

## **Abortion court cases could rise: Statute requiring parental signature needs interpreting, some lawyers say**

by TERRI LANGFORD

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Two girls, both pregnant. Both had their decisions shaped in part by Texas' parental notification law that restricts a minor's access to abortion.

One, a 17-year-old from the Beaumont area, waited nearly three months before telling her parents. "I knew I had to tell my parents if I wanted an abortion," said the young woman, now 21, who agreed to discuss her experience if her real name was not published.

Her parents were in shock, once she told them. They talked, and ultimately she decided to give her baby up for adoption.

"I felt like it was the best thing for the baby and me," she said as she prepares for her senior year in college.

But the second girl, a 16-year-old from the Houston area, did what at least 262 girls in this state have done each year since parental notification became law more than five years ago. She asked a total stranger, a Texas judge, for permission to have an abortion without notifying her mother, a substance abuser with a history of violence.

"I knew I couldn't take care of another human being when I was taking care of my mother and myself," the college-bound teen, now 18, said, asking that her name also be withheld.

For 45 minutes, the judge grilled the young woman about her decision and why she did not want her mother notified.

"She really looked down upon me, like what I wanted was the wrong choice," the teen recalled of the judge's questions to her. "It wasn't very nice."

Nice or not, courtroom scenes like this one may become more common after Sept. 1, doctors and lawyers say. That's when Texas becomes the largest state to require a stricter standard: that a parent give written consent before a teen can terminate a pregnancy.

"I think we'll have more cases. I think there's going to be more cases (in court) because the clinics are going to be touchier," said Susan Hays, a Dallas lawyer and co-founder of Jane's Due Process, which advises Texas teenagers about their rights under the parental notification statute.

## **Judicial bypass**

Abortion opponents have argued that abortion is the only surgical procedure performed on a child without a parent's knowledge and have worked for decades to restrict a minor's access to the procedure. Supporters of abortion rights have said that even minors have constitutional rights about whether and when to become a parent.

Today, a parent must only be notified 48 hours in advance of the abortion. Notification is either through a phone call or a letter mailed to the parent's address.

Although the current notification law has contributed to an already falling teen abortion rate, one thing has remained remarkably steady: the willingness of girls to take their cases to court through what is known as judicial bypass.

To qualify for a bypass to parental notification, a minor must be able to convince a judge that she is mature enough to make the decision on her own or prove that she would suffer abuse or homelessness as a result of telling her parents.

Texas first required abortion providers to notify a minor's parent on Jan. 1, 2000. Since that time, the number of abortions for those under 18 has dropped about 26 percent, from 4,798 abortions performed on girls ages 9 to 17 in 1999 to 3,569 in 2003, the last full year of statistics available from the Texas Department of State Health Services.

However, as the teen abortion rate has fallen, the number of girls going to court annually has never dipped below 262. Incomplete statistics reveal that at least 1,154 girls in the four years through August 2004 have asked a judge to let them proceed without their parent's knowledge, costing taxpayers \$795,506.47 in legal fees.

That number includes only girls whose lawyers were compensated by the state to represent them in the secret judicial bypass hearings. Some lawyers have represented the girls for free and are not included in any state count.

## **Doctors' roles may change**

Texas law does not require courts to keep track of how many of these closed hearings have taken place, or how the judges ruled, making predictions about the new law tough.

Under parental consent, doctors will not only have to obtain consent from a parent before the minor's pregnancy is terminated, but they also will have to determine whether the adult giving the consent is actually the girl's parent.

"Already, we have to rely on the patient to come and give us appropriate identification," Dr. Dave Kittrell, a San Antonio obstetrician and gynecologist, said of minors who want abortions.

But in an era of divorce and where more children are raised by grandparents or other relatives, often without the formal blessing of a court, physicians like Kittrell see themselves having to stop playing doctor and start playing detective as they try to comply with the law and protect themselves from potential lawsuits.

How doctors have verified the parent of a minor has been an issue with abortion opponents in this state.

"Anyone can claim to be the parent," said Stacey Emick, legislative director of the Texas Right To Life Committee. "No one checks."

But under parental consent, doctors will have to be more vigilant about who is claiming to be a parent.

"When this goes into effect, it will be more onerous on the clinics and the individual physicians," Kittrell said.

### **Parents' legal status**

Clinics and doctors could begin closing their practices to teens as a way to protect themselves from potential lawsuits if they performed an abortion on a minor whose parent may have not had legal custody at the time of the procedure.

"The main difference in my estimation are the kids who are residing and cared for by folks other than their parents," said Peggy Romberg, CEO of the Women's Health and Family Planning Association in Austin. "I think they're going to be the kids that are going to have a really tough time."

As a result, uneasiness about a parent's legal status may force clinics or persuade girls to head in larger numbers to the courts, either to clarify their parent's legal standing or because the clinic may want to see the court's approval before terminating a teen's pregnancy.

"More girls are going to probably have to go through the process," said Rita Lucido, the Houston lawyer who represented the young Houston-area teen in court, and a co-founder of Jane's Due Process. "We all agree with the goals of parental consent, but there are a lot of parents who gave that up long ago."

State District Judge Doug Warne, who heads Harris County's family court, said there could be more girls or parents before him after Sept. 1.

"I could see where it could be an issue," he said.

In Austin, discussions are already being held about how the new law may need some procedural tweaking.

"The court needs to sit down and discuss what modifications, if any, it needs to make to give guidance to attorneys who represent minors and judges in the state to interpret this provision," said Lisa Hobbs, rules attorney for the Supreme Court of Texas.