Bypassing Justice:

PREGNANT MINORS AND PARENTAL-INVOLVEMENT LAWS

national partnership for women & families

The National Partnership for Women & Families is a non-profit, non-partisan advocacy group dedicated to promoting fairness in the workplace, access to quality health care and policies that help women and men meet the dual demands of work and family. More information is available at www.nationalpartnership.org.

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INTRODUCTION

The Project's Purpose

Thirty-six states in this country have laws that require a young woman to involve her parents in her decision to have an abortion—typically either by notifying a parent or by seeking a parent's permission. As defined in 34 states, the judicial bypass is a hearing where a minor may ask a judge to waive state parental notice or consent requirements if the minor is mature enough to make the decision, or if an abortion is in her best interest. Statutes and case law, though, do not begin to tell the story of what happens to a minor who wants an abortion without parental involvement.

The gap between law and practice with respect to the judicial bypass is at the heart of this study. To date, there has been significant research about the ways in which parental-involvement laws fail to meet their own objectives: Parental consent and notice laws do not foster parent-child dialogue, and instead often penalize minors who cannot and should not involve unsympathetic, uninterested, unsupportive or abusive parents. Missing from existing research, however, is an in-depth examination of how these laws and bypass systems work in practice and discussion of the systems that do not work at all.

This study is designed to bring unique and valuable insight into the actual operation of parental-involvement laws and the judicial bypass by reporting on interviews with the advocates, judges, lawyers, clinic staff members and court personnel who assist pregnant minors in every state where a bypass is the alternative to parental involvement. Coupled with extensive inquiry into available information on the bypass in each state, the comments of these professionals expose the profound gap between what laws promise—that minors will have a viable legal option outside of parental consent or notice—and what they actually deliver.

Requiring minors to notify or receive consent from a parent, with the alternative being the decision of a judge, may cause long-lasting and significant harm to young women. The U.S. Supreme Court upheld parental-involvement laws on the ground that the judicial bypass presented a compromise between a young woman's access to abortion and her family's interest in knowing about her reproductive decisions. Contrary to the confidential, timely and effective process that the Court had in mind, the judicial bypass is not accessible to many minors who need it and can be anything but fair and effective.[1] The

bypass process and parental-involvement laws generally fail to address minors' uniquely personal situations—a context in which a minor herself is best suited to determine whether her parents should be involved in her abortion decision.

The vulnerability of minors seeking health care alone, the lifelong consequences of unwanted early childbearing and the fact that minors have a constitutional right to choose abortion warrant intensive study of the bypass. Understanding how the bypass works can aid advocates who seek to improve a system that has significant repercussions when it fails.

Major Findings and Recommendations

The project's goals are, first, to understand what happens to a minor who wants an abortion without parental involvement and, second, to offer a set of recommendations that can in some way help make the bypass process fairer and more effective. These suggestions, briefly mentioned below and described in detail later, concentrate on how those working closely with minors seeking abortions—clinic and court staff, judges, lawyers and advocates—can assist in creating local and statewide infrastructures that will enable minors to overcome the logistical and systemic barriers to abortion access.

The current patchwork system presents enormous challenges for minor petitioners and the adults who assist them. What follows is a description of some of the report's central findings about how the bypass fails to meet the basic standards of fairness set out in state laws and in constitutional jurisprudence.

- Perhaps the most important and disturbing finding is that a judicial bypass is not available in a large majority of the country's courts. Within each state, a majority of counties located outside major cities are unable to help petitioners, either because those courts and other actors are unfamiliar with the bypass or because they are unwilling to apply the law. Minors, their lawyers or their advocates may avoid these counties because the judges in them routinely deny bypasses to minors whom judges in other parts of the state would find mature. In at least two states, there is apparently no court willing or able to hear a bypass petition.

- The question, 'How does the bypass work?' generates answers that vary not only from state to state, but also from county to county and courthouse to courthouse within a state. This is due in part to differences among states' laws and rules. But it is also due to inconsistencies between the practices of jurisdictions, high levels of judicial discretion, the lack of training and education about the bypass for legal actors, and the gaps in information about what is happening in courthouses across a state. Calls to the courthouses in three states revealed that in two of the three states, almost no one answering the courts' telephones could give accurate information about the bypass. Whether a petition is granted often depends on which judge or court clerk handles it. For example, in a courthouse where six judges hear petitions, five deny most of them as a matter of course. The clerk of that court, nevertheless, assigns

petitions in strict rotation—making the outcome for minors little more than a game of roulette. Because of this kind of variation, minors in many places have no idea what to expect when calling or visiting a courthouse.

- Few minors know that their state has a mandatory parental-involvement law or that the bypass exists. Although they likely learn some facts when they ask about abortion, what they are told may be incomplete or incorrect. In one example, a woman whose job is counseling pregnant minors knew of her state's parental-involvement law but not of the bypass. Although most clinics review all options with their minor-patients, some clinic staff stated that they mention the bypass to select minors that call the clinic. What information a health-care provider gives a minor, or what a clinic requires of a minor (to establish notice or consent, for example), can vary widely and can be influenced by liability issues.

- Even a minor who knows about the bypass may not be able to gain access to it. Logistics deter many young women, especially the youngest girls, those in rural areas and those living in poverty. Parental-involvement laws further marginalize already-vulnerable minors. Hurdles include limited access to transportation, lack of resources, school attendance requirements, lack of fluency in English, anti-abortion activism, and being in juvenile detention or state care.

This project aims to assist adults who are trying to improve the implementation of parental-involvement laws. Its recommendations are based on strategies already in place in some locales where minors actually have a decent chance of pursuing a bypass. In pockets of all but a few of the parental-involvement states, a small and committed group of judges, lawyers, clinic and court staff, abortion funders, and advocates explains the law to minors and makes it possible for them to claim their rights. These professionals tell minors the bypass exists, where to petition, whom to contact for a hearing and an abortion appointment, and what a court will require. In some cases, they also offer specific information about logistical barriers and support in overcoming them. However, it is clear that this group needs more support in its work. Closing the information gap for these professionals is the first crucial hurdle; making it possible for minors to petition is the next.

Project Method and Activities

To understand the current state of the bypass, project staff

- Interviewed 155 professionals working with the bypass and parental-involvement laws in some capacity;

- Convened a national meeting of 50 experts involved in adolescent reproductive health who are particularly knowledgeable about the judicial bypass;

- Reported on the national meeting to the national reproductive health community;

- Held two smaller meetings to discuss health-care providers' liability and judges' training with experts in those two areas;

- Reviewed bypass statutes, regulations, case law, statistics, court forms and other written materials on parental-involvement laws and the bypass; and
- Telephoned courts in three states to ask about bypass hearings in order to test whether information on hearings was readily available and accurate.

Project staff did not interview minors who had sought a bypass, in part out of respect for their privacy but also because finding minors would have been difficult given the confidential nature of the process.

Report Structure

Part One, "The Law on the Books," describes the types of state statutes and trends in case law. Part Two, "The Law in Practice—Different Perspectives," reflects the perspectives of clinic staff, lawyers, judges, court personnel, advocates and others, and the effect each group can have on how the bypass functions. Part Three, "Barriers and Recommendations," lists the major obstacles to improving the bypass and suggests how it might work better.

Nothing in this report constitutes legal advice. All participants were promised confidentiality—that neither they nor their locale would be identified. For this reason, the report focuses on broad themes, while incorporating many examples of what interviewees said and did with respect to the bypass. Again with confidentiality in mind, feminine pronouns are used universally. Interviewees' statements have been altered slightly, from colloquial spoken English to standard written English. When an interviewee related a third party's statement, the statement is in italics.

Part I:
THE LAW ON THE BOOKS

TYPES OF PARENTAL-INVOLVEMENT LAWS

Introduction

Parental-involvement laws date back more than three decades. In *Planned Parenthood of Central Missouri v. Danforth*[2] in 1976, the Supreme Court first considered a parental-involvement statute and held unconstitutional a Missouri law that required parental consent unless the abortion was necessary to save the life of the minor. The next parental-involvement law considered by the Court was a Massachusetts statute, *Bellotti v. Baird*.[3] Unlike in *Danforth,* the Court upheld the Massachusetts law because it included a judicial-bypass procedure—a process by which a judge could issue an order waiving parental consent. The Court held that this judicial "waiver" or bypass of parental involvement was central to the law's constitutionality; a minor needed an alternative by which she could show that she was mature enough to decide to have an abortion on her own *or* that an abortion would be in her best interest. The Court ruled that a parent cannot issue a blanket veto of a minor's decision to obtain an abortion; every minor must have an alternative to parental involvement that is "completed with anonymity and sufficient expedition to provide an effective opportunity for an abortion to be obtained."[4] Central to the Court's opinion was the belief that a decision about abortion was crucial to a minor's future.[5]

In subsequent cases, the Court has upheld parental-involvement laws if they include a bypass procedure that allows a mature and well-informed minor to make her own abortion decision, or that would permit an abortion to occur if it is in the minor's best interest.[6] This section presents an overview of the typical components of state parental-involvement laws. It reviews the two broad categories—consent and notice—into which these laws fall. This part also summarizes the standards for establishing notice or consent, exceptions to parental involvement, and penalties for violating the law. This section does not provide a detailed account of each consent or notice law in force today. Rather, it describes the commonalities and differences between state parental-involvement laws—important background information for understanding the gap between the law on the books and the law in practice.

Components of Parental-Involvement Statutes: Notice and Consent

Types of Laws. Currently, 36 states have in effect some sort of parental-involvement statute (two have a physician bypass and no judicial or court alternative), and the statutes fall along a spectrum based on what they require of a minor and parties assisting her. Courts in seven other states have enjoined or do not enforce their statutes.[7] New Hampshire became the first state to repeal a parental-notification law in the summer of 2007.[8] Six states—Connecticut, Hawaii, New York, Oregon, Vermont and Washington—and the District of Columbia have not passed parental-involvement laws.[9]

Most parental-involvement provisions require either a minor to obtain consent from a parent (or, in Mississippi[10] and North Dakota,[11] from both parents) or that clinics notify a parent (or in Minnesota,[12] two parents) of a minor's scheduled abortion within a specified time before the procedure. Oklahoma, Utah, Texas and Wyoming require both notice and consent.[13]

Provider Responsibilities. As indicated above, notice statutes are specific in that they require actual notice (the provider delivers notice in person or by telephone) or constructive notice, via delivery of a letter. Special delivery, registered mail—the primary way that laws designate delivery—means that the letter must be delivered to the addressee, who must present identification confirming her identity upon signature. Laws generally require providers to give a parent notice 24 hours before the abortion if the notice is in person or by telephone, and 48 hours (most states) or 72 hours (fewer states) if notice is mailed or delivered. Providers must obtain oral or written consent from the adult(s) designated by statute. Fifteen statutes specify that consent must be in writing and signed, and five of these states require notarization.[14]

Where proof of parentage is needed, three state laws require the person consenting or receiving notice to present a valid or "proper" form of identification that establishes the relationship between the parent/guardian and the minor.[15]

Beyond this, laws speak to providers' duty to use "reasonable means" to notify or to obtain consent or learn a patient's age. Statutes do not usually describe in detail how a young woman must prove her age or standards by which the provider must verify that age.

Procedure for a Judicial Bypass

Confidentiality. All state statutes require the bypass process to be confidential. Some statutes explicitly require courts to keep written (and confidential) records of hearings, to keep files in a secure location, or to specify how pseudonyms for the minor should be used.[16] For example, Wisconsin's law specifies how courts will protect confidentiality, requiring that the petition be titled "In the Interest of Jane Doe."[17] Two state laws, Kansas and Nebraska, expressly limit those who may participate in the hearing, limiting participation to the minor, her attorney or *guardian ad litem* (GAL), the judge, and anyone else the minor requests to attend.[18]

Court Assistance. Nearly one-third of statutes direct the court or another state

official to assist minors in the bypass process.[19] Although most statutes are silent about the forms necessary to file a petition, some states oblige other state offices to create model petitions, court forms and other sources of information to help minors navigate the process. Louisiana's law, for example, requires clerks to prepare application forms in "clear and concise language which shall provide step-by-step instructions for filling out and filing the application forms," as well as to assist minors in filling out forms.[20] Besides stating that a "clerk of court shall assist in completing and filing the petition upon request," the law requires the state court administrator to "develop a petition form and instructions on the procedures for the bypass."[21] The law continues: "A sufficient number of petition forms and instructions shall be made available in each courthouse in such place that members of the general public may obtain a form and instructions without requesting such form and instructions from the clerk of court or other court personnel."[22]

Tennessee places the responsibility of helping a minor through the bypass process on someone other than a court staff member—an advocate from the Department of Children's Services.[23] The Department is also required to provide a brochure with detailed information about the bypass procedure and a toll-free number for minors to use to get in touch with an advocate.[24]

Expedited Process. All states must require a timely process—a prompt hearing that will "ensure that the court may reach a decision promptly and without delay in order to serve the best interest of the pregnant woman."[25] State parental-involvement laws attempt to ensure an expedited process in several ways. First, almost all laws require courts to hear petitions within a specified time frame. For example, courts are obliged to hear petitions within 48 hours;[26] 72 hours;[27] or four,[28] five[29] or seven[30] business days from the date of filing. Some statutes impose a deadline of 24 hours following the hearing for the ruling, and some laws' time frames include hearing and decision. Other laws do not set a deadline for hearing petitions, but require courts to give priority to bypass petitions: Proceedings "shall be given precedence over other pending matters to the extent necessary to ensure that the court reaches a decision promptly and without delay so as to serve the best interest of the pregnant minor."[31] Utah's statute leaves it to the state's Judicial Council to "establish procedures to expedite the hearing and appeal proceedings described in this section."[32]

Appeals. Every state has an expedited process for appeal, but laws vary as to the length and process for appeal. Generally, statutes mandate that appeals must be completed—cases heard and decided—within a short period of time, ranging from 48 hours[33] to seven days.[34] The minority of statutes call for expedited appeal but do not describe the deadline by which those appeals must be heard,[35] or leave the appellate process for a rules committee or other state judicial body to determine.[36] When laws do not specify a timeline, an appellate court (often the Supreme Court of the state) is directed, as in Delaware, to "expedite proceedings to the extent necessary and appropriate under the circumstances."[37] Several statutes explicitly provide that only a minor may appeal a decision (and only a denial may be reviewed).[38] The Massachusetts statute, one of the oldest parental-involvement laws in the country, does not specify the process for

appeal; standards for appellate review have been established through state case law and many statutes are silent on the issue.[39]

Court Assignment and Residency. Statutes also establish what court(s) in the state will hear petitions. For example, statutes can designate juvenile and family courts or district courts (or superior, probate, chancery courts—the general jurisdiction courts at trial level) as the venue. In addition, six states impose residency requirements.[40] This can mean that courts will only hear petitions from minors residing in the county where the court is located or where an abortion will be performed. However, several statutes make clear that minors from out of state may petition.[41]

Attorneys / Guardians ad Litem (GAL). Statutes appear to differ widely in how they treat the minor's access to an attorney (and, depending on the statute, a GAL). For example, many statutes are directive: "The Court must advise minor she has right to an attorney and must appoint one if she cannot pay" attorney expenses.[42] About the same number of states give the minor the right to an attorney upon her request.[43] Fewer laws are permissive; a court may appoint a lawyer.[44] Some states permit a court to appoint a GAL, and require the appointment of a lawyer;[45] others require the appointment of a GAL (who in many instances may also act as the minor's lawyer or in addition to a lawyer).[46] Only Rhode Island's law requires the appointment of a GAL with no mention of a lawyer.[47]

Some states suggest the types of professionals that courts should consider in appointing GALs. For example, Iowa's courts may consider psychologists, social workers, mental-health counselors, or marital and family therapists,[48] and Texas's statute allows a court to appoint a psychiatrist, psychologist or employee of the Department of Protective and Regulatory Services; a member of the clergy; or another appropriate person to serve as the GAL.[49]

In addition to access to a court-appointed lawyer or GAL at no cost to the minor, 16 states make explicit provisions for the waiver of court fees for the minor.[50]

Grounds of the Bypass Petition

Standards for Maturity or Best Interest. All state parental-involvement laws set out a version of the grounds established by *Bellotti* for granting a petition—that the minor is mature (and as stated in most laws, well informed) or that an abortion would be in her best interest. Some statutes set out three grounds for granting a petition: The minor is mature and well informed *or* that the abortion is in her best interest *or* that the continued pregnancy could lead to mental, physical, sexual or emotional abuse.[51] Statutes require courts to grant petitions if any ground is met by the minor.

