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COURTS Minors: Provide for Parental Notification of Abortion

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Minors: Provide for Parental Notification of Abortion

CODE SECTIONS:	O.C.G.A. §§ 15-11-5 (amended) and 15-11-110—15-11-117 (new)
BILL NUMBER:	SB 229
ACT NUMBER:	700
SUMMARY:	The Act amends the Code to grant juvenile courts jurisdiction over proceedings concerning a minor's right to waive notice to her parents of her abortion and adds a new article which requires the unemancipated minor seeking an abortion to be accompanied by an adult. The accompanying adult must either be her parent or guardian and sign an affidavit to that effect, or sign an affidavit that the parent has been notified about the abortion, or that there is no parent or legal guardian and that the person who stands *in loco parentis* for this minor has been notified. Further, the minor must sign the affidavit and must also sign a consent form stating that she seeks the abortion freely and without coercion. A judicial bypass procedure is created whereby the minor can obtain a waiver of the notice requirement from the juvenile court.
EFFECTIVE DATE:	July 1, 1987

History

Just one month after the Supreme Court issued its decisions in *Roe v. Wade*[1] and the companion Georgia case, *Doe v. Bolton*,[2] establishing a woman's right to decide in consultation with her physician to have an abortion, legislation was introduced in the Georgia General Assembly in reaction to these rulings. House Resolution 251 called upon Congress to adopt a constitutional amendment to protect the lives of the unborn.[3]

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1. 410 U.S. 113 (1973).
2. 410 U.S. 179 (1973).
3. 1973 GEORGIA HOUSE JOURNAL 1504.

The first bill introduced in the Georgia General Assembly to require the consent of the parents of a minor who wished to undergo an abortion was introduced on January 21, 1981, the eighth anniversary of the *Roe v. Wade* decision.[4] This bill, HB 300, required both adult and minor women to sign a specific written consent to the abortion. That consent was to include "[a] description of the stage of development of the unborn child"[5] and the "availability of alternatives to abortion"[6] and require a twenty-four hour waiting period between the signing of the consent and the abortion.[7] In addition, the bill required that unmarried minors under the age of eighteen must obtain the consent of their parents in order to obtain an abortion. The parents were to consider only the best interests of the minor in deciding whether to grant the consent, and a judicial bypass was provided for those minors who were unable to obtain their parents' consent or who elected not to notify their parents.[8]

The first parental notification bill, HB 1131, was introduced that same year, on March 25, 1981.[9] It required that unmarried minors give twenty-four hour actual or seventy-two hour constructive notice to their parents in order to obtain an abortion.

The first bill to come close to passage was HB 310, introduced by Representative Tommy Smith in January 1985. A carefully drafted bill, it spelled out the legislative intent; stated, in accord with *Bellotti v. Baird*[10] and *H. L. v. Matheson*,[11] that certain important and compelling state interests prompted the legislation and listed the facts upon which the legislation was based. The bill amended Title 16 of the Code, which addresses offenses against public health and morals, and provided for twenty-four hour actual notice (in person or by telephone), or forty-eight hour constructive notice (by registered mail) to the parent of a minor or incompetent seeking an abortion.[12] No notice was required if a parent accompanied the child to the abortion. If the parents were divorced or one were not readily available, or if the pregnancy were caused by the incest of one parent, notice to one parent sufficed. If the minor or incompetent did not wish to notify her parents, a judicial bypass procedure was provided.[13]

The bill would have created a new Code section 16-12-153, granting jurisdiction to the juvenile court in the county of residence of the minor or the county where the abortion was to be performed. The court would have had jurisdiction over proceedings concerning the right of the minor

4. 1981 GEORGIA HOUSE JOURNAL 166.
5. HB 300, 1981 Ga. Gen. Assem.
6. *Id.*
7. *Id.*
8. *Id.*
9. 1981 GEORGIA HOUSE JOURNAL 2727.
10. 443 U.S. 622 (1979).
11. 450 U.S. 398 (1981).
12. HB 310, as introduced, 1985 Ga. Gen. Assem.
13. *Id.*

to obtain an abortion without parental notification. The section provided the minor with the right to have counsel appointed, to have her anonymity preserved, and to have the matter heard expeditiously. Under this provision, specific written factual findings and conclusions of law from the judicial proceedings were required. No filing fees were to be assessed; and if sought, an expedited appeal was to be provided. The court was required to grant the waiver if the minor was "mature" or if the notice was not in her best interest.[14]

A new Code section 16-12-154 would have made the provisions of the Act applicable to all minors or incompetents seeking an abortion in Georgia, regardless of their state of residence. If the physician performing the abortion found that "a medical emergency exists that so complicates the pregnancy as to require an immediate abortion" the Act did not apply. However, this section required the physician to "certify in writing the medical indications on which his judgment was based."[15]

The bill also provided that "[a]ny person who performs an abortion with knowledge that, or who disregards whether, the person upon whom the abortion is performed is an unemancipated minor or an incompetent and who intentionally or knowingly fails to conform to any requirement of this article shall be guilty of a misdemeanor."[16]

HB 310 passed the House on February 26, 1986, by committee substitute which moved the bill to two different Code sections.[17] It first amended section 15-11-5 to enlarge the jurisdiction of juvenile courts to include "certain medical procedures" performed on unemancipated minors and dropped the provision for incompetents. The substitute moved the revised notice and judicial bypass provisions to section 39-5-1.[18]

