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WATCH

## Access Denied

How Florida Judges Obstruct Young People's Ability to Obtain Abortion Care



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Ability to Obtain Abortion Care**

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## Summary

The United States Supreme Court's stunning June 2022 decision in *Dobbs v. Jackson Women's Health Organization* eliminated the constitutional right to access abortion in the US, giving states the authority to determine access to care. Within weeks, over a dozen US states, including much of the US South, had banned nearly all abortion. Pregnant people were left to navigate a rapidly changing web of barriers obstructing their ability to access time-sensitive health care. Abortion access in the US state of Florida became more significant than ever as a dizzying wave of new bans swept through the region.

Abortion is legal in Florida, but most pregnant people can only access care until 15 weeks of pregnancy and must wait at least 24 hours after an initial visit to have an abortion. Young people under 18 in the state face the added barrier of forced parental consent and notification. Under Florida state law, a parent or legal guardian must receive notification and provide consent for anyone under 18 to access abortion care. Studies in various states have shown that a significant majority of young people seeking abortion care involve a parent or another trusted adult in their abortion decision, even when state law does not require it. Those who do not often fear that parental involvement will have severe and irreparable consequences, such as forced continuation of a pregnancy, abuse, loss of housing or economic support, and alienation from their families. Some young people, such as foster youth in the custody of the state, may not have access to a parent who might otherwise give consent and cannot rely on foster parents or caseworkers because they are forbidden by law from consenting to abortion.

The alternative for young people in these circumstances is to petition a state trial court judge for a court order in a confusing, difficult, and burdensome process called "judicial bypass" or "judicial waiver." To obtain a judicial waiver, a young person must appear before the court and demonstrate to a judge that they are sufficiently mature to decide to have an abortion without parental involvement, or that involving a parent is not in their best interest, or that they have experienced child abuse or sexual abuse by a parent or legal guardian. Forcing young people who choose not to involve a parent in their abortion decision to go through a court process delays their care and risks exposing them to a loss of confidentiality. For some young people, being exposed or found out could jeopardize their safety and wellbeing. A recent study in the *American Journal of Public Health* found

that about 15 percent of young people under 18 obtaining abortion care in Florida use judicial bypass each year.

As this report documents, Florida judges—most of whom are elected—deny far too many young people’s petitions, blocking or further delaying their ability to access time-sensitive care. Some young people appeal their denials, and in some cases, their appeals are also denied.

For this report, Human Rights Watch obtained and analyzed data from Florida courts on the judicial bypass process in recent years, including statewide statistics on petitions filed, granted, and dismissed, as well as publicly available court records from cases decided by appeals courts. Our analysis shows that young people in Florida who lack a supportive parent or legal guardian to involve in their abortion decision are subject to a judicial veto of their human right to access abortion care.

Court records confirm that young people face judges with the power to make highly subjective determinations on their maturity and interests. The system lends itself to arbitrary decision-making. State law directs courts to consider a set of vague factors when assessing a young person’s maturity, including “emotional development and stability,” “credibility and demeanor as a witness,” and “ability to accept responsibility,” among others. In addition, state law specifies that a young person’s best interest to have an abortion without parental involvement “does not include financial best interest or financial considerations or the potential financial impact” of the young person continuing the pregnancy. Lawyers who have represented young people in these cases talk about how a young person’s clothing, their posture, or their manner of speaking can influence a judge’s decision. Decades of legal and social science research have shown that structural racism and implicit bias influence judicial decision making. More broadly, placing decisions around young people’s access to health care in the hands of judges is inherently problematic and incompatible with the right to health and its underlying principle of autonomy.

Human Rights Watch reviewed court files pertaining to several young people’s experiences, and we present several case studies in this report. One young person, dubbed “Jane Doe” in court records, became pregnant in 2021 at age 16. She lived with an extended family member, who was her legal guardian. Court records state that Jane’s legal

guardian “was indifferent to her from the beginning and has remained so such that there is no supportive and nurturing relationship between them.” When Jane became pregnant, she knew she could not involve her guardian in her abortion decision: Her guardian had thrown her older sister out of the home when she became pregnant before turning 18. Jane learned that judicial bypass was an option and petitioned a judge for a waiver of the state’s parental consent and notification requirements. A court-appointed attorney represented her.