Laws describe maturity in different ways. For example, most states require that the court find the minor to be "mature and well-informed"[52] or "mature and capable of giving informed consent."[53] The standard of "well-informed" seems to require more information about abortion than the standard of informed consent (which is necessary for any medical service for a woman of any age). North Dakota empowers the court to "issue an order to provide the minor with any necessary information to assist her in her decision" if the court determines the minor is mature but not well informed.[54]

Several states qualify the definition of maturity by stating that the minor must be "sufficiently" mature and well informed,[55] and 10 states require that the court find such maturity by clear and convincing evidence.[56] Proving a case by "clear and convincing" evidence is a standard more onerous than required for most civil proceedings. Usually, in civil matters, a party proves her case by the preponderance of the evidence; that is, when she more likely than not has met the standard. Florida's law, like several others, applies a "clear and convincing" standard to maturity findings but not to findings of abuse or best interest.[57]

There is less variation in how the best-interest standard is described. Several states, though, differentiate abortion that is in the minor's best interest from waiver of parental involvement because there is abuse or sexual assault.[58] For example, in addition to waiving parental involvement for best-interest reasons, Alabama courts can waive parental consent when a minor alleges that "one or both of her parents or her guardian has engaged in a pattern of physical, sexual, or emotional abuse against her, or that the consent of her parents, parent or legal guardian otherwise is not in her best interest."[59]

Few laws describe how a minor, her attorney or the court should gauge whether the minor's maturity or best interest has been established. However, the eight states that outline what a minor's petition must include or what evidence the court may consider use common language. The court must hear evidence "relating to the emotional development, maturity, intellect, and understanding of the minor; the nature, possible consequences, and alternatives to the abortion; and any other evidence that the court may find useful."[60] Some statutes also require the minor to show—either in her petition or at the hearing—that she "has been fully informed of the risks and consequences of the abortion; that she is of sound mind and has sufficient intellectual capacity to consent."[61]

Petitions Deemed Granted. In 11 states, a petition will be automatically granted if the court makes no decision during the allotted time.[62] A few states use different mechanisms for a bypass petition that is not ruled on in a timely manner. Nebraska's law, for example, states that if the court fails to rule, the minor may petition the state Supreme Court for a writ of mandamus (a court order mandating that another court perform a duty specified in the order), and "if cause for a writ of mandamus exists, the writ shall issue within three days."[63]

Counseling. A handful of states require minors seeking a bypass to undergo counseling or receive state materials on abortion and other information before the court will hear their petitions. These materials are distinct from the informed-consent materials or counseling women of all ages receive before having an abortion. For example, Louisiana law requires minors to "participate in an evaluation and counseling session" with someone from the Department of Health and Hospitals or the Department of Social Services.[64] Iowa established a "Prospective minor parents' decision-making assistance program," which includes a decision-making video and workbook that a health-care provider must offer to the minor; the court is required to appoint a GAL for the minor if she declines to view the program materials (unless she is "accompanied by a responsible adult").[65]

In Kansas, minors must obtain counseling from a medical professional (other than the abortion provider), a social worker, a therapist, or a clergy member.[66] A "parent or guardian, or a person 21 or more years of age who is not associated with the abortion provider and who has a personal interest in the minor's well-being" must accompany the minor during this counseling.[67] Providers must encourage minors to involve their parents or other adult family members and give minors counseling materials explaining alternatives to abortion and information about birth control, the bypass, and agencies available to help them.[68]

South Carolina's law creates a duty on the part of the Adoption and Birth Parent Services Division of the Department of Social Services to prepare brochures that discuss a minor's pregnancy options, birth control and the value of parental involvement in her decision-making.[69]

Alternatives and Exceptions to Parental Involvement: Definitions

Consent From Other Adults. All parental-involvement laws allow parents or legal guardians to consent or accept notice.[70] In six states,[71] other adults may do so in place of the parent or guardian. These states are

- Delaware: Grandparent or a licensed mental-health professional not employed by the abortion provider;[72]
- Iowa: Grandparent;[73]
- North Carolina: Grandparent with whom the minor has been living for at least six months immediately preceding filing;[74]
- South Carolina: Grandparent or someone who has "been standing in loco parentis to the minor for a period not less than sixty days;"[75]
- Virginia: "Person standing in loco parentis [or "in the place of the parent"], including, but not limited to, a grandparent or adult sibling with whom the minor regularly and customarily resides and who has care and control of the minor;"[76] and
- Wisconsin: Adult family member, such as a grandparent, aunt, uncle or sibling, who is at least 25 years old.[77]

Wisconsin allows a clergy member to file a petition on behalf of the minor if the clergy member files an affidavit stating that "she has met personally with the minor and has explored with the minor the alternative choices available to the minor for managing the pregnancy."[78]

Alternatives to the Judicial Bypass. In three states—Maryland, West Virginia and Maine—a health-care provider helps determine when a minor is not obligated to involve a parent. Maryland (which has no judicial bypass) and West Virginia (which does) allow a provider to assess maturity or best interest as a court would.[79] Maine's statute gives the minor the option of a bypass hearing or state-mandated counseling, which is delivered by the provider who describes, among other things, the alternatives to and risks of abortion; encourages minors to consult with parents; and records the minors' reasons for not seeking parental consent.[80] Two states have lowered the age of minority for parental-involvement laws—minors 16 or older do not need to notify a parent in Delaware, and

17-year-olds are exempt from the consent law in South Carolina.[81]

A few statutes further define who may give consent or accept notice. For example, Colorado explicitly includes a foster parent in the definition of "parent," which is unusual because foster parents in many states do not possess the power to consent to nonroutine medical treatment. In Pennsylvania, if neither a parent nor a legal guardian is available to the physician within a reasonable time and in a reasonable manner, consent of any adult person standing in loco parentis is sufficient.[82] A number of states specify that if parents are divorced, only the consent of the custodial parent is necessary.[83]

Emancipation. There are also situations where parental involvement or a judicial waiver is not required. For example, almost all notice or consent laws state that emancipated minors may make abortion decisions without their parents.[84] The definition of emancipation varies from state to state. Virginia's law defines an emancipated minor as someone "willingly living separate and apart from his or her parents or guardian, with the consent or acquiescence of the parents or guardian," or a youth emancipated by a court.[85] Ohio's law defines an *un*emancipated minor as a young woman who "has not become employed and self-subsisting, or has not otherwise become independent from the care and control of her parent, guardian, or custodian."[86] Most statutes explicitly state that married (or divorced) minors can make abortion decisions without parental involvement or a bypass.[87] In Oklahoma, for example, an *un*emancipated minor is "any person less than eighteen (18) years of age who is not or has not been married or who is under the care, custody and control of the person's parent or parents, guardian or juvenile court of competent jurisdiction."[88] A handful of statutes also create an exception for young women serving in the Armed Forces.[89]

Abuse, Neglect, Assault. Twelve states exempt minors who have been abused, neglected, or assaulted (including rape or incest) from the requirements of the parental-involvement law; several states apply the exemption only when the parent or guardian is the perpetrator.[90] Several statutes explicitly remove the ability to consent from the abusive parent but require it from the nonabusive parent.[91] Some explicitly include abuse, neglect or assault as grounds for a best-interest finding.[92]

The evidence needed to establish abuse or assault, and what a provider must do in response to learning this information, varies. In Wisconsin, the minor must provide a signed statement that the pregnancy is a result of sexual assault, abuse or "sexual intercourse with her caregiver," which the provider must report.[93] Laws like the one in Arkansas require the minor to "state by affidavit that the parent has committed incest with the minor, has raped the minor, or has otherwise sexually abused the minor."[94] Oklahoma's law has the most restrictive approach to this exception. The minor must declare she is a victim of sexual abuse and the abortion provider must have reported it to local law enforcement or the Department of Human Services *before* the bypass hearing.[95]

Emergency. Almost all states allow a physician to perform an abortion on a minor without parental involvement or the judicial bypass if there is a medical emergency.[96]

Some laws define emergency as when the minor's pregnancy compromises her health, safety or well-being.[97] Others take a more restrictive approach, defining medically necessary abortions as those that are needed "to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of major bodily function."[98] State laws have been successfully challenged when they either lack a medical-emergency exception or define it so narrowly that it does not allow sufficient time for a physician to assess risk to the health or life of the minor.

Penalties

Most statutes penalize "anyone who performs an abortion in violation" of the law with a low-level (class A or 1) misdemeanor.[99] However, a provider will not be penalized if she can show that she acted with the prudence of a reasonable person in applying the law and performing an abortion. For example, Colorado's statute creates an affirmative defense for the provider who "relied upon facts or information sufficient to convince a reasonable, careful and prudent person that the representations of the pregnant minor regarding information necessary to comply with this article were bona fide and true."[100] Under Idaho's statute, it is a defense to prosecution if a provider relies on "positive identification or other documentary evidence" that a reasonable person would conclude established that the woman was 18 or older (or emancipated).[101]

A few states impose a more serious misdemeanor[102] and several statutes impose even harsher penalties. For example, Colorado and Iowa make it a felony to help or counsel a minor to provide false information to a physician,[103] and in Oklahoma and Utah, it is a felony to violate knowingly the parental-involvement law.[104] Notably, in a few states the law specifies that a person in violation of the parental-involvement statute may be imprisoned for up to one year.[105] Fines in two jurisdictions are capped at $1,000 and at $10,000 in two other states.[106] Several laws subject providers to professional discipline upon violation of parental-involvement standards, which can result in forfeiture, revocation, rejection or suspension of a provider's professional license.[107]

In addition to criminal charges or professional discipline, several states allow minors or an adult whose consent or notice was required to file a civil suit against health-care providers or other individuals who facilitated a minor's abortion.[108] These causes of action are sometimes called "failure to obtain informed consent" or "interference with family relations."[109] Iowa has an unusual provision that requires grandparents to be informed that a minor's guardian or parents may take legal action against the grandparent that is notified of the minor's abortion (under the statute's exception to parental notification).[110]

Reporting Abuse and Reporting Statistics

Parental-involvement laws often explicitly establish that health-care providers or courts must report specified information about the minor to third parties. Michigan's consent law, for example, states: "If the court suspects or the minor reveals that she is the victim of sexual abuse, the court must report the abuse according to the child protection law and may take the child into

temporary protective custody as well as take other necessary action."[111] Missouri's law requires reporting if the physician has "prima facie evidence that the minor has been a victim of sexual abuse."[112]

A handful of statutes oblige providers to report other information to the state. Louisiana law requires providers to notify the Department of Health and Hospitals of each abortion performed.[113] The report must include the young woman's age at the time of the abortion.[114] Florida's Supreme Court is required to report the number of petitions filed in each circuit court and their dispositions each year.[115] Other laws specify additional information that must be sent to a state agency. Idaho and West Virginia obligate providers to send a report to the Bureau of Vital Statistics and the Department of Health, respectively, that includes the age of the minor and the reason for the waiver of the notification requirement.[116] In Alabama, providers must report annually to the Bureau of Vital Statistics the number of abortions performed on minors with parental consent, the number performed following bypass proceedings and the number performed due to medical emergencies.[117] They must also report "non-confidential statistics, including but not limited to age, race and education level of minor."[118]

TRENDS IN STATE CASE LAW

Introduction

Bypass decisions that are accessible to the public are cases in which an appellate court has considered a denial of a petition by a lower court, or that challenge the constitutionality of the state's law. This section briefly reviews themes that state appellate courts address when affirming or reversing the decisions of lower courts that deny bypass petitions. State cases challenging the constitutionality of consent or notice laws are not reviewed here because, although that litigation is important (and has resulted in injunctions against several states' laws), the resulting cases do not necessarily capture how the bypass presently works in the state or how lower level courts currently apply parental-involvement laws.[119]

Appellate Review and Discretion Given to Trial Courts

Appellate courts give the bypass decisions of lower courts a high level of deference. The rationale for this standard was set out in an Alabama case: "Where the trial court has had the opportunity to observe the witness and where assessments of the level of the minor's maturity are crucial—the trial court's findings should be afforded considerable deference. Here, the trial judge had the responsibility of determining the facts . . . The trial judge was in a far better position than are we to determine, as a matter of fact, the minor's maturity and level of knowledge."[120]

There is wide variation in the breadth of case law among states. Some have dozens of published appellate cases, while others have none. If the number of decisions affirmed and decisions reversed were separately tallied, it would appear that appellate courts affirm as often as they reverse denials of petitions by lower courts.

But that information by itself is misleading because in several states, such as Alabama, appellate courts have historically affirmed lower court decisions and in other states, such as Massachusetts and Florida, appellate courts have routinely reversed denials.

Several states will not overturn a lower court's decision unless the decision is clearly erroneous;[121] other states use an abuse-of-discretion standard in reviewing lower court decisions.[122] Following an appellate court's determination that the trial court erred in denying the bypass petition, some state courts will reverse the decision and grant the judicial bypass rather than remand the case to a trial court in order to decide the petition again.[123] This means that the appellate court acts as a trial court by reviewing the lower court record and making a finding of maturity or best interest. A Michigan case provided an example: The appellate court reviewed the lower court record and, based on the minor's age (17), financial independence, and knowledge about the risks and alternatives to abortion, granted a judicial bypass.[124]

What constitutes an error by a lower court varies. First, the appellate court might find that the minor met her burden to establish maturity or best interest, and that the lower court should not have denied her petition. In this vein, it is worth noting that, as several appellate courts have clarified, the minor normally has the burden of proof. As an Arizona court instructed, "Because the party in a judicial-bypass proceeding is the pregnant minor, she bears the burden of proof; in future proceedings, counsel should elicit testimony from the minor and/or introduce whatever additional evidence exists to demonstrate the minor's entitlement to a judicial bypass order."[125] As noted, the burden of proving maturity is met in several states when the minor proves her maturity by clear and convincing evidence.[126]

Other discrete issues have attracted the attention of reviewing courts, a few of which are highlighted here for the purpose of providing examples. Courts in Kansas, Florida and Massachusetts have overturned lower court decisions that created residency requirements where the statute is silent on the issue.[127] Indiana appellate courts have explained the importance of creating and preserving a record of the hearing in the lower court.[128] And Massachusetts appellate courts have held that lower courts may not determine which kind of abortion procedure is used or in what type of clinical setting an abortion is performed.[129]

Factors for Maturity

Perhaps the most interesting aspect of state appellate case law is the standard set for lower courts in determining maturity and best interest. All state statutes require courts to grant a petition for bypass if the minor is mature *or* if the court finds that an abortion would be in her best interest—a minor's petition succeeds if either standard is met. For maturity, appellate courts take a variety of approaches that range from setting out what general considerations a lower court may take into account—experience, perspective and judgment, for example—to describing the specific factors that should inform a maturity finding.[130] These factors include age, academic performance, work experience, future life plans, inclination to seek counsel from an adult, appreciation of medical and emotional risks of the procedure, awareness of other options, and knowledge of the demands of caring for a child.[131]

Following precedent in other states (and in *American College of Obstetricians & Gynecologists v. Thornburgh*),[132] Arizona courts have set out the different types of questions that a judge can ask. For experience, the judge may ask about what a minor has done or seen, and consider age, work experience, living away from home, independent travel, handling personal finances and making other important decisions.[133] Regarding perspective, courts determine the ability of a minor to comprehend the weight and gravity of decisions, look at steps she took in reaching her decision, and examine the extent to which she considered her options.[134] With respect to judgment, the judge should inquire into the minor's conduct since learning of the pregnancy, as well as intellectual ability to understand options and make an informed decision.[135]

Some appellate courts have permitted lower courts to consider demeanor as well. Because it is an ill-defined criterion, it can augment the already considerable discretion of a trial court. An appellate court in Alabama upheld the decision of a trial court that denied a petition because "the answers given by the minor appeared to be [given] in an almost rehearsed manner. There was not any expression of emotion from either the minor or the godmother."[136] An Ohio appellate court also upheld a trial court's denial based on its conclusions about the minor's demeanor.[137] It seems to have done so for the opposite reason of the Alabama court, however. The minor showed too much emotion: "Complainant's decision to seek an abortion appears to result from panic rather than well-reasoned and careful decision-making. Even though complainant does well academically in school and has plans to attend college, she failed to convince this Court that she truly understood the full impact of having an abortion."[138] A third appellate court, in Colorado, permitted a lower court to base its finding on the petitioner's demeanor, even when the court did not elaborate on what aspects of the petitioner's demeanor supported its denial.[139]

Courts may also indicate what state court judges *should not* take into account in assessing maturity. Appellate courts occasionally admonish trial judges for substituting their opinions and biases for an objective assessment of maturity: "When influenced by emotions, a judge loses the judicial perspective, often overstating the case, and at times, resorting to writing that is unbecoming. My colleague's writings in these cases have been inappropriate. Deep convictions do not excuse a judge from respecting her colleagues, the litigants, or the law."[140] Lower courts have also been reversed when judges weighed the minor's unwillingness to involve her parents as evidence of immaturity, or where the court set an unreasonably high standard for maturity. Florida courts have held that the maturity standard for minors is not identical to that for an adult, but is based on what a comparable, mature minor would decide[141]—the opposite conclusion would mean that no one could satisfy sufficient maturity requirements.[142] Kansas courts reversed a lower court decision when the judge found the minor mature, but denied the petition because she was not "extremely mature."[143]

On the other hand, courts in different states have considered the same issues but affirmed lower court decisions in any case. For example, the Supreme Court of

Ohio held that the lower court did not err in finding the minor not "extremely mature" because she had an abortion a year earlier, discontinued birth control and was pregnant again by a different partner.[144]

The Well-Informed Minor

A common theme in state appellate case law is that courts are likely to uphold denials when the lower court dismisses a petition because of the minor's lack of information or knowledge about the risks of abortion or alternatives to abortion.[145]

For example, Texas courts have focused on the information that a minor receives before the abortion. To prove that she is mature and sufficiently well informed, the minor has to show three things: 1) She obtained information from a health-care provider about the potential risks; 2) she is aware of the alternatives to abortion; and 3) she is aware of the emotional and psychological aspects of abortion.[146] As to the first requirement, talking to a doctor is not sufficient; the minor must be able to show she understands the information given to her.[147] The court held, however, that just because "a minor does not share the court's views about what the benefits of her alternatives might be does not mean that she has not thoughtfully considered her options or acquired sufficient information about them."[148]

The range of what is necessary to know appears to vary from court to court. The Mississippi Supreme Court affirmed a denial based on the lower court's conclusion that the minor was unaware of potential abortion risks and did not know that benefits were available if she carried the pregnancy to term.[149] A Georgia court upheld a denial because the minor had not asked any questions of the provider during her options counseling. An Arizona court affirmed a denial because the pre-printed form the minor reviewed at the clinic was "conclusory" and a physician had not examined the minor.[150]

Factors for Best Interest

As with maturity, appellate courts also consider what factors determine best interest. Courts issue general guidelines about what a best-interest inquiry should entail, and what courts should not consider. Factors that lower courts are directed to follow in a number of states include "the minor's emotional or physical needs; the possibility of intimidation, other emotional injury, or physical danger to the minor; the stability of the minor's home and the possibility that notification would cause serious and lasting harm to the family structure; the relationship between the parents and the minor and the effect of notification on that relationship; and the possibility that notification may lead the parents to withdraw emotional and financial support from the minor."[151] It is not necessary for the minor to prove that her parents would abuse her if they are consulted about her decision to obtain an abortion, but the threat of abuse or risk of being evicted from the home could support a best-interest finding.[152] In at least one state, a "substituted judgment test" is used to determine best interest. That is, the court, after determining that the minor is immature, decides based on the evidence whether the minor would choose an abortion if she were mature.[153]

In cases where denials are affirmed, appellate courts have set the tone for what lower courts can consider *insufficient* to establish best interest. A Colorado appellate court affirmed a denial by a trial court that held parental disapproval was not sufficient to meet the best-interest threshold.[154] Similarly, appellate courts in other states have upheld decisions that have found that fear of causing parents emotional stress,[155] the belief that parents will make the minor carry the pregnancy to term[156] or even the threat of suicide by a minor[157] did not establish best interest. Nebraska's case law provides particularly stark examples. In one case, the Nebraska Supreme Court found that even if the minor rightly believed her relationship with her mother, who had a history of depression, would suffer, the minor had not provided any evidence of potential harm that would result from parental involvement.[158] In a subsequent case, the same court found that even a minor's well-founded belief that her father would make her leave the house if he found out she was pregnant, was irrelevant.[159] The statute only required consent from one parent, which meant the minor could tell her mother.[160]

Significance of State Appellate Case Law

The decisions of appellate courts show that a state's higher courts play an important role in challenging the discretion of lower courts, instructing courts in future decisions about the proper operation of the bypass, and reversing outcomes where trial courts may have made mistakes in interpreting or applying the law. Conversely, decisions that affirm trial-court denials and, in particular, interpret the maturity and best-interest standards in ways that make hearings more difficult for minors can have a chilling effect on taking appeals.

Part II:

THE LAW IN PRACTICE—DIFFERENT PERSPECTIVES

This Part reviews some of the lessons learned from the project's interviews and the different ways various professionals interact with the bypass process.

JUDGES AND HEARINGS

Outside of urban or suburban districts within states, and in at least two entire states, no judge may be available to hear a bypass petition. This section discusses which judges hear petitions and which do not, the training deficit for most judges, conduct at hearings, judges' and others' views of how the process affects minors and judges' reasons for denying or granting petitions. Information for this section comes in part from individual interviews and two meetings with judges who hear petitions—18 judges in total.

