is guilty of a [Insert appropriate offense/penalty classification].

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

(d) Failure to obtain consent from person(s) from whom consent is required under this Act is *prima facie* evidence of failure to obtain consent and of interference with family relations in appropriate civil actions. Such *prima facie* evidence shall not apply to any issue other than failure to obtain consent from the parent 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.

(e) Nothing in this Act shall be construed to limit the common law rights of parents or legal guardians.

Section [12]. 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 [13]. 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 [14]. 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 [15]. Effective Date.

This Act takes effect on [Insert date].

STATE OF THE STATES: WHERE ARE WE NOW? PARENTAL INVOLVEMENT LAWS⁶

Forty state parental involvement laws are currently in effect.

Twenty-six states require parental consent for minors seeking abortions: 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 abortions: CO, DE, FL, GA, IL, IA, MN, NH, SD, and WV.

Two states permit an abortion provider to override parental consent or notification: ME and MD.

Two state laws requiring parental notice for minors seeking abortion are in effect while in litigation: AK and MT (MT also has a parental consent law that is enjoined while in litigation).

Four states have parental involvement laws that 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.

Two states have parental notice laws that are enjoined or not enforced: NV and NJ.

⁶ After *Dobbs v. Jackson Women's Health Organization*, it is presumed that parental consent laws have been superseded in states where abortion is prohibited. AUL is conducting a comprehensive review of the impact on states.

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

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