The introductory sections which set out the reasons for the bill were dropped.[19] These provisions have not been included in any subsequent versions. The requirement of notification as it relates to incompetents was dropped from all subsequent versions. The House committee substitute defined "treatment" as "any elective medical or surgical procedure for the termination of a pregnancy," dropping the term "abortion" entirely. It also prohibited anyone from giving "treatment" to an unemancipated minor without actual notice to parents or, if actual notice was unsuccessful "after a reasonable attempt," constructive notice to a parent. No notice was required, however, if a parent accompanied the minor to the office where the "treatment" was to be performed.[20] If the parents were divorced, the bill provided, first, that actual notice be given to the

14. *Id.*
15. *Id.*
16. *Id.*
17. Final Composite Status Sheet, March 7, 1986.
18. HB 310 (HCS), 1986 Ga. Gen. Assem.
19. *Id.*
20. *Id.*

parent with custody. If that failed, actual notice was to be given to the noncustodial parent. If the noncustodial parent could not be notified, constructive notice was to be given to the custodial parent.[21]

HB 310 also required the minor to give information about her parents so they could be notified. However, there was no liability if the minor gave false information. Also, there was no liability if notice were attempted but unsuccessful. A judicial bypass procedure was provided in juvenile court in either the minor's county of residence or the county where "treatment" was to be given. Finally, if one of the parents had caused the need for "treatment," (for example, if the pregnancy were the result of incest), the notice to the other parent would suffice. The Act would have been applicable to all minors seeking "treatment" within Georgia, whether or not they were state residents.[22]

The committee substitute provided the same emergency waiver as the original bill. The bill provided that "[a]ny person who gives treatment with knowledge that, or who disregards whether, the person upon whom the treatment is performed is an unemancipated minor and who intentionally or knowingly fails to conform to any requirement of this chapter shall be guilty of a misdemeanor."[23]

The House Judiciary Committee substitute passed the House on February 26, 1986, by a vote of 120 to 39. It was read that same day in the Senate, with the second reading on March 6, and the third on March 7, 1986. The Senate Judiciary Committee substitute was further amended on the floor and passed by a vote of 54 to 2.

The Senate version added a requirement that the physician or office where the "treatment" was sought must inform the minor of her right to utilize the judicial bypass procedure. It added, by floor amendment, a requirement that the parents of the minor female and the parents of the putative father, if he were also an unemancipated minor, would have equal responsibility with their minor children, for the care and support of their children's offspring, as provided in O.C.G.A. § 19-7-2.[24] There is some question, however, whether this provision would have been germane under Georgia's "one subject matter" requirement.[25]

The bill would have added a provision to O.C.G.A. § 39-5-8 that, if the girl were under age fourteen, appropriate law enforcement officials must be notified of the possibility of a violation of O.C.G.A. § 16-6-3.[26] Another floor amendment provided no civil or criminal liability would be imparted against the person giving "treatment," if false or defective information

21. *Id.*
22. *Id.*
23. *Id.*
24. HB 310 (SCS), 1986 Ga. Gen. Assem.
25. GA. CONST. art. III, § 5, ¶ 3.
26. HB 310 (SCSFA), 1986 Ga. Gen. Assem.; O.C.G.A. § 16-6-3 (1984) defines the crime of statutory rape.

were supplied by the minor.[27]

Due to the abrupt adjournment of the 1986 legislative session, HB 310 was never enacted.

SB 229

Although it was expected that Representative Tommy Smith would reintroduce a notification bill in the 1987 session,[28] Senator Tom Allgood, with Smith's agreement,[29] introduced SB 229 on February 2, 1987. It was believed that more support existed in the Senate for the bill and that its success would be assured by Allgood's sponsorship.[30] Sponsored also by Senators Roy Barnes and Joseph Kennedy, the bill was assigned to the Senate Special Judiciary Committee where a hearing was held on February 9. Ten opponents of the bill, under the umbrella of Georgians for Choice, testified for over two hours. These witnesses included physicians, clergy, counselors, lawyers, and representatives of several groups. Many others were not allowed to testify as the committee had set aside only one hour for the hearing, and the supporters had not yet had an opportunity to testify. Four witnesses spoke in favor of the bill, including William B. Hollberg, volunteer attorney for Georgia Right to Life.

SB 229, entitled the "Parental Notification Act," amends Chapter 11 of Title 15, which addresses juvenile court proceedings. As in HB 310, O.C.G.A. § 15-11-5 was amended to bring the provisions of the Parental Notification Act within the exclusive original jurisdiction of the juvenile courts.[31] It also provides a new article 3, O.C.G.A. §§ 15-11-110 to -118, entitled "Parental Notification Act."[32] In the original version, the bill defined abortion as "the use of any instrument, medicine, drug or anything else with intent to terminate pregnancy of women known to be pregnant."[33] The committee modified this definition.[34] The Act applies only to unemancipated minors, since incompetents are no longer addressed in the legislation.

As introduced, O.C.G.A. § 15-11-112 stated that no unemancipated minor could have an abortion unless she obtained a notarized statement from the mother or father or legal guardian that the appropriate person

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27. *Id.*

28. Interview with Stephanie Davis, Representative of Georgia Women's Political Caucus to Georgians for Choice, in Atlanta (May 24, 1987) [hereinafter Davis Interview].

29. Interview with Terrence Shannon, aide to Senator Thomas F. Allgood, Senate District No. 22, in Atlanta (Mar. 27, 1987).