Who Are the Bypass Judges?

Judges of several kinds (general superior court, probate, juvenile and district court) are designated by statute or court rules to hear petitions. Counties or judicial districts in the same state may use different types of judges, and a single district may use more than one kind.

The number of judges in a district who hear petitions is central to this project's inquiry into how the judicial bypass is functioning. In one state, every lower-court judge is expected to be available, and with very few exceptions they are. This, however, is not the norm. The pattern often described is that petitions are regularly accepted in only one, two or three courthouses in a state. Interviewees stated or surmised that in most courts in their state, a minor could not get a hearing.

Which judges hear petitions is determined in several ways. Although some volunteer, a large number, sometimes every judge in a district, will not participate, despite occasional criticism from colleagues, court administrators or the wider legal community. Thirty interviewees recounted personal experiences with judges who recused themselves from bypass hearings. Some judges have religious objections to abortion; these judges recuse themselves because "they feel too uncomfortable to hear petitions." In other instances, observers suspect that an elected judge's fear of not being re-elected is the motivator. (Twenty-nine states that have a bypass procedure give the electorate some power over judicial selection. Twenty-four of these states allow people to elect directly some or all of the judges at the lowest level of the court

system.) One clerk reported that a judge in her county told her, *This is getting too political. Don't send me anymore.* Some judges refuse to hear petitions without saying why.

Judges who "opt out" considerably reduce the pool of judges available to hold hearings and cause delays for minors seeking to schedule them. Judges, lawyers and court staff reported large numbers of judges opting out in their districts: Five of 10 judges recusing themselves (reported by two attorneys), five of seven, four of six, three of eight, two of five, two of four. An attorney described the frequency of recusal in her area: "It's not unusual to see these cases in kind of a hot-potato situation, where it may go through two, three judges. I've seen up to five recusals before it lands on someone who will take it."

Other judges hear petitions because they were asked or assigned to, typically by the chief judge. This category often includes female judges, some of whom noted that gender seemed to play a role in the request: "My impression is that male judges are very uncomfortable and don't hear bypass petitions. It is not a universal but a widely shared distaste. Judges with moral or religious objections to abortion don't do them either. Others fear political ramifications. I'm puzzled that they are allowed not to participate." Others also questioned the ethics of judges who decline to hear petitions.

As might be expected, advocates have mixed views on recusals from bypass hearings. Lawyers want each client to have a fair and, if possible, sympathetic judge. On the other hand, recusals delay the scheduling of hearings, increase the workload for judges who do hear petitions, and may marginalize the judges hearing petitions, some of whom perceive that their colleagues "look down on them." Most lawyers, though, welcome a judge's withdrawal so long as enough judges remain to do the work. One exclaimed, "I'm *glad* they say they won't do it." Another, reflecting on the judges in her city who routinely deny all petitions, quipped, "I'm fascinated to hear that some judges decline to hear these cases. I've never had anyone that reasoned."

Judicial Training on the Bypass

Very few judges receive information on the bypass process. Of the judges and court personnel interviewed for this study, only two of each noted that their state offers training on the bypass. In one state, written materials are placed in the back of the new judges' bench book, but never discussed in training sessions. Four of the judges interviewed said their peers taught one another how to hear petitions, and four lawyers said they helped conduct training for their district's judges. At the National Partnership's meeting on judicial training (described at the end of this section), participants agreed that very little attention has been paid to the bypass, in part because discussing abortion makes judges uncomfortable or because of judges' distaste for the bypass.

Observers, each in a different state, described judges' and court officials' ignorance of the process. The leader of an advocacy organization noted: "We checked in with the courts and no one knew anything. None of the courts had forms or knew of attorneys filing any petitions. One of our volunteer attorneys developed

a model petition, but no one has asked for a copy." A clinic's chief administrator said similarly, "I dare say most judges in [our state] wouldn't know what the bypass is or how to do it. I'd be fearful many might call a young woman's home." Training on the bypass for all judges eligible to hear petitions would not only improve states' judicial systems, but it could help courts understand their responsibilities to minors seeking a bypass in all regions of a state.

Conducting the Hearings

The level of formality of hearings varies. A minor may be sworn in and seated in the witness stand or at counsel's table. More often, though, participants sit together around a table in the judge's chambers. Those present are usually limited to the judge, lawyer and/or GAL, court reporter, minor, and if she wishes, a companion. Some judges do not permit a minor to bring someone into the hearing due to fears of coercion, particularly if her companion is the partner in the pregnancy. Depending on the formality of the hearing, bailiffs or court coordinators may be present and their reactions can affect the tone of the hearing.

To assess a petitioner's maturity or determine whether an abortion is in her best interest, the judge (or attorney on the judge's behalf) poses questions. Some state laws specify what a judge must consider including age, length of gestation and counseling on pregnancy options. The subjects most commonly inquired about are

- How does the minor know she is pregnant?
- What is the length of gestation?
- Has she seen a doctor?
- Why is she not telling her parent(s)?
- Has she confided in a trusted adult?
- Does she have a plan for dealing with possible complications arising from the abortion?
- How old is she?
- Has she considered all pregnancy options?
- Is anyone pressuring her to have an abortion?
- Does she understand the abortion procedure and risks?
- How will the abortion be paid for?
- Does she attend school, get good grades, participate in activities?
- Does she have a job or other indicia of responsibility?
- What are her plans and hopes for the future?

Other questions sometimes asked seem marginally related to maturity or best interest, such as queries about the minor's relationships, beliefs and preferences. Examples include questions about her preferred reading; what birth-control method she and her partner will use in the future; the length and quality of the relationship she has with the sexual partner and whether he knows of the pregnancy and supports her decision; and the minor's reproductive history, such as previous pregnancies or abortions. Interviewees also reported judges placing a higher

value on options other than abortion (for example, asking why a minor would not consider adoption more seriously) and asking questions that overstate the risks of abortion (for example, whether the minor is aware she could die, become sterile or experience severe emotional distress).

Those interviewed for this study reported that some questions and comments at hearings seemed designed to be "demeaning and demoralizing," or subjected minors to "blistering verbal hostility." Examples related by interviewees include

- *How many times did you have sex? Where did you do it?*
- *Would you kill your 3-year-old?* (Petitioner was the mother of a 3-year-old.)
- *If I grant this, are you just going to get birth control and keep having sex? What kind of person would have sex before marriage?*
- *Why can't you get your minister's help telling your parents? You go to church on Sunday, don't you?*
- *What if we found you perfect adoptive parents or I gave you $2000 today to have the baby?*
- The judge handing the order to the minor saying, *Now you can go kill your baby*.

Although infrequent, these types of statements and questions reflect the possible hazard that judges may rely on their own beliefs and biases to assess maturity or best interest, rather than considering the petition objectively.

Hearing Outcomes

These interviews suggest that a minor who gets to a court that hears petitions has a very good chance of having her petition granted. In fact, a comment made by many professionals is that anyone who negotiates the journey to court is probably mature enough to meet the legal standard. The questions judges ask, however, highlight the intrusive nature of the hearing even when the petition is granted.

Of course, not every minor's petition is granted. As previously noted, some judges deny petitions because of their own moral or religious opposition to abortion. Other judges prefer that parents know about their daughter's decision to have an abortion, regardless of the bypass option that the law provides. Some judges are particularly inclined to deny petitions for younger minors, usually 14 years old or younger. As a matter of law, even if judges determine that these younger minors are immature or not well enough informed, a best-interest analysis is still required.

Occasionally, a petition is denied temporarily; that is, a judge may deny a petition because she suspects coercion and asks the minor to inform herself more fully and return to court. Other reasons that petitions have been denied do not seem well-grounded—that the minor had a previous abortion, she had not told her sexual partner that she was pregnant or the judge thought the pregnancy was too advanced. Particularly troubling are refusals to hear a nonresident's petition in states where the law explicitly allows nonresidents to petition.

Record-Keeping

Only a few judges indicated that they do not keep records of bypass hearings. In one instance, an advocate suspected that the court destroyed all records in order to deter lawyers from taking appeals. Another district destroys the records of granted petitions immediately, but saves denials for 24 hours in case the minor appeals. Elsewhere, a lawyer says that when appellate judges criticized the absence of a record, the court's record-keeping practices were changed. In that court, judges now make lengthy notes on hearings, seal them and keep them separate from other files.

Appellate records are not sealed, although all proceedings are confidential and the minor remains anonymous. A lawyer may ask that the appellate court's decision remain unpublished if necessary to protect confidentiality further. As with every other aspect of the bypass, there is no single pattern or practice.

Problems with the Court Process

Minors' Emotional Distress. The majority of those interviewed who help with bypass hearings say they are difficult procedures at best, and often are uncomfortable or worse because of the distress they cause young women. The statements directly below are from judges:

- "We had some judges who would put a petitioner under oath, interrogate her and then deny the petition. One child I saw to whom this had happened showed real fear, not of her situation, but of the law." (This is from a judge who subsequently heard all petitions herself.)
- "They're nervous. Scared. Upset. Embarrassed. ...Physically, they're with me but their minds are elsewhere."
- "The primary sense I get when they come in is anxiety."

The following comments are from other professionals, describing the effect of hearings on minors:

- "Secrecy and shame pervade the whole system."
- "It can be a humiliating experience. It's hard to talk to strangers about your menstrual period, the abortion procedure or your sex life."
- "Having to participate in hearings has a huge chilling effect on minors seeking a bypass. I wish it didn't exist. It's an extremely humiliating experience…."
- After de-briefing more than two dozen petitioners: "Across the board, the whole thing was a nightmare. None of them had anything good to say about the experience."
- "[E]ven a good bypass system traumatizes girls. No matter what you change about the logistics of the process, you can never take away the humiliation of having to go to court."

A judge may not see the level of a minor's discomfort even when it is apparent to others. Two judges hearing bypasses in the same county said that all minors were calm and composed at their hearings. Yet when the long-time clerk handling bypasses in this courthouse heard the judges' statement, she was amazed, stating "They *all* pace and cry in my office."

Judging the Judges: The Need for Further Education

To understand better how the judicial bypass works in practice and to learn how it could be improved, the National Partnership hosted a meeting of judges from across the country who regularly hear bypass petitions, and experts on judicial training and education. The judges who participated had a collective experience of more than 60 years on the bench and had heard hundreds of bypass petitions during their tenure.

A theme that emerged early in the discussion was the tension between the desire to improve the bypass procedure through judicial training and the reluctance to publicize the bypass to a wider audience of judges or the general public. One judge summarized her fears, "If we begin training and calling attention to the fact that we have a bypass process, and most people don't know that we have it in the first place, there may be a groundswell of activity against it—a grassroots sort of thing that blames judges for the bypass existing and makes hearings harder to conduct." Others worry that increased attention to the bypass might jeopardize its existence. The participants candidly agreed that when judges are elected, concerns about public perception affect their willingness to acknowledge the bypass and their willingness to hear petitions. One participant pointed out, "I've been struck by how timid and intimidated we are by public opinion and the fact that we run for election shapes the suggestions we've made in this conversation."

In light of the desire to protect the bypass procedure and to keep impartial and fair judges in office, participants' suggestions on appropriate training were aimed at helping interested judges learn more while maintaining a low profile. The judges agreed that training should be optional and directed toward judges in counties where reproductive-health clinics are located (as these counties typically have the highest volume of petitions). In describing the maturity standard, several judges thought the training should emphasize that granting a petition is only a judgment that the petitioner can make up her own mind about abortion, and not the judge's opinion about whether she should have an abortion. As stated by one participant: "I'm not ordering anybody to do anything. I'm making a judgment about your ability to make a decision for yourself." The group agreed that training could help insulate judges from public scrutiny. One participant suggested, "If you know what to ask, and . . . people can objectively look and say 'Okay, well, here she covered every area that you'd think might lead someone to make a judgment on maturity,' then you're covered."

Participants shared opinions on what questions elicit responses that help convey whether a minor is mature enough to make her own decision. Each judge had her own view on what should be discussed, but the judges generally agreed that the decision to grant or deny should remain discretionary rather than based on rigid factors. All agreed it was valuable to know whether the minor had made other important life decisions (about seeking medical care or going to college) or exhibited responsibility in other parts of her life (by working, getting good grades, having a job). They agreed, too, that some questions addressing maturity, depending on how they are asked, were inappropriate, such as whether this was the minor's first abortion. On some points related to questions to ask, the judges disagreed—the most notable disagreement being the relevance of learning why the petitioner was not telling her parents.

Suggested topics for training ranged from the substance of hearings (what questions to ask and how to ask them; whether judges should seek advice from other professionals, such as social workers or psychologists; the standard for granting a judicial bypass) to the procedure of conducting hearings. In addition to training events, many of the judges supported the idea of a "cheat sheet" developed by a judicial education organization that would outline the standards and procedures for a bypass hearing. The conversation also focused on innovations that could make the process more efficient and expedient. For example, one judge suggested that petitions could be filed electronically if proper confidentiality precautions were taken.

Applying the Legal Standards for Granting Petitions. Emphasizing the contextual and often subjective nature of maturity, a lawyer asked rhetorically, "How do you prove maturity? I see adults coming through the court system that would have a hard time proving it if asked. It's a difficult standard to meet and young women shouldn't have that burden."

One advocate noted that judges in a large urban area, which attracts minors from neighboring states, require petitioners to meet *both* standards even though, consistent with *Bellotti*, every parental-involvement law requires that a judge must grant the petition of a minor who meets *either* maturity or best interest. A handful of judges err on other points by insisting that a minor who the judge finds mature must also have a good reason for an abortion or, in one case, by telling the petitioner that becoming pregnant shows immaturity.

A minor who does not meet the burden of proving her maturity may, as a matter of law, rely on the best-interest standard in a bypass hearing. However, a number of attorneys in different states said that their judges grant solely on the basis of maturity and would be uncomfortable granting on best interest. These judges fear that a best-interest finding would be seen as approving of abortion or substituting their judgment for that of parents. As confirmed by two other interviewees, a judge in a jurisdiction that hears almost all petitions in the state said that courts never grant a petition on best interest: "I don't think we'd be willing to do that. It's too personal to decide that, yes, an abortion should take place. We don't want to take that extra step—a 'court-ordered' abortion." In another instance, a lawyer who regularly represents petitioners did not know that best interest was a ground for granting a petition because she had only seen judges rule on maturity. For judges who have granted all petitions—and always on the maturity ground—the point has not had practical consequence for the outcomes of petitions. For example, a judge said, "Questions around the best-interest ground really have not come up." But judges who deny petitions on maturity and refuse to consider the ground of best interest are depriving minors of a second chance that the law requires.

LAWYERS

Legal representation can be very helpful or even critical to a fair process. A person who trains the lawyers says, "Minors could go alone to court and file a petition, but that's a lot to ask 14- or 15-year-olds to do. The system is confusing and minors need the help of a lawyer." Also, attorneys in several states had drafted model petitions or helped draft court rules for bypass hearings.

This section describes lawyers' involvement with petitioners, the benefits of representation and the barriers to lawyers' effectiveness. The analysis is informed by interviews with 32 attorneys who have represented minors in bypass hearings and the comments of 15 attorneys at the National Partnership's invitational meeting. These are supplemented by conversations with a dozen other interviewees and the smaller meetings with judges and liability experts.

How Lawyers Assist Minors

The lawyers that help minors who want a bypass are often a small group. A clinic

director, for instance, has a list of 50 volunteer attorneys, but still finds that, "One attorney is our fail-safe." Some have handled hundreds of cases; some only a few. In both instances, they are concerned about the petitioners and willing to help even though the bypass is not the major focus of their law practice. The following is a list of tasks that are likely to be part of representing a minor.

Agreeing to Represent a Minor. Minors find a lawyer in various ways. One lawyer who has accepted more than 2,000 cases says, "Everyone has my name." Another advocate has heard that her contact information is on school bathroom walls. Besides word of mouth, interviewees report that minors learn that they need a lawyer and how to contact one through websites hosted by organizations such as Planned Parenthood and other reproductive-health providers (the most common source of referral), regional abortion funders, volunteer lawyers' groups, court staff, school counselors, clergy, and social workers for various agencies. When asked, a lawyer must decide quickly whether to represent the minor so that she may secure an abortion in the early stages of her pregnancy. Several attorneys observed that, "Minors wait until they're likely on the brink of not being able to have an abortion."

Most lawyers are not paid by the state, even though most parental-involvement laws entitle them to state payment for their costs. Some lawyers indicated that they do not seek state compensation in hope that city officials will not learn that bypasses are available. When lawyers are paid, the amount can vary significantly. In one state, every lawyer is compensated from the time she gets a call about a minor. In another, the state pays $50 an hour. In yet another, the state pays the attorney's normal billing rate—$350 an hour for some. In several states, the lawyers are public defenders or nonprofit lawyers with other responsibilities as well. More often, they are private practitioners who represent minors *pro bono.*

Explaining the Bypass Process. A key role for the attorney is to explain to the minor what the law requires a judge to consider when hearing a petition. This means describing what a client must show to prove that she is mature and well informed, or that an abortion is in her best interest, plus any other standard the state statute includes. To elicit information from their clients, some attorneys use a multi-page questionnaire. They also may spend two or more hours talking by phone or in person with each client; one lawyer allocates two days for the task. The attorney will try to assess whether the minor understands her pregnancy options and the abortion procedure, is certain of her decision or is vacillating and whether she is being coerced by others.

The lawyer may also offer suggestions on courtroom demeanor and appearance, including court-appropriate dress. Lawyers in one county pooled money for blouses to be available in the clerk's office before hearings. If the judge's preferences, sensitivities or prerequisites are known, and the attorney thinks it will be helpful, she will also share that information. Some judges want the minor to acknowledge that abortion risks include death or severe injury including sterility—or to produce written proof of anti-choice counseling, for example. Other judges require certain paperwork before they hear a petition, such

as an affidavit signed by the minor's health-care provider attesting to the length of the pregnancy.

Filing Petitions. Decisions about where to file and before which judge—if there is a choice—are crucial. There may be a reason to avoid the courthouse in a particular district or not to file in a courthouse where judges are randomly assigned to hear bypass petitions. An attorney who could be speaking for many others observed, "Some hearings go so badly the judge is well known to us." As mentioned earlier, many courts do not hear petitions at all. In those that do, staff members may assist attorneys in making choices about where and when to file petitions. Other courts, however, are not as helpful.

The reputations and temperaments of available judges often influence how an attorney approaches hearings. One lawyer said: "I only take a girl to [name of county] if she's an A+ in maturity." Another factor in filing is ease of scheduling. A lawyer complained that in her county, recusals often consume the first 24 hours after filing, leaving the minor "without much advance notice. I hate to call a girl at 11 a.m. and tell her the hearing is at 3 p.m.…because one or more judges won't hear the petition."

Facilitating Court Arrangements.
Attorneys draft forms, collect required signatures, file motions and the petition, and secure a date and time for the hearing. Any of these tasks can be difficult and the last, as has been noted, is frequently a major concern. Many judges make it a point to be available if a minor arrives, but others do not change their schedules to accommodate bypass hearings. A minor in one county waited 10 days for the sole judge hearing petitions to return from vacation.