Jane described to the judge her complicated family dynamics in painful detail, but she said that she had support in her abortion decision-making from two other relatives—neither of whom were legally able to provide consent for her abortion under state law. She also described her understanding of the health and other implications of choosing abortion. The judge denied her petition, stating that she “shifted her testimony” regarding how her legal guardian would respond to her pregnancy “in an attempt to predict what the court wanted to hear.” The judge interpreted inconsistencies in her testimony as evidence that she lacked sufficient maturity to have an abortion without parental involvement and denied her request for a waiver of the state’s parental involvement law.

Jane and her lawyer appealed the denial, and a three-judge panel reversed the lower court’s decision. After testifying in court about the most intimate details of her life and waiting for four judges—perfect strangers in a position of authority—to determine her fate, Jane finally had the option to access clinical abortion care to end a pregnancy she did not want to continue. Some young people in Florida do not get this chance.

Each year, about 200 young people like Jane go through judicial bypass in Florida. In 2020 and 2021, more than 12 percent of their petitions were denied. Since 2011, Florida residents have had to file for judicial bypass in the circuit in which they reside. State data show that a young person’s ability to obtain a judicial waiver is significantly determined by the county in which they live. Hillsborough County, in west central Florida and home to the city of Tampa, denies a greater number and a greater proportion of petitions than any other county in the state. County judges denied half of all petitions filed there in 2021.

Young people whose petitions are denied are left with several options, each presenting serious challenges. Those who have access to a parent or legal guardian can suffer potentially life-altering consequences by complying with state law and getting consent



from an adult who may be—at best—unsupportive, and—at worst—retaliatory or abusive. They can continue the pregnancy against their wishes or self-manage abortion outside the health system. They can find the resources, support, and time to travel to a state that does not require parental involvement, like Illinois, New York, or New Jersey. Or they can appeal the court’s decision and wait up to another seven days for a three-judge panel to review and decide on their case.

Human Rights Watch requested statistics from Florida courts about how many such appeals are filed annually in each district court of appeals. At time of writing, we had received responses from the courts of appeals in Florida’s second, third, fourth, and fifth districts. By analyzing these responses and searching public archives maintained by the appeals courts, Human Rights Watch identified nine appeals court decisions on judicial bypass denials between 2020 and 2022. In five cases, appeals courts affirmed the denials by lower courts. In three cases—like Jane’s—the appeals court reversed the lower court’s decision, ordering the court to grant the young person the waiver they were seeking. In one case, Human Rights Watch was unable to determine the court’s decision as there was no published opinion and the file is sealed.

The delays caused by navigating judicial bypass—especially when young people’s petitions are denied—can make abortion inaccessible, especially with Florida’s newly enacted 15-week ban, a 24-hour waiting period, and clinics overwhelmed in the wake of the *Dobbs* decision. Refiling or appealing can add days or even weeks to young people’s abortion timelines, with the state’s 15-week cutoff looming.

Florida authorities do not track the racial or ethnic identity of young people who go through judicial bypass, so there is no way to know extent of bias or discrimination in judicial decision making, or to evaluate the disparate racial impacts of the state’s parental involvement law. However, abortion restrictions like those imposed in Florida are a form of racial and economic discrimination, in that they disproportionately harm Black, Indigenous, and other people of color, as well as people with lower socioeconomic status. National data show that people of color need abortion care more frequently than white people for a variety of reasons, including disparities in rates of unintended pregnancy; economic, geographic, and social barriers to accessing health care; and unequal access to health insurance and contraception.

The new national abortion landscape means more young people under 18 from out of state will likely seek abortion care in Florida, as many nearby states have enacted total or near-total abortion bans. Indeed, Planned Parenthood of South, East, and North Florida has seen its patients more than double in clinics closest to the state border since the *Dobbs* decision in June 2022. Under existing law, some young people from out of state will be forced to navigate judicial bypass.