30. *Id.*

31. O.C.G.A. § 15-11-5(a)(2)(D) (Supp. 1987).

32. O.C.G.A. §§ 15-11-110 to -118 (Supp. 1987).

33. SB 229, as introduced, 1987 Ga. Gen. Assem. The bill defines "abortion" rather than "treatment," the term used in HB 310.

34. O.C.G.A. § 15-11-111(1) (Supp. 1987).

had been notified of the minor's decision to seek an abortion.[35] As a result of the hearing, however, the Senate committee changed the provision to require an affidavit signed by the minor and an accompanying adult that the parent or guardian had been notified.[36] A judicial bypass procedure was provided for a minor who elects not to notify her parents.[37] This same procedure was included in the previous year's bill.

The remainder of the bill passed the committee without changes. Section 15-11-113 provides that the minor seeking judicial waiver is to receive notification of the time and date of the hearing when her petition is filed. The hearing must be held within three days, excluding Saturdays, Sundays, and holidays. Parents are not to be served with the summons for the hearing.[38]

Section 15-11-114 provides that the minor is to be advised of her right to counsel and provided with counsel if she so desires or if she is "not already adequately represented."[39] Anonymity of the parties and expeditiousness are required.[40] The original version of SB 229 provided that the juvenile court judge must grant the waiver of the written statement from the parent, if the minor has "reasonable knowledge and understanding of her pregnancy and the nature of an abortion," or if the abortion is in her best interest.[41] This differs from HB 310 in that instead of requiring that the minor be "mature," a definition of maturity was set out. Also, HB 310 required waiver if the waiver were in the minor's best interest, whereas SB 229 required, as introduced, that the abortion be in the minor's best interest. Again, no filing fee was required.[42]

Section 15-11-115 contains the same provision as HB 310, stating that the Act applies to all minors seeking an abortion in Georgia, whether or not they are residents of the state.[43] The emergency waiver, found in the original version of SB 229, added a provision that the medical emergency be confirmed by a second physician.[44] The original version also made violation of the "provisions of this article" a misdemeanor, dropping the requirement for knowledge or disregard found in HB 310.[45]

With the change from notarized statements from the parents to affidavits from an accompanying adult, and minor changes in the definitions of abortion and unemancipated minor, the bill unanimously passed the

35. SB 229, as introduced, 1987 Ga. Gen. Assem.
36. SB 229 (SCS), 1987 Ga. Gen. Assem.
37. SB 229, as introduced, 1987 Ga. Gen. Assem.
38. O.C.G.A. § 15-11-113 (Supp. 1987).
39. O.C.G.A. § 15-11-114(a) (Supp. 1987); HB 310 would have added this identical provision. However, that bill would have amended Title 39, dealing with minors.
40. O.C.G.A. § 15-11-114(b) (Supp. 1987).
41. SB 229, as introduced, 1987 Ga. Gen. Assem.
42. O.C.G.A. § 15-11-114(f) (Supp. 1987).
43. O.C.G.A. § 15-11-115 (Supp. 1987).
44. SB 229, as introduced, 1987 Ga. Gen. Assem.
45. HB 310, 1986 Ga. Gen. Assem.

committee.

On the Senate floor, Senator Allgood, the sponsor, offered a substitute to clarify several technical points and make the remainder of the bill consistent with the changes made in the Senate Judiciary Committee. Section 15-11-112 was changed to provide that a minor accompanied by a parent or guardian could obtain an abortion without an affidavit, and that a minor not accompanied by a parent must be accompanied by an adult who would furnish the physician with an affidavit. This affidavit must be signed both by that adult and the minor, attesting that the parent or guardian had been notified. Section 15-13-113 specified that the parents of a minor electing the judicial bypass should not "otherwise [be] notified of the proceeding."[46] An attempt was made to amend the bill by requiring mandatory sex education in the schools and by lowering the age to which the Parental Notification Act applies to minors under seventeen, but this motion was ruled not germane.[47] The Senate voted 50 to 2 in favor of the bill on February 17.[48]

SB 229 was read in the House for the first time that same day and referred to the House Judiciary Committee. On February 23, the committee held a hearing to consider both SB 229 and HB 645, which had been introduced on February 5 by Representatives Cathey Steinberg and Jim Pannell. HB 645 was an attempt to provide a better approach to parental notification than HB 310 provided the previous year.[49] The Abortion Counseling Act, as HB 645 was styled, provided for comprehensive counseling for each person seeking an abortion, unless the physician determined that it was "not relevant" or "intrudes upon the discretion of the physician in treating the woman."[50] The bill encouraged minors to consult with their parents, but contained no requirement that they do so.[51]

Both bills were referred to a subcommittee chaired by Representative Denmark Groover. The subcommittee met on February 25 and 26 to consider the bills and voted to report back a substitute, with no recommendation, to the full House Judiciary Committee. The subcommittee's substitute lowered the age of an unemancipated minor to sixteen and included a requirement for counseling and for the publication of a booklet on abortion, which were provisions in HB 645. It also changed the notification requirement so that the adult accompanying the minor to the abortion could attest that parental notification would not be in the best

46. O.C.G.A. § 15-13-113 (Supp. 1987).

47. Hopkins, *Senate OKs Abortion Bill by 50 - 2 Vote*, Atlanta J., Feb. 17, 1987, at 1B, col. 2. *See also* PLANNED PARENTHOOD OF ATLANTA, LEGISLATIVE HISTORY (1987) (copy on file at *Georgia State University Law Review* office).