Representing the Minor at the Hearing

Attorneys vary in terms of how prominent a role they assume in hearings. Following the judge's lead, they may manage the dialogue themselves (20 questions on direct examination is not unusual), relate their conversations with the client to the judge, or leave the conversation to judge and petitioner. One lawyer comments on the variety of bypass practices: "Judges in the same courthouse handle the matter differently—who is sworn, where the hearing is held, who can be in the hearing. A lawyer needs to be familiar with the differences for clients." In any case the lawyer stands ready to intervene when judges make comments like, *I just don't understand why you can't tell your mother*. Many lawyers are comfortable holding the hearing in the judge's chambers. A few lawyers insist on formal hearings for their clients. They think a formal hearing seems less personal and judgmental to the minor, and helps the judge to see her in the same light as anyone else with business in the courts.

The presence of legal counsel does not guarantee that a minor will be treated fairly or even professionally in a court. Lawyers will warn their clients about what to expect in the courtroom—that they can expect "a lecture" from the judge, for example. A lawyer recounted a variety of experiences she had in hearings: "The tone of the hearing depends *entirely* on what judge you get. My favorite was warm and comforting. At the other end are judges, usually men, who are aggressive questioners and

paternalistic. They see their own children before them….One judge grants the petition but then tells the minor she'd be surprised how compassionate her parents would be if she told them. This judge actually knows it would be a very bad idea for some of the minors to tell their parents."

Confidentiality. Like court staff, lawyers pay attention to record-keeping. Two indicated that they are permitted to keep bypass files permanently in their own offices rather than the courthouse. One lawyer sees minors identified only by initials. If a petition is granted, a common practice is to give the signed order to the petitioner. However, in a few locations, for fear of loss, discovery or perhaps tampering, the order is faxed to the clinic that will treat the minor.

Appeals. As noted in Part I, bypass denials have been appealed with both positive and negative results. In half a dozen states, denials are appealed fairly regularly. However, although appeal is possible, unsuccessful petitioners may not want to proceed. An attorney practicing where two of five judges "*will not* grant" any petitions finds that, "[Minors] disappear when they lose. They're intimidated and don't want to appeal. We don't know what happens to them." An attorney recalled a client pregnant as a result of rape, and the judge denied her petition without knowing that rape is a ground for granting a petition. The minor, who did not speak English, was told of the denial by the interpreter and ran out of the courtroom. Because her lawyer was unable to locate her after the hearing, the minor was never informed about her right to appeal, which the lawyer believes she would have been likely to win.

Other Support

A few attorneys go beyond their legal role to try to assist clients in other ways, including

- Information on family planning and sex education: "Often they don't know the basic facts.… Often I'm the only person who's ever talked to the girl about sex."
- Political education: One lawyer points out to her client the social value of choice in reproductive matters, which the client will someday be able to protect as a voter.
- Transportation: Several lawyers said they occasionally drive a client to or from a bypass-related appointment she might otherwise not be able to keep. (Another lawyer thought this a serious liability risk for an attorney.)
- School absence: A couple of lawyers inform the school that the minor has missed class for an approved reason (for example, the note will say, "Please excuse [minor] for court business").

Impediments to Effective Representation

Too Few Lawyers and Time Constraints. Although nearly every state's bypass statute entitles a minor to legal assistance, the promise may be hollow in counties where attorneys are unwilling or unavailable to represent these clients. Even if an attorney can be found, she must fit the case quickly into her schedule. Some lawyers go to great lengths to do that and the best-organized

bypass systems schedule an attorney to be at the ready. Still, frequently this is not the case. Some clinic employees identify lawyers' availability as a major concern: "Sometimes we struggle to find an attorney who will call the minor back right away." Another reported, "I may need to call seven lawyers."

A delay in the initial meeting between the minor and her attorney, even of just a few days, can make the bypass much harder. The hearing will likely be delayed as a result. The minor may have to negotiate another trip—though to avoid this, lawyers often prepare the client by phone and some meet with the minor to review the case immediately before the hearing. Delay can be distressing for petitioners. Judges in a metropolitan area that hear more than 200 petitions a year stated that no minor had ever accepted the offer of an attorney. Later that day the judges' clerk said they were mistaken. Nearly *all* minors accept her offer of an attorney, but change their minds when they learn that it will delay their hearings for several days.

Lack of Training. In many places, interviewees said that lawyers with experience in bypass proceedings train others and schedule refresher sessions at regular intervals. However, about the same number of those interviewed said they largely learned on the job and do not have a network of colleagues who share this work.

While nearly all attorneys representing bypass petitioners know the basic law on point, a small number do not. An attorney handling about 30 cases a year did not realize that the best-interest standard was a sufficient reason to grant a petition, and also did not know whether minors from outside the lawyer's county or state had the right to petition. Another who assisted all petitioners in one jurisdiction was not aware that under the state statute, sexual assault was a ground for having a petition granted.

Lack of Information on the Bypass Across a State. Any minor would benefit significantly from knowing where petitions are accepted and under what conditions they are granted, before she makes plans about where and how to pursue a bypass. Yet, most attorneys cannot tell her. In interviews, they routinely reported knowing little or nothing about whether there is access to the bypass outside their own or adjoining counties. As a result they cannot direct a minor to an alternative venue that may be easier for her to reach, where judges understand what the bypass is, where forms are available at the courthouse, or where the court staff will assist her through the process.

Ambivalence. Some lawyers mentioned that they have colleagues who are reluctant or unwilling to work on bypass petitions. A lawyer doing this work for 20 years commented on just how different and difficult bypasses are from the rest of her caseload: "I'm always scared to death when I represent girls. Suppose I fail?" A few noted the prevalence of stereotypes that minors who have sex are "bad girls," and other biases about a minor's background. One lawyer reported that some volunteer attorneys would refuse to represent minors if they did not approve of the minor's sexual partner

or if the minor was already a parent, for example.

Two attorneys practicing in strongly anti-choice states expressed moral reservations about handling petitions. One lawyer spoke with a religious mentor about whether to continue representing minors. Such ambivalence can lead to questionable behavior on the attorney's part; this attorney said she prayed with two successful petitioners immediately after their hearings, telling them, "It's up to you, but you should know you don't have to do this; many people would take your baby. God will love you either way."

REPRODUCTIVE HEALTH-CARE PROVIDERS

Health-care providers who offer abortion services are usually the first point of contact for a young woman seeking an abortion on her own. Clinic policies not only set the stage for what a minor learns about the bypass in her city or state, but they also play a major role in how she gathers that information. Some clinics also facilitate access to the bypass in more direct ways by either accompanying the minor to court or arranging her meeting with an attorney or court staff member. This section summarizes the project's findings about reproductive health-care providers' roles in assisting minors with the bypass. It is based on interviews with 54 clinic directors, managers, and other staff members, as well as other local and national advocates that work with providers.

What Clinics Learn About the Minors They Serve

The number of patients who need a bypass varies from place to place. Most clinics reported serving an average of one or two such minors per month, with only a few clinics reporting at least three or more each month. Some clinics assist only a few minors a year. In more extreme situations, clinics that had previously helped minors obtain bypass petitions no longer do so. The reasons offered were that local judges now refuse to hear petitions or deny them, or that the clinic had stopped offering abortion services. As noted below, estimates of those that begin the process do not reflect the minors who decide not to try for a bypass after learning what it involves. No clinic staff member interviewed had any consistent way of gauging how many minors learned of their state's parental-involvement law and then "disappeared," either finding other means to procure an abortion (legally or illegally), involving a parent, or carrying the pregnancy to term.

The number of minors who seek a bypass should also be considered in light of the number of minors that a clinic sees in total. One clinic staff member, for example, estimates that 10 percent of its patients are minors. Of those, according to a national clinic executive, 5 percent to 10 percent will opt to go through the bypass process. One provider reported that 98 percent of minors involve a parent, but that high percentage may be partially due to the clinic's unusual practice of requiring the parent to be present during the procedure.

Most clinic staff members said that, as far as they knew, no petitions had been denied; others indicated that only one to two

petitions had been denied in their memory. Staff members at clinics that reported denials relied mostly on second-hand information from lawyers or advocates about why the denial occurred. But their impressions of why a judge denied the petition reflected the same kinds of reasons lawyers and judges reported: Judges' disapproval of characteristics of the minor, such as previous abortions, age or the minor's conduct. Often the denials that clinic personnel heard about occurred in courts outside the main cities of the state (remote from where most providers are located).

Clinic interviewees saw mostly older adolescents who were 16- or 17-years-old. Younger minors—those 15 or younger—were described as outliers. Across the board, staff members described minors pursuing bypasses as "articulate," "responsible" and "very mature." Minors gave health-care providers a variety of reasons for not wanting to involve their parents. Often clinic staff discussed these reasons to prepare her for the bypass hearing, to help her feel more at ease with the clinic staff, or to encourage her to talk to her parents. The most frequently discussed reason for seeking a bypass was fear of disappointing parents, either because parents would then know about the minor's sexual activity or because of the parents' religious or moral beliefs. Minors also confided in clinic staff members that they feared abuse, being thrown out of their home or burdening parents who are already under financial pressure.

Establishing Consent or Notice

A state's parental-involvement statute dictates whether a clinic must establish that a parent received notice or gave consent for a minor's abortion. As noted in Part I, notice laws require that a provider send a letter, usually by means of special delivery and registered mail, or call a parent a day or two in advance of the abortion. Some clinics use the following protocol: Letters are sent before the procedure, and after the statutorily required time period passes (24, 48 or 72 hours after delivery), the clinic deems notice delivered. Clinics that rely on letters keep postal receipts to document that they complied with the law. Providers are not responsible for ensuring that a parent read the letter in order to meet statutes' notice requirements. If the clinic relies on *actual* notice, the provider may telephone the parent, recite a scripted conversation regarding notice and record the conversation.

However, some clinics in notice states require more than the statute does in order to meet the clinic's own internal standards for proving notice to a parent. Some clinics require parents to come to the provider's office to sign a form attesting to the fact that they received notice; some providers do not require the in-person signature requirement, but ask that the parent return a signed form witnessed by a notary.

Providers may take other steps to prove the parents' identity. For example, one clinic asks the minor and parent the same three questions separately (in a telephone conversation). The form attesting to receipt of notice is sometimes coupled with a statement waiving any future claims against the clinic.

Clinics sometimes impose requirements that state law does not in consent states as well.

Liability Concerns—A Thorny Problem

"Our legislature is determined to scare the pants off anybody who helps a minor. The civil penalties in our parental-involvement law have a chilling effect."

In August 2009, the National Partnership brought together a group of experts to discuss how liability concerns shape the provision of reproductive health care for young women. This confidential meeting consisted of OB/GYNs, directors of surgical or clinical policy, and representatives of major national professional associations for health-care providers and lawyers. Although the participants had varied experiences under different state laws, several common themes emerged from the discussion. One participant reflected the sentiments of many in the room when she said, "It is sad, but I have to think much more from a business perspective or a legal liability perspective than from a social worker's perspective."

All participants acknowledged that liability concerns greatly influence their policies and practices, resulting in additional precautionary procedures that are not necessarily required by the law. This was true even when the policies made access to abortion care more onerous for patients. One provider said she feels as if, "Every day, we're just coming up with more forms and more things to be concerned about." Participants described various policies intended to prevent liability, such as one hospital's decision to stop performing abortions past 20 weeks even though state law allowed the hospital to perform abortions up to 24 weeks. Another provider said that, while her state law has a broad definition of emancipation, her organization still notifies a patient's parents even if the clinic believes that the patient qualifies as emancipated. A more common practice is to require a birth certificate if the last names of a patient and her parent differ. Such precautions can be problematic for the health-care provider as well as the minor: Several participants had seen clinic or hospital staff members take steps on their own that went beyond the organization's policy in order to protect the organization from liability; these staff members inadvertently increased the risk of liability by not following written policy.

Participants discussed their diligence in complying with child abuse and assault reporting requirements, which are often complex. Although participants had somewhat differing views about the interpretation of mandatory reporting standards, all described extensive policies that address reporting and said that they continually update them. One organization changed its training protocols and reporting policy following two lawsuits. Each lawsuit involved a minor that at the time of her abortion misrepresented her age.

All participants agreed that the scarcity of abortion providers is a crucial problem. Several participants who practice in hospitals reported difficulty finding providers in related disciplines, especially anesthesiologists who were adequately trained and comfortable with providing abortion care. Many primary-care doctors, pediatricians and OB/GYNs have little training in abortion care. Liability concerns, as well as state laws that restrict abortion practice, can persuade providers not to offer abortion services. For example, participants described their states' special licensing schemes for providers performing more than five abortions a year, how malpractice insurers discourage or prohibit family practice or primary care doctors from adding abortion to their practices, and complicated state abortion laws that may lead to criminal liability for health-care providers.

They may require the consent form parents sign (in order to establish written consent) to be notarized, or that the form be signed in person at the clinic. One clinic requires that parents accompany minors while they are at the clinic if they reside in a neighboring state. The lack of clarity of state laws undoubtedly influences these policies; often what constitutes "reasonable means" for establishing consent or notice is poorly defined.

Providers may ask nonparent guardians to show court documents proving guardianship, and in some instances, even parents may have trouble proving their relationship to the patient. For example, if the minor is from an immigrant family, her parents may lack U.S. identification or the minor's birth certificate. Problems arise too when the parent fails to comply with clinic rules (such as notarization of consent forms or proving parentage in person) because of inability to take time off from work, indifference, hostility toward the daughter or other reasons. A director of clinical services noted the complex family dynamics that parental-involvement laws implicate, using as an example a patient whose parents are not living together and whose family is very poor. The minor's mother refused to sign the abortion consent form and her father was threatened with eviction from the home of the minor's grandfather (who opposed abortion) if he signed it. A number of professionals reported that many young women have great difficulty locating a parent or guardian eligible to receive notice or consent. It is not unusual, they say, for a parent to be unknown, missing, imprisoned, out of the country, mentally ill or otherwise unavailable, forcing the minor to go to court or seek an abortion elsewhere.

Informing Minors About the Bypass

Almost all clinic staff members indicated that minors first learn about the bypass and the state's parental-involvement law when they call a provider to inquire about an abortion appointment. As one clinic director reported, "Most minors who call clinics do not know about the bypass. Almost all are shocked, in fact, when they are told about the parental-involvement law." Minors who did know had learned either through word of mouth or from school nurses and counselors.

A minor, like any woman who calls a clinic, first talks to an operator, receptionist or staff member of a call center. Some clinics train receptionists to ask every caller her age and then refer her to a particular staff member if she is a minor. The clinic may designate a specific professional to talk to minors. For example, clinics will train a clinical social worker, clinic intake assistant or patient educator to describe the parental-involvement law and the minor's options. This counseling is done either by phone or in person.

Some clinics have scripts or outlines that can be used by any clinic staff member when a minor calls or arrives at the facility. In some instances, these materials can identify a minor who may qualify for an exception under the state's parental-involvement law. The staff member may probe a bit deeper in this initial screening to find out whether a parent is refusing to consent or why the minor is not telling her parents and whether the clinic can help facilitate a conversation.

Different Policies for Discussing the Bypass

Many providers who help prepare a minor to meet with an attorney or for a hearing will ask the minor why she is unwilling or unable to involve her parents. The questioning depends on what the clinic understands the attorney or judge will ask the minor. Some clinics, however, will screen the minor's reasons to see if they would "be good enough for a judge." Two interviewees, a small minority among those interviewed, suggested that clinic staff may lack sympathy for pregnant minors: "Some clinic staff seem to think minor patients are not appreciative enough, not 'invested' enough…they made their bed, now let them lie in it."

Providers stressed both that it is their policy to "try to figure out why she thinks she has no options" except for abortion, and then to encourage minors to talk to parents. Several clinicians felt that parental-involvement laws generally "play a vital role in connecting kids to their parents." Almost all clinic staff members expressed a desire to share information about the bypass, and help a minor pursue one. However, a number of clinics do not tell a minor about the bypass unless she states that she cannot or will not tell her parents. That is, the minor is not informed in her first interaction with a clinic call center or receptionist about the bypass, but is only told of the requirements of the parental-involvement law. The danger this creates is that minors may make decisions without knowing all of their options. Believing that parental involvement is the only avenue to a legal abortion is especially problematic for minors who fear telling their parents and whose parents will not give consent or are absent from their lives for whatever reason.

In a few conversations, the interviewee suggested that facilitating access to the bypass might present a conflict of interest for clinic staff. The concern of these few staff members was that employees of the clinic should not help minors get an order that allows them to purchase services from the clinic. Some clinicians expressed the concern (for reasons that were unclear in most instances) that telling a minor that a neighboring state does not have a parental-involvement law could expose the health-care provider to liability.

Facilitating Minors' Access to Court or to a Lawyer

The degree to which clinics facilitate minors' access to lawyers and courts varies. On one end of the spectrum, clinics simply connect the minor to others who can help her with the bypass by offering the phone number of an individual attorney, a county clerk or an organization that coordinates a pool of volunteer attorneys. A couple of states have a toll-free number for information on the bypass process, which connects the minor to a lawyer. Echoing the concerns stated above, some clinic staff felt that doing anything more than providing the minor the number of a willing attorney would have the appearance of coercion. This concern extends, in at least one instance, to an unwillingness to develop any materials that would help prepare the minor for a bypass hearing. At the other end of the spectrum are clinic staff members who accompany minors to their hearings, or call the court or the lawyer on the minor's behalf. A handful of clinics help minors extensively, for instance, by filing court paperwork. In

many ways, how clinics handle the needs of minor patients who are proceeding alone depends on the access staff members have to lawyers who represent minors or to courts that hear bypass petitions.

Logistical Problems Minors Face

Like all professionals who work with minors, clinic staff discussed the hurdles that block a minor's access to an abortion without her parent's involvement. The ultimate effects of logistical impediments are delay and anxiety—delay that can pose health risks for minors by preventing them from obtaining abortions early in their pregnancies and anxiety that adds to the frightening and humiliating aspects of the process.

Clinicians commented that a large portion of the minors they treat, with or without parental consent or notice, know very little about their reproductive health or have poor access to health care generally. "Many minors don't know about birth control—or even how to fill a prescription. I had a teen come in with her dad and I gave her a prescription. She came back six months later pregnant. When I asked about the prescription, she said she didn't get it filled—didn't know where to take it. We need much better reproductive health care and sex education for young people." A clinician who has worked in several states described the health care that minors typically receive in one particular state—*before* seeking an abortion—as "third-world care."

Most abortion providers are located in urban or suburban areas. This and the dearth of providers mean rural minors often must travel long distances. In addition, some minors travel out of state to seek abortion care. An interviewee recalled, "[Minors] acted like fugitives from the law—they were afraid, crossing state lines and not necessarily giving accurate information. There was nowhere to send results of the Pap smear or tests for [sexually transmitted infections (STIs)], and they had no follow-up care. So there could be minors with a precancerous growth or with an STI, but no way to tell them this health information."

Even for minors living relatively close to a provider, access to abortion services can be difficult. The length of time it takes to complete a bypass varies greatly across and within the parental-involvement states, ranging from one to 30 days. A number of clinics only schedule abortion appointments one day a week, and even where a court hears petitions quickly, the process of contacting the clinic initially, appearing before a judge and securing a clinic appointment can take one to two weeks. Interview participants indicated that about a week is average.

Because of the lack of providers, the secrecy of the bypass process, and the age of petitioners, transportation was one of the most significant logistical difficulties cited by clinic staff. Young women, many of whom do not own a vehicle, often must travel hours across a state to reach clinics and courts. One clinic director commented, "Women are traveling incredible distances….It breaks my heart the amount of travel that minors have to do to get an abortion."

Another consequence of the bypass mentioned by several clinic professionals is school absence. Often, a minor must miss class for counseling, the bypass hearing and the abortion appointment, which can result in two or three unexcused absences.

Problems with Notice or Consent Laws—The Provider Perspective

All interviewees were asked what they thought was the single largest problem with their state's consent or notice law, and the operation of the bypass in their city, county or state. Most clinic staff members identified substantial problems. Their comments are listed below.

- The process is "too intimidating for a minor, especially if she has to head to court alone and talk to a judge."
- "I think the biggest problem might be that minors don't know the bypass exists. I fear some don't know they can get an abortion if they don't notify their parents. And if you're under 16 you can't drive—one young woman missed her court date three times."
- The biggest problem is the gap between what is available in rural and urban areas, as well as the availability of attorneys across the state. "Sometimes we struggle to find an attorney who will call the minor promptly. The obstacle is how quickly the hearing needs to happen. She needs to get to court in a day's time, so she can make her abortion appointment."
- Minors need to make repeat trips. "It is potentially a three-step process—a visit to the clinic to fill out paperwork, a visit to the court for a hearing and a visit to the clinic for an abortion."
- "We work with a lot of minors that live with the grandparents but those grandparents are not legal guardians. Those minors go through the bypass if neither parent is available."
- Transportation is the hardest problem. "Minors often rely on their boyfriend or a friend to make the two visits to the clinic, the two trips to the lawyer's office and then the hearing….I sometimes feel like I am telling them they have to manage the impossible."
- "I think the biggest problem is that very few people know about the bypass—neither the minors nor most adults. …Our own staff has to be re-trained frequently on it. A new staff member will direct a minor to the wrong court or office. For example, [we had] someone who referred a minor to the [state's attorney's office], which had no idea what to do about a bypass. Then, too, if a minor seeks information on the bypass on her own—say, from the health department—she may not receive accurate information or assistance. A minor will just hear she needs to go to court and she will contact the traffic court or another office that is not helpful. I'm sure that some minors fall through the cracks."

A handful of providers responded that they did not "see too many problems with the process from the health-center perspective" or that "the law and the process is as good as it can be." Some of the latter comments, however, came at the end of interviews in which the provider had mentioned several problems.

Some clinics give a minor a generic note excusing her absence; it only gives the doctor's name, rather than the clinic's, in order to protect confidentiality. One staff member, however, noted that she can only write a note excusing the minor's school absence for the abortion, and not for any classes missed because of the bypass hearing. Sometimes it is possible to arrange the clinic appointment, the meeting with an attorney and the hearing all outside of school hours, but often it is not. Clinic staff members say some minors have "worked it out"—that is, figured out ways to miss school without being detected. But for minors coming from rural areas, especially those who have to make several trips over long distances, the barriers can be insurmountable.

One interviewee raised a confidentiality problem presented by notes excusing school absences. Under the Family Educational Rights and Privacy Act, parents may view their children's school files, including notes for absences.[161] This interviewee reported that parents called physicians and lawyers who had written absence notes for minors upon finding the note in their daughter's file.

Coordination Among Clinics

Very few clinics kept and updated information about the bypass in any other regions—much less all regions—of their states. In a rare exception, one clinic has drafted a "bypass template" for all providers that can be tailored for use in any court in the state. The template includes all the necessary court papers—legal documents that can be completed with details about the minor (whether she understands the procedure; her age, grades and school experience; and her understanding of her pregnancy options) in language that meets the requirements of the law (shows the minor's maturity or best interest). In addition, this particular clinic has developed a county-by-county database for information on how to make an appointment for a hearing, the sitting judges' names, the contact information for the court's staff (and minor's representative), and notes about how the process works in each district.

The same clinic has also developed good relationships with courts in many areas of the state. Health-care providers who share information with other providers, courts and attorneys on the operation of parental-involvement laws seem better situated to help reduce the difficulties the process creates for young women. As one clinic director said, "Our system only works because we all work together—a minor can call [the clinic] from the court and [the clinic] will call the court and intervene if the process is not running as it should or if someone is unkind to the minor."

CLERKS AND OTHER COURT PERSONNEL

Clerks and other court employees—including those who answer calls from the general public—play an important role in how the bypass operates. They are sometimes the minor's first contact with the legal system; they organize and administer court paperwork and control access to the judge's schedule. This section reports on the study's findings on how well informed court personnel are about the bypass (tested by 60 calls to courts in three states), how clerks treat minors who want a bypass, the

training that clerks receive on the bypass, and the court staff's duty to safeguard the proceedings' confidentiality. In addition to the calls, information for this section was gathered from lawyers, judges and providers and a small number of interviews conducted with clerks (who were often hesitant to be interviewed without state approval).

Attitudes Toward Minors

The attitudes of clerks toward minors who seek a bypass vary widely. Some court personnel express open hostility toward the minors, behaving in ways that were described as "very nasty" or "very unfriendly." However, some lawyers and health-care providers said clerks in their jurisdiction are "knowledgeable," "professional" and "very helpful to minors ." One lawyer spoke about court staff in the following terms: "The court staff have all been wonderful. When a girl arrives at the courthouse they quickly help her. They assign her a lawyer and help her file the petition. There is a clerk regularly assigned to do this and there's a *back-up* staff person, too. Both are terrific." Another lawyer noted the kindness with which clerks treat minors in her county, and added that staff members are mostly women. Thirteen professionals mentioned gender differences among judges and court staff, and all but one thought women were more likely to be helpful.

Training for Court Personnel

Infrequently, court clerks take central positions in administering training on parental-involvement laws. In one state, the leader of the state's clerks' association voluntarily organized training sessions for clerks across the state so that petitions would be handled consistently. This clerk persuaded her court to adopt a rule allowing petitions to be faxed rather than filed in person. A head clerk in another state played a similar role in coordinating training for all courts because she understood that court staff may be the first to explain the parental-involvement law and bypass to a minor. This particular clerk ensured that every court in the state would know how to handle a bypass, or know to which office the minor should be referred. The clerk reflected on how this training was received by other clerks: "No one objected to being part of the process; we deal with a lot of things in juvenile court, so we are used to putting our feelings aside."

These may be rare examples, however. Although some court staff said they had seen a packet of information on the bypass or mentioned some early training on implementing their state's parental-involvement law, most said court staff throughout their state lacked meaningful training and information about the bypass. As one lawyer commented, "Every time we go to court the court staff acts like this is the first time they've heard one.…I've never heard of a clerk helping a minor with the paperwork and setting up a hearing independently. Clerks need training but get none."

In addition, few judges know what their staff members understand about the bypass. Several more judges said they knew their staff lacked information, but that they had not addressed the court staff's lack of training. A few judges added that further education for clerks would be useful, but judges may not have much control over court clerks, who are often managed by separate elected officials.

The Court Clerk's Role

Training is important because of the power clerks can wield. In some jurisdictions, they can substantially impede or improve minors' access to court. For example, one lawyer commented that the clerk managing the hearings in her jurisdiction "isn't being as proactive in setting up [attorney] meetings the same day" as the previous clerk had been. As a result, despite some informal attempts at training, minors now have to make two trips to the court—one to meet with the attorney and one for the hearing. A judge described a similar issue, which improved after some training: "I got the sense that the clerk's office was annoyed about the extra work [associated with the bypass] and with having to treat minors differently than other people. One staff member was very hostile.…Sometimes she wouldn't tell me a minor was here for her hearing, and then would tell other staff that 'we can't drop everything for them.' As soon as the hearing was over, court staff would want to know how I ruled and why. They want to know that their judge would not routinely grant petitions."

In many places, the clerk plays only a marginal role—by preference or design. For example, in one city, if a minor calls the court asking about a bypass, a court staff member is likely to tell her to call a doctor or family-planning clinic. Sometimes a minor will first come to court only to find court staff members do not have bypass petitions on hand, or they instruct the minor that a counselor from the clinic or a lawyer needs to fill out paperwork.

By contrast, clerks in other states actively manage judges' schedules in order to accommodate bypass hearings and arrange representation for the minor. In one of the best venues, when a minor arrives at court, the clerk ensures that she is able to file her court papers, meet with her lawyer and have her hearing the same day. In another city, clerks work with judges' schedules so that only judges willing or open to hearing bypass petitions are assigned petitions.

This latter group of clerks performs more than a clerical role in the bypass process; they may help prepare minors for hearings by letting them know what questions the judge will ask. A few court staff also felt that one of their responsibilities was to make the minor feel more comfortable. One court staff member conducts face-to-face interviews with all minors before matching them with a lawyer. However, there is a danger of court staff intruding on the minor's privacy unnecessarily; in one instance, a clerk asked questions that were in addition to what a judge would ask.

In at least one state, clerks (or their equivalent title) act somewhat like advocates for the minors—as the minors' lawyers would. These court officials meet with the minor and counsel her about the process, fill out and file court paperwork, and figure out which judge is in rotation and whether that judge is willing to hear petitions. In another city, clerks prepare change-of-venue papers for judges to sign so that the minor may petition in the county where the abortion will be performed.

Confidentiality

By law courts must protect minors' confidentiality, and clerks play a particularly important role in making sure that information from a bypass hearing is kept confidential. State laws may be vague about these duties, leaving it to clerks to devise systems that protect the minor's anonymity.

Calls to Courts in Three States

In June and July 2009, the National Partnership called 60 courthouses across three states to ask for information about pursuing a bypass. The three states were chosen because they are each located in different regions and represent a cross section of population density; the calls were designed to elicit a spectrum of responses. These were not interviews but rather attempts to discover what callers would be told upon telephoning a court for information. For each conversation with court staff in different courthouses, the caller assessed the information given, the manner in which it was conveyed and the probable effect on a minor caller. The conclusions display the variations in how states implement the bypass: Minors calling courts in one state will likely conclude that obtaining a judicial bypass is a possibility, but minors in the other two states will likely reach the opposite conclusion.

The caller first said, "I'm calling to find out how a girl who's not 18 who wants an abortion can get permission from a judge to make the decision without telling her parents." If respondents provided information, the caller asked about timeliness, cost, confidentiality and the process. When each call ended the response's accuracy was ranked on a five-point scale, with one point being "no information given." A second ranking measured the ease of acquiring the information and the respondent's overall tone in order to determine whether a minor on such a call would likely move forward with her plan to obtain a bypass. Answers were ranked as forthcoming, not forthcoming or suspicious/hostile. Despite lack of information, a respondent could be judged forthcoming if she offered specific referrals to appropriate services or suggestions about other contacts, or volunteered to ask another court employee for answers to the caller's questions. Each call received a value combining the respondent's tone and the accuracy of the information received, if any. The template for the calls was based on the work of Helena Silverstein, Girls on the Stand: How Courts Fail Pregnant Minors (2007). Silverstein observes, "What is important is that those charged with carrying out the law convey that the system stands ready to function, that those interested in pursuing a bypass can do so. Minors should come away from the court contacts thinking, 'I can do this.'"

Key findings include

- Court staff members in the less-populated section of one state take seriously the statutory duty to provide specific information upon first contact with a minor seeking a parental-consent waiver. Each gave at least some, if not all, essential information (right to confidentiality, legal counsel and help with the petition) and all calls were ranked as forthcoming. Some staff members, though, were surprised by the call, saying how seldom a call about the bypass had come to their court. Twenty percent of respondents asked the caller to call back in order to give the clerk time to find the answer.

- In the second state the caller received some responses that were openly hostile or denied that a bypass could be sought. More than 50 percent of respondents said that the minor would need a private attorney, which is not true under the state statute; 20 percent denied the existence of the bypass; one denied that abortion was legal in the state. Out of the calls to all of the state's district courts, 75 percent were neutral or helpful/kind in tone, but gave incorrect information. Only one court gave fully correct information about the bypass.

- In the third state, court employees were universally polite, but universally ignorant of their duty under the state's bypass statute. Not one call provided the caller any information about a bypass.

Some clerks will bring the minor in and out through a private door; invite her to wait in the staff members' offices; or move hearings from juvenile court, for example, to a facility where the minor is less likely to be recognized.

Despite these measures, court staff members in smaller cities or rural areas remain concerned about confidentiality. A director of court services in a small city summed up the problem: "If a child is seen with me…it labels them. So, I don't meet them in the halls or outside the courtroom. Sometimes they see someone they know. I tell them before they get here to have a story ready about what they're doing in the courthouse." A clerk in a mid-size city also described obstacles to anonymity: "We don't have a separate room where they can fill out the petition and minors don't want to stand there with everyone else, so they often return the petition later or the next day." While being spotted is unlikely in a court serving a larger city, minors there expressed the same privacy concerns and worried that the hearing would not be "truly confidential—from parents, school, everyone."

Whatever a court's protocol, clerks are responsible for creating, storing and properly disposing of the client's record. One lawyer described the steep learning curve of court personnel in her state: "Once a clerk wouldn't accept a bypass petition because she didn't know what it was and the petitioner was only identified with initials. Someone else on staff told her to accept it. Then she tried to store the file in the statewide database, which is accessible to all juvenile court staff. Finally, they decided to keep the bypass petitions in a file room instead of on the computer. I am concerned that this issue could come up again in the absence of a formal policy addressing privacy concerns in these cases."

This was one of the few accounts of a court staff member not performing the duty (apparently because she did not understand it) to keep minors' files confidential. When petitions are regularly heard in a courthouse, the staff is usually capable and conscientious; most are able to handle the procedure confidentially from beginning to end. Their various strategies for guarding the information include storing paperwork in a vault or a secure area rather than the court computer system; not asking the minor for her name and using only a case number, initials or "Jane Doe" to identify the petitioner; sealing the record after the hearing or labeling the file "protected record;" and scanning and filing it digitally. One clerk insisted on doing all the paperwork herself in order to protect confidentiality. She tapes the restricted access file closed and makes sure the file is ultimately shredded because she thinks the bypass should be—"the most confidential proceeding that we do." Court staff in a different state bought a laminating machine to seal (literally) the files.

ADVOCATES AND OTHER ACTORS

The final subsection of Part II examines the political and social climate in which parental-involvement laws are enforced, and the comments of the advocates and other actors who work with minors seeking a bypass.

The Role of Public Opinion and Stigma

Almost every advocate commented on the problems associated with convincing the public that parental-involvement laws do not achieve the goals they purport to, such as fostering communication between parents and their children or protecting minors' health. The stigma against adolescent sex is also a major impediment to repealing consent or notice laws. An interviewee commented that it is "hard to get information about the bypass to minors in a politically acceptable way." This animosity is caused by a complex web of influences, from popular culture to differences among parents' expectations for their children. On the latter point, a clinic director opined that rural minors are almost expected to become mothers at a relatively early age. Rejecting this expectation, she thinks, is as difficult as the extraordinary travel barriers and lack of anonymity that minors in her area face.

Where public opposition to abortion is strongest, advocates must be creative in finding ways to get information to minors. Staff members at one nonprofit agency are in the early stages of planning a program to help young women in a juvenile detention center understand their reproductive-health options. Another organization's education campaign is targeted at health-care providers. A coalition is hoping to convince more doctors to provide medication abortion.

Public opinion is not static, however. Some commented on the success certain advocates have had with television advertising; in fact, one advocate thinks that the public is sympathetic to arguments that abortion restrictions put minors' health in jeopardy. On the other hand, another advocate contends that litigation challenging state statutes as applied is probably the best way to solve major problems with the bypass, given the current stigma associated with abortion.

The Role of the State Legislature

In some states, anti-choice legislators introduce bills each year that would restrict minors' access to the bypass. These bills may change how maturity is established, require minors to report personal information to the state, or allow only custodial guardians or parents to accept notice (removing the possibility of waiver by grandparents or other adult relatives). There are also bills that would restrict all women's access to abortion by aiming to drive abortion providers out of business and making the climate and practicalities of seeking abortion difficult for any woman.

For the most part, advocates' current strategy is to maintain the status quo rather than try to gain ground, even in "semi-friendly" legislative environments. As one interviewee said, "We haven't tried to amend [the state parental-involvement law] because surveys indicate there aren't the votes for repeal in the [state] legislature. We routinely fight off more restrictive laws but haven't rolled anything back." A state's "Right to Life" chapter (or its equivalent) can have a major impact on the legislature. As one lawyer noted, "[State] Right to Life is incredibly strong. Legislators protect their rating in the anti-choice voter's guides, and Republicans that were once pro-choice have become anti-choice. [Pro-choice Democrats] are almost a minority in our own party."

But the same lawyer suggested that legislators on both sides of the aisle are tiring of the anti-choice "stranglehold" on state politics. She and others were hopeful that progress could be made on issues like contraception and prevention—strategies that might reduce the need for abortion overall.

The Dangers of Attracting Attention

Advocates share the concern that publicity about a bypass system that functions reasonably well will encourage anti-choice state legislators to try further restricting adolescents' access to abortion. In particular, several interviewees feared that if legislators learned of so-called "loopholes" in statutes (provisions in laws that allow a clinic to determine when a minor is emancipated, for example), anti-choice legislators would look for ways to amend those aspects of the law and to add language that would make it harder to seek a bypass. The strategy frequently favored by lawyers and advocates in interviews was one that kept the bypass "off the radar."

Concerns about publicity are evident in the measures professionals take to keep the system "under wraps." As noted earlier, a court staff member worries that picketers, who are a fixture at nearby clinics, will turn their attention to the courts; another thinks the legislature might withhold funding for courts hearing bypass petitions; and a third does not put into the court budget the costs of waiving filing fees for minors pursuing a bypass for fear of attracting attention to the bypass. One interviewee believes that even publicity about the shortcomings of the bypass is dangerous. A study conducted by a nonprofit organization in the state determined that *no* court dispensed full or complete information about the bypass. Advocates disagreed about whether to publish the study.

Social Workers, School Personnel and Other Actors

School counselors and nurses, state agency officials and social workers, and staff members at state-funded health centers and clinics that do not provide abortion services were not the focus of this study, but they are among the professionals who can help young women understand their options. A lawyer noted that because these professionals work closely with minors, they may know where the bypass is working in a state and where it is not.