48. Interview with Joan Cates, Planned Parenthood of the Atlanta Area, in Atlanta (June 10, 1987) [hereinafter Cates Interview].

49. Telephone interview with Representative Cathey Steinberg, House District No. 46 (May 27, 1987).

50. HB 645, 1987 Ga. Gen. Assem.

51. *Id.*

interest of the minor.

On March 3, the House Judiciary Committee considered the subcommittee substitute, as well as a substitute from Representative Tommy Smith, which basically tracked the Senate version of the bill. The Smith substitute passed by a vote of 7 to 6.[52] A minority report of the committee was filed in the House. A similarly close vote in the House Rules Committee of 14 to 12 on March 5, 1987, placed the House Judiciary Committee substitute on the House calendar. The House, after considerable debate, passed the committee substitute by a vote of 133 to 33. There were some minor amendments considered by the House and Senate, which were all finally agreed to by both houses on March 9, 1987. On April 14, 1987, the Governor signed the bill into law.[53]

The Act defines abortion as "the intentional termination of human pregnancy with an intention other than to produce a live birth or to remove a dead fetus."[54] The expansive definition of abortion in the original bill was changed significantly. Arguably, the bill, as passed, could be read to allow the use of a "morning after pill" for women not "known to be pregnant," which might not have been possible under previous definitions.

The definition of an unemancipated minor was also changed. An unemancipated minor is now defined as "any person under the age of 18 who is not or has not been married or who is under the care, custody, and control of such person's parent or parents, guardian, or the juvenile court of competent jurisdiction."[55] The final version of section 15-11-112 requires that even if the minor is accompanied by her parent or guardian, both the parent and child must furnish an affidavit "attesting that such parent or guardian is the lawful parent or guardian of such minor."[56] An additional paragraph was added to the section, applicable to the minor who has no parent or legal guardian, that provides for notification to "the person standing in loco parentis to the minor."[57] Another paragraph was added which requires the minor to sign "a consent form stating that she consents, freely and without coercion, to the abortion."[58]

The Act provides that a minor may either elect to utilize the judicial bypass, if she does not wish to notify her parents, "or if the parent, legal guardian, or person standing in loco parentis of such minor cannot be located," she may petition for a judicial waiver.[59] It is unclear whether a minor unable to locate her parents must utilize the judicial bypass, or

52. Cates Interview, *supra* note 48.
53. Final Composite Status Sheet, March 12, 1987.
54. O.C.G.A. § 15-11-111(1) (Supp. 1987).
55. O.C.G.A. § 15-11-111(2) (Supp. 1987).
56. O.C.G.A. § 15-11-112(a)(1)(A) (Supp. 1987).
57. O.C.G.A. § 15-11-112(a)(1)(C) (Supp. 1987).
58. O.C.G.A. § 15-11-112(a)(2) (Supp. 1987).
59. O.C.G.A. § 15-11-112(b) (Supp. 1987).

whether it is optional. Presumably, a minor unable to locate her parents is not under their control, and is thus an emancipated minor. Further, the use of the word "may" seems to indicate that such a procedure is optional.

Section 15-11-113 provides that the minor or her next friend be notified of the date, time and place of the hearing when she files the petition for the hearing. Section 15-11-114(a) allows the minor to participate in the hearing and requires the court to appoint counsel for her if she "is not already adequately represented."[60] Section 15-11-114(b) provides for anonymity and expedited treatment.[61]

Subsection (c) of section 15-11-114 redefines the two provisions under which a minor will be granted the judicial waiver. Instead of requiring that she understand the nature of her pregnancy and possible abortion, the final version requires that she "is mature and well-informed enough to make intelligently the abortion decision on her own."[62] Section 15-11-115 makes the act applicable to all unemancipated minors within Georgia regardless of their state of residency.[63]

Section 15-11-116 as passed, which provides a waiver of the notice requirements in an emergency situation, deletes the requirement of consultation with a second physician which was required under the bill as introduced.[64] Section 15-11-117, an amendment to the original bill, provides that any physician who relies in good faith on the affidavits of the minor and the accompanying adult cannot be held criminally or civilly liable.[65] Section 15-11-118 provides that a "person who violates the provisions of this article shall be guilty of a misdemeanor."[66] The bill, as introduced, provided for an immediate effective date. This provision was eliminated, and therefore, the effective date of the law is July 1, 1987.[67]

Ever since the Supreme Court decisions in *Roe v. Wade*[68] and its companion case from Georgia, *Doe v. Bolton*,[69] the controversy concerning a woman's right to an abortion has intensified. A particular area of focus has been a minor's right to an abortion. SB 229 and the legislative activity that preceded it is a manifestation of the continuing controversy that the abortion issue has created.

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60. O.C.G.A. § 15-11-114(a) (Supp. 1987).
61. O.C.G.A. § 15-11-114(b) (Supp. 1987).
62. *Compare* HB 310, as introduced, 1986 Ga. Gen. Assem. *with* O.C.G.A. § 15-11-114 (Supp. 1987).
63. O.C.G.A. § 15-11-115 (Supp. 1987).
64. O.C.G.A. § 15-11-116 (Supp. 1987).
65. O.C.G.A. § 15-11-117 (Supp. 1987).
66. O.C.G.A. § 15-11-118 (Supp. 1987).
67. *See* O.C.G.A. § 1-3-4 (Supp. 1987). This Code section provides that any acts signed by the Governor before July 1 will become effective on July 1, unless the bill provides otherwise.
68. 410 U.S. 113 (1973).
69. 410 U.S. 179 (1973).

Georgia has a particularly acute problem with teenage pregnancies. For the year 1985, Georgia recorded 6,686 live births for mothers between the ages ten and seventeen.[70] In addition, there were 141 spontaneous abortions for that age group, and 4,268 induced abortions for ten to seventeen year olds.[71] Thus, there were 11,095 minors under the age of eighteen in Georgia who became pregnant in 1985. Four hundred eighty children between the ages of ten and fourteen had abortions in 1985, while 3,788 minors between the ages of fifteen and seventeen had abortions during the same period.[72]

Opponents of SB 229 maintain that the bill is a thinly disguised effort to make it more difficult for minors to obtain abortions in Georgia.[73] To support this position, opponents note that supporters of the legislation include anti-abortionists. Opponents maintain that notice and consent legislation has resulted in increased birthrates for teenagers,[74] as well as delay in the time it takes for a minor to obtain an abortion, often requiring a second trimester abortion instead of a much safer and cheaper first trimester abortion.[75]

Opponents also are concerned that many provisions of SB 229 violate a minor's right to privacy and that other provisions of the Act and the rules designed to implement the judicial bypass in the juvenile courts do not meet constitutional standards.[76] Planned Parenthood Association of the Atlanta Area, Inc. and Planned Parenthood of East Central Georgia, Inc. filed suit on June 25, 1987, seeking to enjoin the Act.[77]

Supporters of the legislation, on the other hand, maintain that:

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70. GEORGIA CENTER FOR HEALTH STATISTICS, GEORGIA VITAL STATISTICS REPORT 1985, at 9 (1986).

71. *Id.*

72. *Id.*

73. Opponents to SB 229 have organized under the umbrella of Georgians for Choice, which includes the American Civil Liberties Union of Georgia, Atlanta Surgi-Center, Counsel for Children, Feminist Women's Health Center, Georgia Abortion Rights Action League, Georgia Federation of Business and Professional Women's Clubs, Georgia Women's Political Caucus, League of Women Voters of Georgia, Midtown Hospital, Planned Parenthood of the Atlanta Area, Planned Parenthood of East Central Georgia, YWCA of Greater Atlanta. GEORGIANS FOR CHOICE 1987 LEGISLATIVE PACKET at 13 (copy on file at *Georgia State University Law Review* office).

74. ACLU REPRODUCTIVE FREEDOM PROJECT, PARENTAL NOTICE LAWS, THEIR CATASTROPHIC IMPACT ON TEENAGERS' RIGHT TO ABORTION 7 (1986) [hereinafter PARENTAL NOTICE LAWS] referring to testimony in Hodgson v. Minnesota, 648 F. Supp. 756 (D. Minn. 1986) discussing that the birthrate for 15 to 17 year olds in Minneapolis rose 38.4% for the period in which Minnesota's consent law was in effect, while the birthrate for 18 to 19 year olds, who were unaffected by the law, rose only 0.3% for the same period.

75. *Id.* at 15. In Minnesota, contrary to the national pattern, during the period the law was in effect, second trimester abortions for minors increased 26.5% (citing the transcript of *Hodgson v. Minnesota*).

76. Cates Interview, *supra* note 48; Davis Interview, *supra* note 28.

77. Planned Parenthood v. Harris, No. C87-1405A (N.D. Ga. filed June 25, 1987).

> [SB] 229 recognizes the rights of parents which would not be in issue but for the status of the law which presently excludes parents from even knowing what is being done to a child. . . . [A]bortion rights have eclipsed the right of parents to do the job required of them by law—that is to rear their own children and protect children against their own immaturity.[78]

Most issues which concern the opponents of SB 229 have been litigated in other states with similar laws. Twenty states have some type of legislation requiring either parental notification or consent for a minor's abortion.[79] Many of these laws are currently being litigated.[80] The Supreme Court has ruled, on several occasions, on parental notification and consent statutes. All of these decisions, however, resulted from cases enjoining the implementation of these laws, but the Court has never ruled on such a law after it became effective.[81] In Minnesota, however, a parental notification statute was in effect for almost five years when *Hodgson v. Minnesota*[82] was litigated.

In 1973, the Court declared in *Roe v. Wade* that every woman has the fundamental right in consultation with her physician to terminate an unwanted pregnancy absent unwarranted intrusion by the government.[83] That right is a qualified right which must be weighed against compelling state interests.[84] Any state interference with that right is subject to strict judicial scrutiny.[85] Thus, any state statute which presents a significant burden or obstacle to a woman's right to an abortion must be supported by a compelling state interest,[86] and the statute must be narrowly tailored

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78. Letter from William B. Hollberg to the members of the Georgia House of Representatives (Feb. 25, 1987) (copy on file at *Georgia State University Law Review* office).

79. Consent laws: IND. CODE ANN. § 35-1-58.5-2.5 (Burns 1982); KY. REV. STAT. ANN. § 311.732 (Supp. 1986); LA. REV. STAT. ANN. § 40:1299.35.5 (West Supp. 1987); MASS. GEN. LAWS ANN. ch. 112, § 12S (1983); MISS. CODE ANN. § 41-41-53 (Supp. 1987); MO. ANN. STAT. § 188.028 (Vernon Supp. 1987); PA. STAT. ANN. tit. 18, § 3206 (Purdon 1983); R.I. GEN. LAWS § 23-4.7-6 (1985); S.C. CODE ANN. § 44-41-30 (Law Co-op 1985).