School personnel in particular were identified as a potentially important source of assistance for minors seeking abortions. A handful of health-care providers interviewed, for example, believed that a minor is likely to tell a school official first about her pregnancy. The issue may then become whether counselors, nurses or teachers have information on options available to the minor and are able to refer her to a clinic, court or lawyer if the minor wants an abortion without parental involvement. One state used to include information about the bypass in high school health materials until state politicians repealed that policy. Two interviewees said that teachers and school nurses in their areas could tell the minor that her absences should be excused (as any absence for medical treatment or legal business would). School officials' willingness to help depends, of course, on whether they feel comfortable

communicating with a pregnant minor about her choices—an area where training may also be needed.

A number of interviewees discussed the role of staff at clinics funded by state or federal sources that provide contraceptives and pregnancy testing. Views were mixed regarding the effectiveness and willingness of staff members and others who intervene on behalf of minors. In some places, it appears clear that state health departments or clinics help minors navigate the bypass process. One state agency employee described the information she gives to minors, but noted that most of this work is "behind the scenes." Another professional occasionally helps minors arrange transportation but does not let her state employer know that she is doing so. Confusion, perhaps unfounded, appears to surround the issue of whether a state employee may talk to or aid a minor in pursuing a bypass. States often do not train employees who work with minors on how the bypass is structured. In one state, a family-planning counselor whose sole assignment was to advise pregnant adolescents had no idea that the bypass existed.

Social-services caseworkers assisting minors in state care have a different role, of course, than staff members at clinics that provide family-planning assistance (and not abortion services). Minors in detention or in foster or group homes are one of the most vulnerable and disadvantaged populations in terms of access to the bypass. The rules that govern their access are often hard to ascertain. Even when clear and fairly applied, state policy often depends on the legal status of the minor—does a social-service agency have full legal custody over her, for example, or only physical or temporary custody? If the latter, who consents to her medical care? One clinician said, "State officials seem confused about the [bypass] process. They adamantly insist that minors require consent for an abortion that the state cannot give—even though it's a notice law. Then they say 'notify the parent.' I think it's a political thing—[state] is anti-choice and the state is unwilling to be perceived as doing anything that looks like it's approving of abortion."

A lawyer said that she receives calls from social workers working with minors in state or foster care and "they are beside themselves." Social workers in her state do not think they can help the minor make arrangements for an abortion (even though many minors are in state care because they have no contact with their parents). Statutes do not appear to forbid social workers from giving minors information about abortion or the bypass. The written or unwritten policies of state agencies may create a chilling effect. Some state employees incorrectly interpret statewide policies that forbid any state spending in support of abortion as prohibiting them from telling adolescents anything about abortion or the bypass.

Part III:

BARRIERS AND RECOMMENDATIONS

The final part of this study identifies the main barriers to a minor's success with a bypass petition, and offers recommendations about how those who work with the bypass might improve it. The success or failure of a bypass process depends on a very context-driven, interrelated set of factors. Any proposal to improve the operation of the bypass depends on the availability of time, will and resources of those committed to assisting pregnant minors.

BARRIERS TO ACCESS

Even with the many differences between court rules, clinic policies and state laws, there are consistent problems with how the bypass operates in most jurisdictions. Addressed below are recurring problems with the implementation and the substance of parental-involvement laws.

Lack of Information or Coordination

As noted earlier, each person interviewed for this project was asked to name her major concern about the bypass. The most common response was that minors do not know the bypass exists or, if aware of it, they cannot get a hearing. Minors in most places have no reliable or easily accessible source of information on the bypass. There are various reasons for this difficulty, such as well-founded fear of reminding the public or public officials that minors can secure abortions without parental involvement, the number and severity of logistical barriers that minors face in obtaining a hearing, the stigma of unplanned pregnancy and minors' reluctance to reveal their sexual activity to adults.

Given the lack of information available to minors, many never know their full legal options. As a clinic director said, minors "struggle to find out where to go and some of them fall through the cracks." Even when minors learn that the bypass exists, there is a high likelihood they will receive insufficient or inaccurate information. As noted earlier, clinic receptionists, court employees, school counselors, hotline operators or other "first contacts" with the minor can set the stage for whether she learns enough about the bypass to be able to pursue it. If the bypass is explained badly, a minor may "just hang up" or seem to "crumble with fear….giv[ing] up at that point." Minors who ask for bypass advice in less-populated areas of states, where bypass petitions are not typically heard, often receive no information at all.

There are very few places where a minor can learn how to navigate a bypass process on her own. Part of the information deficit is due to a lack of coordination among the clinics, law offices and courts that participate in the bypass process. Often minors get the information and assistance they need because one person has connected the necessary actors. As one interviewee said, "It has always been a joint effort—the collaboration of lawyers, judges and clerks that all try to make the process work. If one arm didn't function, then the whole process would fail." Some of the barriers to an effective bypass process reflect problems that occur when there is no such coordination.

This, of course, does not address the places where legal and clinical actors are willfully ignorant about the bypass. Citing the instance described in the Introduction, court staff in one county assign petitions to judges in rotation, knowing that five of six judges will most likely deny petitions regardless of the evidence a petitioner presents. A court's failure to make reasonable arrangements for hearings can also leave the minor without legal relief. For example, one district court heard petitions only two days a month until lawyers objected and more dates were added, and a court in a rural area was "too busy" to accept bypass petitions. And as noted throughout the report, most courts in many of the parental-involvement states are not prepared to hear any bypass petitions.

Logistical Impediments to Access to Courts and Clinics

Related to the lack of coordination and information are the problems for many young women who are without sufficient income, reliant on others for transportation, in school or working, and who live long distances from clinics that provide abortions or courts that hear bypass petitions. As so many interviewees reiterated, these logistical concerns can make a bypass feel "impossible" or the barriers "insurmountable," potentially causing many minors "to just give up."

Transportation. Detailed earlier in this report is the gap between urban and rural access. Abortion providers tend to be based in the urban centers of states. As a result, they refer minors to courts that are located in the larger cities. It bears repeating that minors outside of these areas may have to travel long distances to reach clinical or court services. Both urban and rural minors who cannot involve a parent struggle to travel to clinics or courts without detection, which can add to the stress associated with arranging and paying for transport. A trip of any significant length—required two or three times in some places—can be extremely daunting for young women who may not have a license, a car of their own or access to one, or money for travel and related costs. Although designed to protect patients' health, some clinics' policies can create further logistical problems. Whenever general anesthesia is used, providers typically require that a patient be accompanied by a driver, and many mandate that the driver be at least 18 or 21 years old. Another provider requires patients to bring a driver for all procedures, even those without anesthesia.

Cost. Given that a first-trimester abortion generally costs more than $400 and a second-trimester abortion is considerably more expensive, poor women are disproportionately affected by laws that

add cost and delay. The problem is all the more acute for minors; as a staff member of an abortion fund said, "The cost of abortion is an enormous barrier for minors. The fact is someone else has to pay for the abortion, for several reasons. Whatever the family income, the minor just won't have access to her family's funds. The fact is that minors' delay puts them often into the second trimester, where the abortion is more expensive. Minors may need an escort [to the clinic]. …All this adds to the cost." One lawyer said, "I don't know how low-income minors pay for the procedure, and the travel, and everything else. …They probably can't access abortion."

School Absences. If unaided by her school, and challenged because clinics and courts do not provide a note excusing absence, a minor must find her own solution to avoid the problems that accompany missing class. A court staff member commented that students might have to absorb as many as three unexcused absences to secure a bypass, which can ultimately lead to academic failure, expulsion or truancy charges. Charging minors with school absences is particularly problematic in a process that uses school performance and extra-curricular activities to judge maturity.

Foster Care / State Care. It is often unclear what responsibility state guardians have in giving consent for a minor's abortion. Standards governing that decision are often vague. Although state or county agencies may make health-care decisions for a minor (if certain conditions are met), unofficial or unpublished policies indicate that many state or county programs do not want state guardians to give consent because of liability concerns or fear of negative public reaction. Moreover, beliefs held by caseworkers or foster parents about adolescent sexuality or opposition to abortion may make obtaining consent or notice practically impossible. The result can be a bypass system marked by delay, confusion and, ultimately, failure for these adolescents. Clinicians in at least six states described social workers and state officials who called the provider at a loss about how to help a pregnant minor who wanted an abortion and had no relationship with her parents.

Language. A minor who is not fluent in English faces additional, significant barriers. Courts may not have interpreters on hand to accommodate a bypass hearing (which happens quickly and confidentially by design), or materials on the state parental-involvement law may be in English only. This can deprive a minor of vital information, including what she should learn from a clinic about the abortion procedure, the expectations of a judge at her hearing and her right to appeal a denial of her petition.

Assumptions About the Value of Parental Involvement

This research, as well as other studies, shows that the large majority of minors choose to involve their parents.[162] The framework for adolescent reproductive-health services supports parental involvement: Title X clinics, for example, encourage parental involvement; providers themselves value parental involvement; and cases dating back to *Bellotti* through the present extol the benefits of discussing pregnancy options with parents.

While justifiable in some circumstances, assumptions about the inherent value of parental involvement can constitute a major barrier to an effective bypass process for some adolescents. Laws that make minors choose between talking to their parent or a judge put many young women in a difficult bind. Minors who do not want to involve parents have personal and private reasons for that decision.[163] An early study found that, of those minors who did not inform their parents of their abortions, 30 percent had histories of violence in their families, feared the occurrence of violence or were afraid of being ejected from their homes.[164] Parental-involvement laws undercut young people's ability to understand and to respond to their unique family circumstances. Furthermore, the laws delay medical treatment, turning otherwise very-low risk abortions into more costly and complicated procedures.[165]

National Meeting on the Bypass

In December 2008, the National Partnership for Women & Families brought together 50 people to share information on how the bypass functions. Attendees included clinic professionals, judges who conduct hearings, lawyers who represent minors or find attorneys for them, hotline staff whom minors call for information, operators of abortion funds, academics, and state and national medical and legal advocates for minors' health and rights. Because each attendee was also a speaker, the meeting was a rare opportunity to learn from one another about what helps and hinders young women seeking abortions without parental involvement.

Participants discussed the difficulty minors have navigating the process, the obstacles of misinformation and fear of liability, the staggering differences in arrangements among jurisdictions, judicial conduct and the lack of training for judges or other court personnel, and finally, strategies that might help make the bypass more fair. While participants spoke of minors' "tremendous fear and apprehension," they also noted their firm resolve. Most attendees seemed to share those minors' assessment, seeing the bypass as intended not to protect minors but to prevent abortion, punish (female) adolescent sexuality, and bolster parental authority. Moreover, it was agreed that lawyers should find judges who are fair or do not have a history of treating minors unkindly.

Representatives of health organizations were concerned about the burden the bypass places on minors' emotional health and increased risk to physical health that can come from delaying abortion. They also noted that parental-involvement laws contradict a trend of the last 50 years—to allow minors to consent to a wide range of reproductive health-care services. The final panel, on strategies for law reform, focused on the possibility of amending particular statutes, constitutional litigation around the bypass, public education, and working with courts and legislatures to shape rules and orders that make the process less onerous.

The meeting was encouraging and indicated that cooperation and information-sharing can extend the reach of professionals who work alone or with only a few others on behalf of adolescents who need assistance.

Unfulfilled Promises of Parental-Involvement Laws

Parental-involvement laws frequently guarantee access to resources or tools that are not delivered in practice. For example, most statutes give minors the right to a lawyer at no cost. But this is a right that minors would be hard-pressed to realize in some of these states. Almost every state law requires courts (not merely the larger courts or those in major cities) to assist a minor in filing her petition; however, in actuality, very few states enable minors to file for a bypass in every county or district court in the state. In two states, it is unlikely that any court hears petitions at present. In the same vein, parental-involvement laws clearly require judges to make independent evaluations of best interest and maturity—if a minor does not meet one standard, she may meet the other. Yet many judges, in practice, conflate the two rather than make findings on either standard or require the minor to show only maturity *or* only best interest, ignoring the other.

Assessing maturity can be difficult. Affirmative answers to common questions—whether a minor is enrolled in school, getting good grades and has a job—may suggest maturity, but negative answers should not always be taken for immaturity. Minors with poor grades may be immature, or they may have learning disabilities, pressing personal or family problems or inadequate schooling. A minor who leaves school or does not plan to attend college in order to care for siblings or her own child, or to work may be more mature than most of her peers.

RECOMMENDATIONS FOR IMPROVING THE BYPASS

This section focuses on strategies some professionals already use that lessen the burdens posed by a judicial-bypass system. By and large, these practices target actions that advocates might take to gather information in order to centralize how bypass processes work; to create an infrastructure for managing the different pieces of a complicated process; to distribute information to providers, school officials, legal actors, and youth and reproductive-rights advocacy organizations; to update and vet training materials for all actors in a bypass process; and, finally, to formulate strategies to assist already marginalized minors. Since the repeal of parental-involvement laws seems unlikely at this time in most states, every minor should at least be able to petition for a bypass, and the process of seeking one should be as efficient, confidential and humane as possible.

Because parental-involvement statutes, case law, court rules and local practices differ widely, advocates 'on the ground' are the most familiar with how the bypass operates in their regions and are the best situated to improve it. Actions suggested here will not fit all bypass systems. And the financial resources and time available to professionals who assist bypass petitioners vary greatly. Nonetheless, a number of steps have been taken in some places that could, if adopted widely, make a significant and positive difference for many young women.

Collecting Relevant, Existing Information on the Bypass

At the state level, what is usually missing is a central source of information about how to get a bypass and where it can or cannot be obtained. This information is difficult to gather and to maintain. It means contacting each courthouse in the state (and perhaps in adjoining states) to learn which ones accept petitions, and developing relationships with the lawyers and clerks who work with minors in order to learn how, if at all, the bypass actually operates in each jurisdiction. In one state, the primary abortion provider compiles information on each court including clerk contact numbers, the demeanor and knowledge of court staff and judges, and the process that the court follows in hearing a petition.

Information of this sort can help clarify for minors and their advocates what judges want to know and what documents will be required before a petition is heard or granted. For instance, a minor may need to present an affidavit confirming pregnancy and due date; she may need to assure the judge that she has considered alternatives to abortion and knows its risks or talked to a trusted adult; and she may need to make plans for the procedure and any complications that could occur.

In addition to understanding where a minor can seek a bypass, those involved in the process need to comprehend fully the state parental-involvement law and the case law interpreting it, so that legal requirements for health-care providers, courts, lawyers and minors are clear. For example, providers and court staff should seek legal counsel to understand the state statute's venue requirement, so minors not residing in the county, state or country are not refused erroneously. In the same vein, it is important to figure out instances where parental notice or consent is not needed. What evidence must a minor show? What are the next steps if she has been sexually assaulted or abused? How does state law define emancipation and is any action from a court necessary to deem a minor emancipated?

Coordinating Resources for Minors and Professionals Across a State

Once there is knowledge of where the bypass happens and what state law requires, there should be a system for managing the different pieces of a complicated process. One way to achieve this is to centralize information through a pool of volunteer attorneys, which happens in a few states. Advocates working through civil-rights organizations, public-defender services or lawyers working pro-bono can bring order and consistency to the bypass. Responsibilities of such groups might include recruiting others across the state willing to assist minors, developing materials for statewide training, and ensuring refresher training for experienced attorneys or clinic staff. Where appropriate and with attorney supervision, law students or paralegals could help manage filings and other tasks.

A coherent picture of state-by-state practice can go a long way to helping clinical and legal professionals. Sorting out what is really happening in a state requires talking to clinical and legal professionals.

However, sometimes professionals working with minors will contradict each other because they do not know what happens in other parts of their state. Drawing such a comprehensive picture will, of course, require considerable time and resources.

A state clearinghouse of information on the bypass can also ensure that everyone understands state law and how the bypass operates in different counties. Useful materials that might be distributed include scripts for clinic intake, model questions for attorneys, and standing orders for the appointment of attorneys and the payment of costs or fees. Just as there is value in centralizing attorneys' efforts, the state administrative office of the courts should be asked to consolidate instructions to court staff and to supervise statewide training on execution of bypass procedures. Such bodies have the authority and responsibility to train staff throughout the state on the process, including helping courts establish a confidential system for bypass record-keeping. For clinics in states where there is more than one abortion-care provider, a streamlined process for minors needing a bypass could be managed by abortion funders or nonprofit groups, or by an affiliate within a group of providers.

Getting the Word Out to the Right People

Once advocates understand the lay of the land, the task is to disseminate information regularly to those who need it. Health-care providers, family-planning clinicians, social workers, school nurses, counselors, teachers and youth advocacy organizations could do this. It is essential that every minor advised of the parental-involvement law also be told about the bypass. For clinics, this means ensuring that every staff person answering the telephone can tell a caller whether bypasses are heard locally and whom to contact in that or another state's courts. Accuracy of and accessibility to information are equally important.

There are specific initiatives that would help disseminate information about the bypass in each state with a parental-involvement law. Organizations in two states provide minors with a toll-free statewide phone number for connecting with a clinic or lawyer—good examples of one way to improve minors' access to the bypass process. A website geared toward minors would be a helpful support. It could offer all forms needed to file a petition, maps of courthouse locations where petitions are heard, and the names and phone numbers of one or more contacts in each courthouse or its vicinity. Ideally, a minor wanting independent access to abortion could call almost any reproductive-health clinic, courthouse, or legal-services or public defenders' office in her own or an adjoining state and be referred to the nearest court that hears petitions.

Pro-choice advocates should consider the best methods for informing minors about how to petition for a bypass, such as through social media, voluntary organizations' efforts, educating professionals or public campaigns. Distributing information, however, requires a careful strategy. Groups that talk to pregnant minors, such as clinics that receive Title X funds, school-based health centers and state youth organizations, may be a good starting point for distributing information that effectively describes the bypass as a viable option.

Maintaining and Updating a Clearinghouse of Information

There is a need to provide current and consistent training for all actors in a bypass process. For judges, this might include judicial training either through a state's judicial conference or a national organization dedicated to continuing education for the judiciary. The training should include consideration of the logistics of hearing petitions, given minors' need for confidentiality; the application of the best interest and maturity standards; and pitfalls to avoid (such as inappropriate questions).

There are also important organizational strategies around building a lasting capacity or infrastructure to help minors. It is essential to remember that the participants in a state bypass system change frequently—attorneys leave practice, providers close down or new clinics open, and judges or clerks retire. Maintaining an up-to-date list of attorneys, clerks, providers and judges involved in the bypass is essential. It is also crucial to check regularly a state's statutes, regulations, case law and court rules to ensure consistency between the law and what is actually made available to minors. For example, if the state's statute entitles minors to free representation, do courts appoint and pay attorneys?

The entity or person responsible for keeping this information may differ from state to state, according to the needs and resources of the jurisdiction. In some locations it might make the most sense for statewide civil-rights groups, youth advocacy organizations or women's rights nonprofits to take a coordinating role (and to apply for funding to help them in this endeavor).

Helping the Most Vulnerable Minors

One of the themes woven throughout this report is that parental-involvement laws heavily penalize already marginalized minors. Addressing their needs directly can make the process fairer for minors who are already at a disadvantage in the legal and health systems. Providers and lawyers should learn state and local authorities' rules on abortion access for minors in foster care or detention and inform all parties (minors, clinics, attorneys, court staff and judges). For minors living in the rural parts of a state, advocates and others should encourage more courthouses around the state to begin hearing petitions.

Solving Common Problems

For the vast majority of minors who find parental-involvement laws and the bypass hard to navigate by virtue of their age and lack of resources, legal and clinical professionals can take concrete steps to make the process less onerous. For example, clinics or courts could provide a written excuse for petitioners who must miss school for a hearing or for medical care. To protect the confidentiality of the judge's order granting a bypass, attorneys or clerks could fax it to the minor's health-care provider. Judges could conduct hearings through videoconference, which would greatly ease minors' logistical problems with seeking a bypass. And all professionals could take an active role in reporting a judge, clerk, health-care provider or lawyer who treats minors poorly.

One unexpected benefit of this project was its ability to connect clinics, attorneys and clerks with one another to facilitate broader conversations about how to implement these recommendations. Building relationships like these on a larger scale can help create the tools that simplify the bypass process and pool the collective expertise that allows others to participate meaningfully in this work.

CONCLUSION

In petitioning for a bypass, minors are trying to comply with the law. State laws force a minor who wants a legal abortion to make a choice between involving parents or appearing before a judge. By pursuing a bypass, minors avail themselves of a form of legal relief to which they are entitled. The profound gap between what the law promises and what it delivers is the core of this project.

The bypass is rarely treated as a legal right belonging to young women that states must protect. Instead, too often it is marked by secrecy, shame and, as this report illustrates, is in many instances difficult or impossible to obtain. At present, whether a minor can avail herself of what the law guarantees is often determined by factors wholly outside her control—such as where she resides; where health-care providers in her state are based; whether schools, lawyers, advocacy organizations, clinics or other groups make information on the bypass available and describe the process clearly; or whether any judge accessible to her will hear petitions. Even for those girls and young women who know about the bypass and have the ability to pursue it, the process can be extremely daunting.

Standards that would mark any fair and effective legal process are often missing in the bypass. Assistance from competent and humane professionals in clinics, courts, law practices and advocacy organizations makes all the difference in whether minors can effectuate their legal rights. But professionals' efforts are often thwarted by a lack of awareness, information and coordination about how the bypass process works in each jurisdiction in their own state or in neighboring states. As the strategies for improving the bypass in this report make clear, those assisting minors need better support and training, and they need an infrastructure that can help facilitate the exchange of information across states and between courts, clinics, schools and advocacy groups. The heartening message of this report is that, despite the difficulties that parental-involvement laws create for young women and girls, professionals can take further vital steps toward ensuring justice by improving the functioning of the bypass.

Law and practice in the United States should better serve the needs of pregnant young women and girls. As it is, parental-involvement laws neither foster family unity nor protect pregnant minors' health or safety. At the same time, these laws burden and sometimes prevent minors' access to abortion. However, as long as the laws remain in force, this report can help those seeking to improve the judicial bypass for the minors who need it. The National Partnership for Women & Families looks forward to working with others to that end.

ENDNOTES

1 *See* Bellotti v. Baird, 443 U.S. 622, 644, 648–49 (1979).
2 428 U.S. 52 (1976).
3 *Bellotti*, 443 U.S. at 625–26.
4 *Id.* at 644, 648–49 ("constitutional right to seek an abortion may not be unduly burdened by state-imposed conditions upon initial access to court").
5 "We are concerned here with a constitutional right to seek an abortion. The abortion decision differs in important ways from other decisions that may be made during minority. The need to preserve the constitutional right and the unique nature of the abortion decision, especially when made by a minor, require a State to act with particular sensitivity when it legislates to foster parental involvement in this matter . . . . Indeed, considering her probable education, employment skills, financial resources, and emotional maturity, unwanted motherhood may be exceptionally burdensome for a minor . . . . In sum, there are few situations in which denying a minor the right to make an important decision will have consequences so grave and indelible." *Id.* at 642.
6 Planned Parenthood v. Casey, 505 U.S. 833, 899–900 (1992).
7 *See* State v. Planned Parenthood of Alaska, 171 P.3d 577 (Alaska 2007); Am. Acad. of Pediatrics v. Lungren, 940 P.2d 797 (Cal. 1997); Hope Clinic for Women Ltd. v. Adams, No. 90CH38661 (Ill. Cir. filed Oct. 13, 2009); Glick v. McKay, 937 F.2d 434 (9th Cir. 1991); Wicklund v. Montana, No. ADV 97-671, 1999 Mont. Dist. LEXIS 1116 (D. Mont. 1999); Planned Parenthood v. Farmer, 762 A.2d 620 (N.J. 2000); N.M. Op. Att'y Gen. No. 90-19 (Oct. 3, 1990) (declaring New Mexico's parental notification law, N.M. Stat. Ann. § 30-5-1(C), unconstitutional and unenforceable because it fails to provide bypass procedure).
8 Pam Belluck, *New Hampshire to Repeal Parental Notification Law*, N. Y. Times, June 8, 2007, at A22.
9 Connecticut law provides minors counseling about the value of parental notification, but does not mandate it. Conn. Gen. Stat. Ann. §§ 19a-600 to -601 (West 2007).
10 Miss. Code Ann. § 41-41-53 (2009); *see* Barnes v. Mississippi, 992 F.2d 1335 (5th Cir. 1993), cert. denied, 510 U.S. 976 (1993); Pro-Choice Miss. v. Fordice, 716 So. 2d 645 (Miss. 1998).
11 N.D. Cent. Code §§ 14-02.1-03.1 (enacted 1981), 14-02.1-03 (enacted 1975), 14-02.1-02 (enacted 1975; last amended 1995), 14-02.1-02.1 (enacted 1991). North Dakota's two-parent consent only applies when both parents are living and married to each other.
12 Minn. Stat. § 144.343 (2010).
13 Okla. Stat. tit. 63, § 1-740.2 (2009); Utah Code Ann. § 76-7-304, -304.5 (2009); Wyo. Stat. Ann. § 35-6-118 (2009).
14 *See, e.g.,* N.D. Cent. Code § 14-02.1-03.1 (2009) (written consent); Ark. Code Ann. § 20-16-801, -803 (2009) (notarized consent or witnessed signature); La. Rev. Stat. Ann. § 40:1299.35.5 (2009) (notarized consent); Okla. Stat. tit. 63, § 1-740.2 (2009) (notarized consent); Va. Code Ann. § 16.1-241 (2009) (notarized consent unless parent present); S.C. Code Ann. § 44-41-31 (2009) (witnessed signature).
15 Okla. Stat. tit. 63, § 1-740.2; Tenn. Code Ann. § 37-10-303 (2009); Ark. Code Ann. § 20-16-803; Ga. Code Ann. § 15-11-112 (2009).
16 *See, e.g.,* Fla. Stat. § 390.01114 (2009) ("Court proceedings shall be kept confidential but include a written transcript of all testimony"); Del. Code Ann. tit. 24, § 1784 (2010); Neb. Rev. Stat. § 71-6903 (2009) (sealed record not opened except for cause); Wis. Stat. § 48.257 (2009).
17 Wis. Stat. § 48.257 (2010).
18 Kan. Stat. Ann. § 65-6705 (2009); Neb. Rev. Stat. § 71-6903 (2010).
19 18 Penn. Cons. Stat. § 3206 (2009); Ohio Rev. Code Ann. §§ 2151.85, 2919.121 (West 2010); Ala. Code § 26-21-4 (2009); Ga. Code Ann. § 15-11-114 (2009); Iowa Code § 135L.3 (2010); Mich. Comp. Laws § 722.904 (2010); Mo. Rev. Stat. § 188.028 (2009); N.C. Gen. Stat. § 90-21.8 (2009); La. Rev. Stat. Ann. § 40:1299.35.5 (2010); Neb. Rev. Stat. § 71-6903 (2010); Tenn. Code Ann. § 37-10-304 (2009).
20 La. Rev. Stat. Ann. § 40:1299.35.5 (2010).
21 *Id.*

22 *Id.*
23 Tenn. Code Ann. § 37-10-304 (2010).
24 *Id.*
25 18 Penn. Cons. Stat. § 3206 (2010).
26 Ariz. Rev. Stat. § 36-2152 (2010); Fla. Stat. § 390.01114 (2010); Idaho Code Ann. §18-609A (2009); Ind. Code. Ann. § 16-34-2-4 (West 2010); Iowa Code § 135L.3 (2010); Kan. Stat. Ann. § 65-6705 (2009); N.D. Cent. Code § 14-02.1-03.1 (2010); Tenn. Code Ann. § 37-10-304 (2010); Tex. Fam. Code Ann. § 33.003 (Vernon 2009) (considering petition granted if court has not ruled by 5:00 p.m. the second business day); W. Va. Code § 16-2F-4 (2010) (requiring hearing the next day and ruling no later than the day after hearing).
27 Ala. Code § 26-21-4 (2010); Ga. Code Ann. § 15-11-113 (2009); Mich. Comp. Laws § 722.904 (2010); Miss. Code Ann. § 41-41-55 (2009); 18 Penn. Cons. Stat. § 3206 (2010); S.C. Code Ann. § 44-41-32 (2009); Wis. Stat. § 48.375 (2010).
28 Colo. Rev. Stat. § 12-37.5-107 (2009); La. Rev. Stat. Ann. § 40:1299.35.5 (2010); Va. Code Ann. § 16.1-241 (2010).
29 Del. Code Ann. tit. 24, § 1784 (2010); Mo. Rev. Stat. § 188.028 (2010); Ohio Rev. Code Ann. § 2151.85 (2010); Wyo. Stat. Ann. § 35-6-118 (2009) (heard within five days and order issued no later than 24 hours after the hearing).
30 Neb. Rev. Stat. § 71-6903 (2010).
31 Ark. Code Ann. § 20-16-804 (2009); *see also* Mass. Gen. Laws Ann. ch. 112, § 12S (2010); Minn. Stat. § 144.343 (2010); Okla. Stat. tit. 63, § 1-740.3 (2009); R.I. Gen. Laws § 23-4.7-6 (2009); S.D. Codified Laws § 34-23A-7.1 (2009).
32 Utah Code Ann. § 76-7-304.5 (2010).
33 *See* Idaho Code Ann. §18-609A (2010) (48 hours); La. Rev. Stat. Ann. § 40:1299.35.5 (2010) (48 hours); Mich. Comp. Laws § 722.904 (72 hours); Tex. Fam. Code Ann. § 33.004 (Vernon 2009) (ruling by 5:00 p.m. on second business day after notice of appeal filed).
34 *See* Neb. Rev. Stat. § 71-6904 (2010); N.C. Gen. Stat. § 90-21.8 (2010). A number of states mandate courts to hear appeals within four to five days. *See* N.D. Cent. Code § 14-02.1-03.1 (2010) (four days); Wis. Stat. § 809.105 (2009) (four days); Kan. Stat. Ann. § 65-6705 (2010) (five days); Mo. Rev. Stat. § 188.028 (2010) (five days); 18 Penn. Cons. Stat. § 3206 (2010) (five days); Va. Code Ann. § 16.1-241 (2010) (five days); Ohio Rev. Code Ann. § 2505.073 (West 2010) (four days to docket and five days for decision); Tenn. Code Ann. § 37-10-304 (2010) (five days to docket and five days for decision). *But see* S.C. Code Ann. § 44-41-34 (2009) (10 days).
35 *See* Ark. Code Ann. § 20-16-804 (2010); Fla. Stat. § 390.01114 (2010); Okla. Stat. tit. 63, § 1-740.3 (2010).
36 *See* Colo. Rev. Stat. § 12-37.5-107 (2010); Ind. Code. Ann. § 16-34-2-4 (2010); Miss. Code Ann. § 41-41-55 (2010); Utah Code Ann. § 76-7-304.5 (2009); Wyo. Stat. Ann. § 35-6-118 (2010).
37 Del. Code Ann. tit. 24, § 1784 (2010); *see also* Ky. Rev. Stat. Ann. § 311.732 (West 2009); W. Va. Code § 16-2F-4 (2010) ("shall hear and decide the matter without delay and shall enter such orders as such court…may deem appropriate").
38 *See* Ga. Code Ann. § 15-11-114 (2010); Kan. Stat. Ann. § 65-6705 (2010); Ky. Rev. Stat. Ann. § 311.732 (2010); Miss. Code Ann. § 41-41-55 (2010); Minn. Stat. § 144.343 (2010); Okla. Stat. tit. 63, § 1-740.3 (2010); S.D. Codified Laws § 34-23A-7.1 (2010); Tenn. Code Ann. § 37-10-304 (2010); Va. Code Ann. § 16.1-241 (2010).
39 *See In re* Moe, 423 N.E.2d 1038,1040–41 (Mass. App. Ct. 1981).
40 Fla. Stat. § 390.01114 (4)(a) (2010); N.C. Gen. Stat. § 90-21.7 (2010); N.D. Cent. Code § 14-02.1-03.1 (2010); Ohio Rev. Code Ann. § 2151.85 (2010); 18 Penn. Cons. Stat. § 3206 (2010); W. Va. Code § 16-2F-4 (2010).
41 *See, e.g.,* Ala. Code § 26-21-4 (2010). Other states have clarified whether out-of-state residents may petition courts in Attorney General opinions or court opinions. *See* 1981 N.D. Op. Att'y Gen. 398 (North Dakota); *In re* Moe, 851 N.E.2d 1111 (Mass. App. Ct. 2006) (Massachusetts).
42 Ala. Code § 26-21-4; *see also* Ariz. Rev. Stat. § 36-2152 (2010); W. Va. Code § 16-2F-4 (2010); Tex.

Fam. Code Ann. § 33.003; Ohio Rev. Code Ann. §§ 2151.85, 2919.121 (2010); Mo. Rev. Stat. § 188.028 (2010); Ga. Code Ann. § 15-11-114 (2010); Ind. Code. Ann. § 16-34-2-4 (2010); Idaho Code Ann. §18-609A (2010); Kan. Stat. Ann. § 65-6705 (2010); Mich. Comp. Laws § 722.904 (2010) (attorney or GAL); Miss. Code Ann. § 41-41-55 (2010); 18 Penn. Cons. Stat. § 3206 (2010).
43 *See* Neb. Rev. Stat. § 71-6903 (2010); Minn. Stat. § 144.343 (2010); Ky. Rev. Stat. Ann. § 311.732 (2010); Ark. Code Ann. § 20-16-804 (2010); N.C. Gen. Stat. § 90-21.8 (2010); Fla. Stat. § 390.01114 (2010); Okla. Stat. tit. 63, § 1-740.3 (2010); S.C. Code Ann. § 44-41-32 (2010); S.D. Codified Laws § 34-23A-7.1 (2010); Tenn. Code Ann. § 37-10-304 (2010); Va. Code Ann. § 16.1-241 (2010).
44 *See* Colo. Rev. Stat. § 12-37.5-107 (2010); Wyo. Stat. Ann. § 35-6-118 (2010).
45 Iowa Code § 135L.3 (2010); Okla. Stat. tit. 63, § 1-740.3 (2010); S.D. Codified Laws § 34-23A-7.1 (2010); 18 Penn. Cons. Stat. § 3206 (2010); Minn. Stat. § 144.343 (2010); Va. Code Ann. § 16.1-241 (2010); Wyo. Stat. Ann. § 35-6-118 (2010); Mass. Gen. Laws Ann. ch. 112, § 12U (2010); Idaho Code Ann. § 18-609A (2010); Colo. Rev. Stat. § 12-37.5-107 (2010); Neb. Rev. Stat. § 71-6903 (2010).
46 Ohio Rev. Code Ann. §§ 2151.85, 2919.121 (2010); S.C. Code Ann. § 44-41-32 (2010); Mo. Rev. Stat. § 188.028 (2010) (if the minor has no private attorney); Mich. Comp. Laws § 722.904 (2010); Tex. Fam. Code Ann. § 33.003 (2010); Ky. Rev. Stat. Ann. § 311.732 (2010).
47 R.I. Gen. Laws § 23-4.7-6 (2010).
48 Iowa Code § 135L.3 (2010).
49 Tex. Fam. Code Ann. § 33.003 (2010).
50 Ala. Code § 26-21-4 (2010); Del. Code Ann. tit. 24, § 1784 (2010); Iowa Code § 135L.3 (2010); Kan. Stat. Ann. § 65-6705 (2010); Ky. Rev. Stat. Ann. § 311.732 (2010); La. Rev. Stat. Ann. § 40:1299.35.5 (2010) (if minor declares she is unable to pay court costs); Mich. Comp. Laws § 722.904 (2010); Minn. Stat. § 144.343 (2010); Miss. Code Ann. § 41-41-55 (2010); Neb. Rev. Stat. § 71-6905 (2009); N.C. Gen. Stat. § 90-21.8 (2010); Ohio Rev. Code Ann. §§ 2151.85, 2919.121 (2010); Okla. Stat. tit. 63, § 1-740.3 (2010); S.C. Code Ann. § 44-41-34 (2010); Tenn. Code Ann. § 37-10-304 (2010); Wis. Stat. §§ 48.257, 809.105 (2010); Tex. Fam. Code Ann. § 33.003 (Vernon 2010) (coverage of costs by court order).
51 Tex. Fam. Code Ann. § 33.003 (Vernon 2010).
52 Del. Code Ann. tit. 24, § 1784 (2010); Ga. Code Ann. § 15-11-114 (2010); Kan. Stat. Ann. § 65-6705 (2010) (maturity must be shown by preponderance of the evidence); Ky. Rev. Stat. Ann. § 311.732 (2010); N.C. Gen. Stat. § 90-21.8 (2010); S.C. Code Ann. § 44-41-33 (2009); Tenn. Code Ann. § 37-10-304 (2010); Va. Code Ann. § 16.1-241 (2010); Wis. Stat. § 48.375 (2010).
53 Ariz. Rev. Stat. § 36-2152 (2010); Ark. Code Ann. § 20-16-804 (2010); Idaho Code Ann. §18-609A (2010); Iowa Code § 135L.3 (2010); Mass. Gen. Laws Ann. ch. 112, § 12S (2010); Minn. Stat. § 144.343 (2010); Neb. Rev. Stat. § 71-6903 (2010); Okla. Stat. tit. 63, § 1-740.3 (2010); 18 Penn. Cons. Stat. § 3206 (2010); R.I. Gen. Laws § 23-4.7-6 (2010); Utah Code Ann. § 76-7-304.5 (2010) (requiring preponderance of evidence); S.D. Codified Laws § 34-23A-7 (2010) (requiring clear and convincing evidence).
54 N.D. Cent. Code § 14-02.1-03.1 (2010).
55 Ala. Code § 26-21-4 (2010); Colo. Rev. Stat. § 12-37.5-107 (2010); Fla. Stat. § 390.01114 (2010); La. Rev. Stat. Ann. § 40:1299.35.5 (2010); Mich. Comp. Laws § 722.904 (2010); N.D. Cent. Code § 14-02.1-03.1 (2010); Ohio Rev. Code Ann. § 2919.121 (2010); Tex. Fam. Code Ann. § 33.003 (Vernon 2010); W. Va. Code § 16-2F-4 (2010); Wyo. Stat. Ann. § 35-6-118 (2010).
56 Colo. Rev. Stat. § 12-37.5-107 (2010); Fla. Stat. § 390.01114 (2010); La. Rev. Stat. Ann. § 40:1299.35.5 (2010); Ohio Rev. Code Ann. § 2151.85 (2010); S.D. Codified Laws § 34-23A-7 (2010); Idaho Code Ann. § 18-609A (2010); Okla. Stat. tit. 63, § 1-740.3 (2010); Ariz. Rev. Stat. § 36-2152 (2010); Miss. Code Ann. § 41-41-55 (2010); Wyo. Stat. Ann. § 35-6-118 (2010).
57 Fla. Stat. § 390.01114 (2010); *see also* Colo. Rev. Stat. § 12-37.5-107 (2010).
58 *See* Ala. Code § 26-21-4 (2010); Fla. Stat. § 390.01114 (2010); N.C. Gen. Stat. § 90-21.8 (2010); Ohio Rev. Code Ann. § 2151.85 (2010); Tex. Fam. Code Ann. § 33.003 (Vernon 2010).
59 Ala. Code § 26-21-4 (2010).
60 Fla. Stat. § 390.01114 (2010); Mo. Rev. Stat. § 188.028 (2010); N.C. Gen. Stat. § 90-21.8 (2010); Ohio Rev. Code Ann. § 2919.121 (2010); 18 Penn. Cons. Stat. § 3206 (2010); S.C. Code Ann. § 44-41-32