Notification laws: ARIZ. REV. STAT. ANN. § 36-2152 (Supp. 1986); IDAHO CODE § 18-609(6) (Supp. 1987); ILL. ANN. STAT. ch. 38, ¶ 81-64 (Smith-Hurd Supp. 1987); MD. HEALTH-GEN. CODE ANN. § 20-103 (1987); MINN. STAT. ANN. § 144.343, subd. 2 (West Supp. 1987); MONT. CODE ANN. § 5020-107 (1987); NEV. REV. STAT. ANN. § 442.255 (Michie 1986); OHIO REV. CODE ANN. § 2919.12 (Anderson 1987); UTAH CODE ANN. § 76-7-304 (1978); W. VA. CODE § 16-2F-3 (1985).

80. PARENTAL NOTICE LAWS, *supra* note 74, at 29 n. 1.

81. *See* Hodgson v. Minnesota, 648 F. Supp. 756, 774 (D. Minn. 1986).

82. 648 F. Supp. 756 (D. Minn. 1986).

83. Roe v. Wade, 410 U.S. 113, 153 (1973), recently reaffirmed in Thornburgh v. American College of Obstetricians, 106 S. Ct. 2169, 2178 (1986).

84. Roe v. Wade, 410 U.S. 113, 154 (1973).

85. *Id.* at 155; Carey v. Population Servs. Int'l, 431 U.S. 678, 688 (1977).

86. Roe v. Wade, 410 U.S. 113, 155 (1973).

to accomplish only that compelling interest.[87]

Further, "[c]onstitutional rights do not mature and come into being magically only when one attains the state-defined age of majority. Minors, as well as adults, are protected by the Constitution and possess constitutional rights."[88] However, the Supreme Court has recognized that, because of "the peculiar vulnerability of children; their inability to make critical decisions in an informed, mature manner; and the importance of the paternal role in child rearing,"[89] the state has significant interests when regulating the conduct of children that are inapplicable when regulating the conduct of adults.[90]

Accordingly, the Supreme Court has held that states have a legitimate interest in encouraging parental involvement in a minor's abortion decision.[91] The Court has recognized that the state's and parents' interest, at times, is subordinate to that of the mature minor's right to an abortion or to the best interests of an immature minor.[92] Thus, any state which regulates to encourage parental involvement must provide some alternative for a mature minor whose best interests would not be served by parental involvement.[93] The judicial bypass provision generally seems to satisfy that alternative.

It is not clear what degree of scrutiny is to be applied to a state regulation which burdens the minor's right to an abortion.[94] The Utah notification statue at issue in *H.L. v. Matheson* was upheld because it "plainly serves important state interests [and] is narrowly drawn to protect only those interests."[95] However, the court in *Hodgson v. Minnesota* found, instead, that "the state regulation must be rationally calculated to serve that state's significant interests."[96] The degree of scrutiny applied to regulations which burden a minor's right to abortion is not clear, but it appears that at least "[s]tate restrictions inhibiting privacy rights of minors

87. *Carey*, 431 U.S. 678, 686, 688 (1977).

88. Planned Parenthood of Cent. Missouri v. Danforth, 428 U.S. 52, 74 n.12 (1976). *See also* Bellotti v. Baird, 443 U.S. 622, 633 (1979); *Carey*, 431 U.S. 678, 692 (1977).

89. Bellotti v. Baird, 443 U.S. 622, 634 (1979).

90. Akron v. Akron Center for Reproductive Health, 462 U.S. 416, 427 n.10 (1983).

91. Planned Parenthood Ass'n v. Ashcroft, 462 U.S. 476, 490-91 (1983); H.L. v. Matheson, 450 U.S. 398 (1981) (involving parental notice); Bellotti v. Baird, 443 U.S. at 638-39, 648 (plurality opinion regarding parental consent). *But see* Planned Parenthood of Cent. Missouri v. Danforth, 428 U.S. 52, 75 (1976); H.L. v. Matheson, 450 U.S. at 448-49 (Marshall, J., dissenting).

92. *See* Akron v. Akron Center for Reproductive Health, 462 U.S. 416, 428 n.10 (1983). *See also* H.L. v. Matheson, 450 U.S. 398, 450-51 (1981) (Marshall, J., dissenting).

93. Bellotti v. Baird, 443 U.S. 622, 643-44 (1979).

94. "The question of the extent of state power to regulate conduct of minors not constitutionally regulable when committed by adults is a vexing one, perhaps not susceptible of precise answer." Carey v. Population Servs. Int'l, 431 U.S. 678, 692 (1977).

95. H.L. v. Matheson, 450 U.S. 398, 413 (1981).

96. 648 F. Supp. 756, 772 (D. Minn. 1986).

are valid only if they serve 'any significant state interest . . . that is not present in the case of an adult.' "[97]

The General Assembly has not specifically articulated the state interest which SB 229 seeks to promote. The section, which stated the legislature's intent in earlier versions, was removed from the bill in 1986.[98] The interest most frequently discussed by supporters of the bill was the promotion of parental involvement in the minor's decision to undergo an abortion.[99] Opponents maintain that the real interest is to prevent abortions[100] which, if true, would be an improper purpose and might invalidate the statute.