(2010); Wis. Stat. § 48.375 (2010); Wyo. Stat. Ann. § 35-6-118 (2010).
61 Ohio Rev. Code Ann. § 2919.121 (2010); *see also* Mo. Rev. Stat. § 188.028 (2010); 18 Penn. Cons. Stat. § 3206 (2010); Wis. Stat. § 48.257 (2010); Wyo. Stat. Ann. § 35-6-118 (2010).
62 Ariz. Rev. Stat. § 36-2152 (2010); Colo. Rev. Stat. § 12-37.5-107 (2010); Del. Code Ann. tit. 24, § 1784 (2010); Ga. Code Ann. § 15-11-114 (2010); Idaho Code Ann. § 18-609A (2010); Iowa Code § 135L.3 (2010); Kan. Stat. Ann. § 65-6705 (2010); Miss. Code Ann. § 41-41-55 (2010); Ohio Rev. Code Ann. § 2151.85 (2010); Tex. Fam. Code Ann. § 33.003 (Vernon 2010); Va. Code Ann. § 16.1-241 (2010).
63 Neb. Rev. Stat. § 71-6903 (2010).
64 La. Rev. Stat. Ann. § 40:1299.35.5 (2010).
65 Iowa Code § 135L.2 (2010).
66 Kan. Stat. Ann. § 65-6704 (2009).
67 *Id.*
68 *Id.*
69 S.C. Code Ann. § 44-41-37 (2009).
70 A legal guardian is a person the court has ordered to act in loco parentis (in the place of the parent) for a minor. This can include a family member who has petitioned the court in the parents' absence, or the state acting on behalf of a minor in state care.
71 The Illinois Parental Notice of Abortion Act was enjoined at the time of writing. The Act allows an adult family member, a "person over 21 years of age who is the parent, grandparent, step-parent living in the household, or legal guardian," to receive notice. 750 Ill. Comp. Stat. 70/10, 70/15 (enacted 1995).
72 Del. Code Ann. tit. 24, § 1783 (2010).
73 Iowa Code § 135L.3 (2009).
74 N.C. Gen. Stat. § 90-21.7 (2009).
75 S.C. Code Ann. § 44-41-31 (2009).
76 Va. Code Ann. § 16.1-241 (2010).
77 Wis. Stat. § 48.375 (2010).
78 *Id*.
79 Md. Code Ann. Health-Gen. I § 20-103 (2009); W. Va. Code § 16-2F-3, 4 (2009).
80 Me. Rev. Stat. tit. 22 § 1597-A (2009).
81 Del. Code Ann. tit. 24, §§ 1782-83 (2010); S.C. Code Ann. §§ 44-41-10, -30 (2009).
82 18 Penn. Cons. Stat. § 3206 (2010).
83 N.C. Gen. Stat. § 90-21.7 (2009); Mass. Gen. Laws Ann. ch. 112, § 12S (2010); Miss. Code Ann. § 41-41-53; N.D. Cent. Code § 14-02.1-03.1 (2010); 18 Penn. Cons. Stat. § 3206 (2010).
84 For example, the Massachusetts consent statute does not create an exception for emancipated minors. Note that Massachusetts does not have a law that addresses the general standards for emancipation, but does have a statute that sets out the requirements for emancipation in making medical decisions, which excludes abortion. *See* Mass. Gen. Laws Ann. ch. 112, § 12F (2010).
85 Va. Code Ann. § 16.1-241 (2010).
86 Ohio Rev. Code Ann. § 2919.121 (2010).
87 *See, e.g.,* Fla. Stat. § 390.01114 (2010).
88 *See, e.g.,* Okla. Stat. tit. 63 § 1-740.4 (2010).
89 *See, e.g.,* Va. Code Ann. § 16.1-241 (2010).
90 Ariz. Rev. Stat. § 36-2152 (2010) (perpetrator must be parent, guardian or adult who lives with the minor and minor's mother); Colo. Rev. Stat. § 12-37.5-105 (2010) (perpetrator must be person who would receive notice) (2009); Idaho Code Ann. §18-609A (2010) (perpetrator must be relative, guardian or foster parent); Iowa Code § 135L.3 (2010); Kan. Stat. Ann. § 65-6705 (2010) (perpetrator must be person who would receive notice); Minn. Stat. § 144.343 (2010); Neb. Rev. Stat. § 71-6906 (2009); Okla. Stat. tit. 63, § 1-740.2 (2010); S.C. Code Ann. § 44-41-30 (2009) (perpetrator must be relative); Tenn. Code Ann. § 37-10-303 (2010) (perpetrator must be parent); Va. Code Ann. § 16.1-241 (2010); Wis. Stat. § 48.375 (2010).
91 *See* Ala. Code § 26-21-3 (2009); Ark. Code Ann. § 20-16-808 (2009); Miss. Code Ann. § 41-41-53 (2010); Ohio Rev. Code Ann. § 2919.12 (2010) (notice can be given to brother or sister who is over 21 years old, step-parent or grandparent, if parent is abusive); Utah Code Ann. § 76-7-304 (2010).

92 *See, e.g.,* Tex. Fam. Code Ann. § 33.003 (Vernon 2010).
93 Wis. Stat. § 48.375 (2010).
94 Ark. Code Ann. § 20-16-808 (2010).
95 Okla. Stat. tit. 63, § 1-740.2 (2010).
96 States without a medical-emergency exception include Missouri, Ohio and Rhode Island. *See* Mo. Rev. Stat. § 188.075; Ohio Rev. Code Ann. § 2919.121 (2010); R.I. Gen. Laws § 23-4.7-4 (2010) (medical emergency "requiring immediate action").
97 Ala. Code § 26-21-5; Kan. Stat. Ann. § 65-6705 (2010).
98 Ariz. Rev. Stat. § 36-2152 (2010); *see also* Ark. Code Ann. § 20-16-802 (2009); Colo. Rev. Stat. §§ 12-37.5-103, -105 (2009); Del. Code Ann. tit. 24, §§ 1782, 1787 (2010); Fla. Stat. § 390.01114 (2010); Iowa Code §§ 135L.1, 135L.3 (2010); Mich. Comp. Laws §§ 722.902, 722.905 (2010); Minn. Stat. § 144.343 (2010) (abortion is necessary to prevent death); Mo. Rev. Stat. § 188.015 (2009); N.D. Cent. Code § 14-02.1-03.1 (2010) (abortion is necessary to prevent death); Okla. Stat. tit. 63, § 1-740.1 (2009); 18 Penn. Cons. Stat. §§ 3202, 3206 (2009); S.D. Codified Laws §§ 34-23A-1, -7 (2009); Tex. Fam. Code Ann. § 33.002 (Vernon 2009); Utah Code Ann. §§ 76-7-304, -304.5 (2010); Va. Code Ann. § 16.1-241 (2010); Wyo. Stat. Ann. § 35-6-118 (2010) (abortion is necessary to avert "imminent peril" to minor's life).
99 *See, e.g.,* Del. Code Ann. tit. 24, § 1789 (2010).
100 Colo. Rev. Stat. § 12-37.5-106 (2010).
101 Idaho Code Ann. §18-614 (2010).
102 Iowa Code § 135L.3 (2010); Neb. Rev. Stat. § 71-6907 (2010) (third-degree misdemeanor).
103 Colo. Rev. Stat. § 12-37.5-106 (2010); Iowa Code § 135L.6 (2010).
104 Okla. Stat. tit. 63, § 1-740.4b (2009); Utah Code Ann. § 76-7-314 (2009).
105 Miss. Code Ann. § 41-41-61 (2010); Wyo. Stat. Ann. § 35-6-118 (2010). *Cf.* W. Va. Code § 16-2F-8 (2010) (30 days in jail).
106 Wyo. Stat. Ann. § 35-6-118 (2010) ($1,000); W. Va. Code § 16-2F-8 (2010) ($1,000); Tex. Fam. Code Ann. § 33.002 (Vernon 2010) ($10,000); S.C. Code Ann. § 44-41-36 (2010) ($10,000).
107 Fla. Stat. § 390.01114 (2010); Miss. Code Ann. § 41-41-59 (2010); Ala. Code § 26-21-6 (2010) (penalty is forfeiture of license).
108 *See* Ark. Code Ann. § 20-16-806 (2010); Del. Code Ann. tit. 24, § 1789B (2010); Mich. Comp. Laws § 722.907 (2010) (authorizing punitive damages); Neb. Rev. Stat. § 71-6907 (2010); Ohio Rev. Code Ann. § 2919.121 (2010); Okla. Stat. tit. 63, § 1-740.4 (2010) (authorizing punitive damages); 18 Penn. Cons. Stat. § 3206 (2010); S.C. Code Ann. § 44-41-35 (2010); Ky. Rev. Stat. Ann. § 311.732 (2010); Tenn. Code Ann. § 37-10-307 (2010); Mass. Gen. Laws Ann. ch. 112, § 12S (2010) (all common law rights to civil action).
109 *See* Ky. Rev. Stat. Ann. § 311.732 (2010); Mich. Comp. Laws § 722.907 (2010) (authorizing exemplary damages); 18 Penn. Cons. Stat. § 3206 (2010); Tenn. Code Ann. § 37-10-307 (2010); Del. Code Ann. tit. 24, § 1789B (2010) (interference with family relations only).
110 Iowa Code § 135L.3 (2010).
111 Mich. Comp. Laws § 722.904 (2010).
112 Mo. Rev. Stat. § 188.023 (2009) (2010).
113 La. Rev. Stat. Ann. § 40:1299.35.10 (2009).
114 *Id.*
115 Fla. Stat. § 390.01114 (2010).
116 Idaho Code Ann. §18-609G (2009); W. Va. Code § 16-2F-6 (2010).
117 Ala. Code § 26-21-8 (2010).
118 *Id.*
119 *See, e.g.,* State v. Planned Parenthood of Alaska, 171 P.3d 577, 584 (Alaska 2007) (lower court found delay caused by judicial bypass often led to negative physical effects for minor, and that not all adolescents know enough about bypass to pursue it).

120 *Ex parte* Anonymous, 810 So. 2d 786, 790 (Ala. 2001).
121 *See In re B.S.*, 74 P.3d 285, 288 (Ariz. Ct. App. 2003); *Ex parte Anonymous*, 810 So. 2d at 790–91 (applying deferential *ore tenus* standard of review to trial court's decision); *In re* Moe, 423 N.E.2d 1038, 1040 (Mass. App. Ct. 1981).
122 *See In re* R.B., 790 So. 2d 830, 833 (Miss. 2001); *In re* Doe, 566 N.E.2d 1181, 1184 (Ohio 1991).
123 *See, e.g., In re Moe*, 423 N.E.2d at 104–41.
124 *In re* C H, 567 N.W.2d 240 (Mich. Ct. App. 1997). *See also In re Doe*, No. C-050133, 2005 WL 736666, at *3 (Ohio Ct. App. April 1, 2005) (reversing the lower court and issuing an order for minor who was almost 18 years old, active in extracurricular activities, understood the risks of abortion and planned to attend college).
125 *In re* B.S., 74 P.3d at 289. For another example, see *In re* Anonymous 1*,* 558 N.W.2d 784, 787 (Neb. 1997).
126 Colo. Rev. Stat. § 12-37.5-107 (2010); Fla. Stat. § 390.01114 (2010); La. Rev. Stat. Ann. § 40:1299.35.5 (2010); Ohio Rev. Code Ann. § 2151.85 (2010); S.D. Codified Laws § 34-23A-7 (2010); Idaho Code Ann. §18-609A (2010); Okla. Stat. tit. 63, § 1-740.3 (2010); Ariz. Rev. Stat. § 36-2152 (2010); Miss. Code Ann. § 41-41-55 (2010); Wyo. Stat. Ann. § 35-6-118 (2010).
127 *See In re* Doe, 843 P.2d 735, 736 (Kan. Ct. App. 1992); *In re* Doe, 973 So. 2d 627, 629–30 (Fla. Dist. Ct. App. 2008); *In re* Moe, 855 N.E.2d 1136, 1136 (Mass. App. Ct. 2006).
128 *See In re* T.H., 484 N.E.2d 568, 570–71 (Ind. 1995).
129 *See In re* Moe, 517 N.E.2d 170, 172 (Mass. App. Ct. 1987) (waiver cannot be conditioned on having abortion performed in hospital); *In re* Moe, 469 N.E.2d 1312, 1315 (Mass. App. Ct. 1984) (waiver cannot be conditioned on having abortion performed in hospital or on type of abortion procedure).
130 Compare *In re* Doe, 866 P.2d 1069, 1074 (Kan. Ct. App. 1994) (maturity includes "the intellectual capacity, experience, and knowledge necessary to substantially understand the situation at hand and the consequences of the choices that can be made"); *In re B.S.*, 74 P.3d 285, 290–91 (Ariz. Ct. App. 2003) (maturity includes "experience," "perspective" and "judgment"); *In re* Doe, 967 So. 2d 1017, 1019 (Fla. Dist. Ct. App. 2007) (listing factors for courts to consider in determining maturity).
131 *In re Doe*, 967 So. 2d at 1019.
132 737 F.2d 283, 296 (3d Cir. 1984).
133 *In re B.S.*, 74 P.3d at 290–91.
134 *Id.*
135 *Id.*
136 *Ex parte* Anonymous, 812 So. 2d 1234, 1236 (Ala. 2001).
137 *In re* Doe, 749 N.E.2d 807, 809 (Ohio Ct. App. 2001).
138 *Id.*
139 *In re* Doe 2, 166 P.3d 293, 296 (Colo. App. 2007).
140 *In re* Doe, 19 S.W.3d 346, 364 (Tex. 2000).
141 *In re* Doe, 967 So. 2d 1017, 1018 (Fla. Dist. Ct. App. 2007).
142 *Id.*
143 *In re* Doe, 866 P.2d 1069, 1074 (Kan. Ct. App. 1994).
144 *In re* Doe, 566 N.E.2d 1181, 1184 (Ohio 1991).
145 *See In re B.S.*, 74 P.3d 285, 291–92 (Ariz. Ct. App. 2003); *In re Doe 2*, 166 P.3d 293, 296 (Colo. App. 2007); *In re Doe*, 967 So. 2d at 1019; *In re* E.H., 524 S.E.2d 2, 3 (Ga. Ct. App. 1999); *In re R.B.*, 790 So. 2d 830, 831 (Miss. 2001).
146 *In re* Doe, 19 S.W.3d 249, 256 (Tex. 2000).
147 *In re* Doe, 19 S.W.3d 346, 358 (Tex. 2000).
148 *Id.* at 359.
149 *In re R.B.*, 790 So. 2d at 832.
150 *In re B.S.*, 74 P.3d at 291.
151 *In re Doe 2*, 166 P.3d 293, 296 (Colo. App. 2007); *see also In re Doe*, 866 P.2d 1069, 1075 (Kan. Ct. App. 1994); *In re* Doe 2, 19 S.W.3d 278, 282 (Tex. 2000); *In re* Doe, 973 So. 2d 548, 553 (Fla. Dist. Ct. App. 2008).

152 *Ex parte* Anonymous*,* 618 So. 2d 722, 724–25 (Ala. 1993); *In re Doe*, 866 P.2d at 1075.
153 *In re* Moe, 469 N.E.2d 1312, 1314-15 (Mass. App. Ct. 1984).
154 *In re* Doe, 166 P.3d 293, 296 (Colo. App. 2007).
155 *In re* T.P., 475 N.E.2d 312, 315 (Ind. 1985); *In re E.H.*, 524 S.E.2d 2, 4 (Ga. Ct. App. 1999).
156 *In re E.H.*, 524 S.E.2d at 4.
157 *In re* A.W., 826 So. 2d 1280, 1281–82 (Miss. 2002).
158 *In re* Anonymous 2, 570 N.W.2d 836, 840 (Neb. 1997).
159 *In re* Anonymous 1, 558 N.W.2d 784, 788 (Neb. 1997).
160 *Id.*
161 20 U.S.C. § 1232g; 34 CFR Part 99 (1974).
162 *See* Stanley K. Henshaw & Kathryn Kost, *Parental Involvement in Minors' Abortion Decisions*, 24 Fam. Plan. Persp. 196, 200 (Sept.-Oct., 1992) (reporting that parents know of abortion decisions for 90% of minors that are 14 years old or younger, 74% of 15-year-olds and 61% of minors total); Caroline A. Placey, Comment, *Of Judicial Bypass Procedures, Moral Recusal, and Protected Political Speech: Throwing Pregnant Minors Under the Campaign Bus*, 56 Emory L.J. 693, 703–04 (2006); *see also* Laurie S. Zabin et al., *To Whom Do Inner-City Minors Talk About Their Pregnancies? Adolescents' Communication with Parents and Parent Surrogates*, 24 Fam. Plan. Persp. 148, 148 (1992) (finding that 91% of study participants consulted a parent or "parent surrogate" about decision to have an abortion).
163 J. Shoshanna Ehrlich, *Grounded in the Reality of Their Lives: Listening to Teens Who Make the Abortion Decision Without Involving Their Parents*, 18 Berkeley Women's L.J. 61, 122–40 (2003).
164 Henshaw & Kost, *supra* note 162, at 213.
165 Rachel N. Pine, *Speculation and Reality: The Role of Facts in Judicial Protection of Fundamental Rights*, 136 U. Pa. L. Rev. 655, 677–90 (1987).