On the presumption, therefore, that the state's interest in SB 229 is encouragement of parental involvement in the minor's pregnancy and possible abortion, in order to protect a minor and promote her best interests, the first question is whether that interest is a "significant state interest . . . not present in the case of an adult."[101] While a plurality in *Bellotti* found that the state has a legitimate interest in requiring parental involvement in the abortion decision of their minor, 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."[102] Further, although parental involvement may be a legitimate state interest, that interest "requires more than a bare assertion, based on a conceded complete absence of supporting evidence."[103]

The next question to consider is whether required notice to parents actually effectuates familial communication. In *Hodgson*, the only case in which a notification statute was examined after it became effective, the

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97. *Carey*, 431 U.S. at 693. In *Carey*, while not defining the precise level of scrutiny, the Court notes, "This test is apparently less rigorous than the 'compelling interest test' applied to restrictions on the privacy rights of adults." *Id.* at 693 n.15.

98. The original version of HB 310 in the 1986 Georgia General Assembly stated:

> In accordance with the decisions of the United States Supreme court in *Bellotti v. Baird*, 443 U.S. 622 (1979) and *H.L. v. Matheson*, 450 U.S. 398 (1981), which acknowledge the existence of important and compelling state interests in:
>
> (1) Protecting minors against their own immaturity;
>
> (2) Fostering the family structure and preserving it as a viable social unit; and
>
> (3) Protecting the rights of parents to rear their children in their own household, it is the intent of the General Assembly to further such interests through enactment of this article.

HB 310, 1986 Ga. Gen. Assem.

99. Letter from William B. Hollberg to the members of the Georgia House of Representatives (Feb. 25, 1987).

100. *See supra* note 73 and accompanying text.

101. Carey v. Population Servs. Int'l, 431 U.S. 678, 693 (1977); Planned Parenthood of Cent. Missouri v. Danforth, 428 U.S. 52, 75 (1976).

102. Bellotti v. Baird, 443 U.S. 622, 642 (1979).

103. *Carey*, 431 U.S. at 696 (1977).

court found that "five weeks of the trial have produced no factual basis upon which the court can find that Minn. Stat. § 144.343(2)-(7) on the whole furthers in any meaningful way the state's interest in protecting pregnant minors or assuring family integrity."[104] The court found that of 3,573 bypass petitions filed during an almost five year period, only nine petitions were denied.[105] Of those nine, one involved a minor who did not wish to have an abortion, but was being coerced.[106] Others involved judges who were unfamiliar with the law and the procedure.[107] The court considered the testimony of judges who collectively had heard over ninety percent of the petitions,[108] and testimony claiming that "the law has not promoted family integrity or communication. The law has, more than anything, disrupted and harmed families."[109]

Although the court found that the Minnesota statute, as applied, failed even the rational relationship test, it believed that since the Supreme Court had already set out standards for the judicial bypass procedure in *Bellotti*[110] and *Ashcroft*,[111] the court was required to limit its inquiry to statutory construction. The court framed the issue as whether Minnesota provides "a judicial alternative that is consistent with established legal standards."[112] It is uncertain whether SB 229, which seems to assert the same interest as the Minnesota law, is an interest which can in fact be accomplished by that law.

In the only notification statute on which the Supreme Court has ruled,[113] the Court found that, as applied to the class of immature, dependent minors, the Utah parental notification statute[114] which required that the physician "[n]otify, if possible, the parents or guardian of the woman upon whom the abortion is to be performed, if she be a minor,"[115] was constitutional.[116] However, the facts of *H.L. v. Matheson* may be limiting. Class certification was denied because of defective pleading. Also, the plaintiff failed to allege that she was either mature or emancipated and did not list her reasons for not wanting her parents notified; therefore, her overbreadth challenge was denied.[117] Whether the Utah statute is sufficiently narrowly tailored to apply to mature or emancipated minors, or

104. Hodgson v. Minnesota, 648 F. Supp. 756, 775 (D. Minn. 1986).
105. *Id.* at 765.
106. *Id.*
107. *Id.*
108. *Id.* at 766.
109. *Id.* at 767.
110. Bellotti v. Baird, 443 U.S. 622 (1979).
111. Planned Parenthood Ass'n v. Ashcroft, 462 U.S. 476 (1983).
112. Hodgson v. Minnesota, 648 F. Supp. 756, 777 (D. Minn. 1986).
113. H.L. v. Matheson, 450 U.S. 398 (1981).
114. UTAH CODE ANN. § 76-7-304 (1978).
115. H.L. v. Matheson, 450 U.S. at 400.
116. *Id.* at 413.
117. *Id.* at 426-27 (Marshall, J., dissenting).

those in whose best interest no notification would be proper, was not determined.

The Georgia Act places the burden of notification on the minor, by requiring that she either be accompanied by a parent or that she be accompanied by another adult who will attest that her parent has been notified. Thus, if the minor's parent is unable or refuses to accompany her to the abortion, the minor must reveal to another adult both her pregnancy and her abortion decision. This requirement may place an additional burden on the minor's right to privacy that was not present under the statute at issue in *H.L. v. Matheson*, in which that burden was on the physician.[118] In Georgia, abortion facilities are located only in major cities, thus requiring a substantial journey for minors in rural areas seeking abortions.[119] Presumably, some parents would be unable to accompany their daughters, and others would choose not to accompany them. It is uncertain whether the requirement of an accompanying adult so burdens the minor's right to privacy as to be unconstitutional.

The Act provides the judicial bypass procedure that the Supreme Court seems to require for "mature" minors or for those in whose best interest notification would be improper. However, whether this particular bypass procedure will satisfy constitutional requirements is unclear. Opponents of the bill believe that the addition of the phrase "and well-informed enough to make intelligently the abortion decision on her own" to section 15-11-114(c)(1) imposes a higher standard of maturity on a minor seeking an abortion than it does on an adult. Under *Roe v. Wade*, adults need only reach the abortion decision in consultation with their attending physician.[120] In *Bellotti*, the Court upheld a judicial bypass procedure for a minor "mature enough and well enough informed to make her abortion decision, in consultation with her physician, independently of her parents' wishes."[121] The minor in Georgia, however, must be capable of reaching the abortion decision on her own which, arguably, is a higher standard than that applied to adults or that which *Bellotti* requires.

The judicial bypass procedure may pose some problems for minors regarding their rights to privacy and anonymity. Opponents point to the five-year experience in Minnesota, in which minors in small towns and rural areas were readily identifiable when they sought to use the bypass procedure because the court personnel frequently were their neighbors, friends, and relatives.[122]

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118. 450 U.S. 398, 400 & n.1 (1981).

119. Planned Parenthood of Atlanta has compiled a list of abortion providers in Georgia. There are eight clinics in the Atlanta metropolitan area, one in Savannah, one in Columbus, and one in Augusta.

120. Roe v. Wade, 410 U.S. 113, 163-64 (1973).

121. Bellotti v. Baird, 443 U.S. 622, 643 (1979).

122. PARENTAL NOTICE LAWS, *supra* note 74, at 12, referring to transcripts of Hodgson v. Minnesota, 648 F. Supp. 756 (D. Minn. 1986).

Furthermore, although the Act does not address the appointment of a guardian ad litem for a minor selecting the judicial bypass, the proposed rules of the Council of Juvenile Court Judges to implement the Act require the appointment of such a guardian.[123] This requirement necessitates that the minor share personal information with another adult.

Georgia does not have an appeals procedure which assures "anonymity and sufficient expedition to provide an effective opportunity for an abortion to be obtained."[124] This deficiency may be a defective part of the statute. Section 15-11-114(e) states that this "expedited appeal preserving the anonymity of the parties shall be available." However, the General Assembly cannot make rules establishing such an appeals process. The Georgia Constitution requires that the Georgia Supreme Court, with the advice and consent of the council of the judges of the court of appeals, adopt any rules governing the court.[125] The Act states that the "appellate courts are authorized and requested to preserve the anonymity and to ensure the expeditious disposition of procedures provided by this Code section."[126]

The Georgia Supreme Court, as of July 1, the effective date of the bill, had adopted neither the rules for the juvenile courts nor the rules for the appellate courts.[127] The Seventh Circuit in *Zbaraz v. Hartigan* found that, since the Illinois Supreme Court had not yet adopted the necessary rules to assure anonymity and an expeditious appeal, the Illinois statute in question was unconstitutional.[128] The Seventh Circuit determined that

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123. COUNCIL OF JUVENILE COURT JUDGES, PROPOSED RULES TO IMPLEMENT SB 229. Rule 23.2 states: "Whenever a minor petitions the court for relief under Article 3, Chapter 11, Title 15 of the official code of Georgia, the court shall appoint a guardian ad litem to protect the interests of the minor." *Id.*

124. Planned Parenthood Ass'n v. Ashcroft, 462 U.S. 476, 491 n.16 (1983); Bellotti v. Baird, 443 U.S. 622, 644 (1979).

125. GA. CONST. art. VI, § 9, ¶ 1.

126. O.C.G.A. § 15-11-114(e) (Supp. 1987).

127. Interview with Chris Perrin, Executive Director, Council of Juvenile Court Judges, in Atlanta (June 15, 1987).

128. Zbaraz v. Hartigan, 763 F.2d 1532, 1542 (7th Cir. 1985). "It is difficult to see how the absence of such rules provides the framework for a constitutionally sufficient means of expediting the appeal . . . . It is also difficult to see how a mere request for such rules provides the necessary framework." *Id.* at 1541. *See also* American College of Obstetricians & Gynecologists v. Thornburgh, 737 F.2d 283, 297 (3d Cir. 1984), *aff'd*, 106 S. Ct. 2169 (1986), *on remand*, 656 F. Supp. 879 (E.D. Pa. 1987) ("To pass constitutional muster, the alternative procedure must be an established and practical avenue and may not rely solely on generally stated principles of availability, confidentiality, and form."); Glick v. McKay, 616 F. Supp. 322, 325-26 (D. Nev. 1985).

On June 30, 1987, Judge Robert Hall temporarily enjoined implementation of the Georgia Act. After a preliminary hearing on July 16 and 17, that injunction was continued, pending submission of post-hearing briefs in mid-August. Judge Hall announced that whatever ruling he issued was intended to stay the proceedings pending a ruling by the Supreme Court on the *Zbaraz* case. Planned Parenthood v. Harris, No. C87-1405A (N.D. Ga. filed June 25, 1987).

the proper course was to enjoin the Illinois statute until constitutionally sufficient rules were adopted by the Illinois Supreme Court.[129]

The entire abortion issue remains a topic of concern, not just in Georgia, but in the entire country. There is certain to be more litigation and legislation for many years.

M. Borowski

129. *Zbaraz*, 763 F.2d at 1544.