Access to abortion is a human right, including for young people under 18. Human rights experts have consistently called for the removal of barriers that deny access to safe and legal abortion and have commented specifically on parental involvement requirements posing a barrier to abortion care. Florida's parental involvement law violates a range of human rights, including young people's rights to health, to be heard, to privacy and confidentiality of health services and information, to nondiscrimination and equality, to decide the number and spacing of children, and to be free from cruel, inhuman or degrading treatment.

Florida legislators should repeal the state's parental consent and notification law, and ensure young people under 18 can access confidential, timely abortion care without being forced to either involve an unsupportive parent or go to court.

Young people's rights and dignity hang in the balance.

## **Recommendations**

### **To the Florida Legislature**

- Repeal the Parental Notice of and Consent for Abortion Act and ensure that young people under 18 can access abortion care without being forced to involve a parent or legal guardian in their decision-making.
- Enact legislation to affirm young people’s rights to access essential health care (a “young people’s bill of rights”).

### **To the US Department of Justice**

- Launch an investigation of judicial bypass and youth abortion access in Florida as an enforcement action that impairs a pregnant person’s ability to seek reproductive care in a state where it is legal.

## Methodology

This report draws on research conducted by Human Rights Watch between December 2019 and January 2023.

In December 2019 and January 2020, Human Rights Watch conducted in-depth interviews on the state’s parental involvement law with nine Florida experts, including with healthcare workers providing abortions and attorneys. We also requested data from the Office of the State Courts Administrator regarding judicial bypass petitions filed, granted, and dismissed. At the time, we were seeking to understand the human rights impacts of the state’s parental notification law as the state legislature was considering imposing a more stringent parental consent requirement. Human Rights Watch presented that preliminary research and analysis in testimony before the Florida Senate Committee on Rules in early 2020. We also submitted our testimony in writing to several other House and Senate legislative committees.<sup>1</sup> The Florida legislature ultimately adopted the parental consent requirement.

Since the parental consent law went into effect, Human Rights Watch has continued to request data annually from the Office of the State Courts Administrator regarding judicial bypass petitions. We have also spoken with state advocates, attorneys, and care providers to understand how youth abortion access changed with the new parental consent law.

In 2022, Human Rights Watch began new research for this report. We analyzed county and state-level statistics on judicial bypass denials in recent years. We compared the rate of denials among Florida counties that received 10 or more judicial bypass petitions in a single year.

We also reviewed court records pertaining to several young people’s experiences. While trial court files for judicial bypass cases are kept sealed and confidential to protect the privacy and safety of young people, appeals court rulings on these cases are publicly

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<sup>1</sup> Letter from Human Rights Watch to Senator David Simmons, chair, Committee on Judiciary, Florida Senate, “Reject Forced Parental Consent for Abortion,” January 14, 2020, <https://www.hrw.org/news/2020/01/14/letter-urge-florida-senate-reject-forced-parental-consent-abortion>.

available through the Florida courts, though they do not identify petitioners by name and typically use the pseudonym “Jane Doe.” Human Rights Watch searched the opinions archives of each of Florida’s courts of appeal to identify appellate court decisions on judicial bypass denials using a variety of search terms.<sup>2</sup> We identified nine appeals court decisions published between January 2020 and August 2022, and obtained court files related to eight of the decisions.<sup>3</sup> In six of the cases, appeals courts published opinions explaining why they either affirmed or reversed a lower court’s ruling. In two cases, appeals courts issued “per curiam affirmed” decisions, meaning they affirmed the lower court’s ruling in the name of the court without publishing an opinion authored in one judge’s name.

In August 2022, Human Rights Watch wrote letters to each of Florida’s courts of appeal requesting data on the number of appeals filed annually in each district between 2018 and August 2022. At time of writing, we had received responses from the second, third, fourth, and fifth district courts of appeals, four of the state’s then-five appellate courts.<sup>4</sup>

We also analyzed state, national, and international laws and policies and conducted a review of secondary sources, including public health studies, reports by the American Academy of Pediatrics and other health professional associations, and other sources. We also drew on joint research conducted by Human Rights Watch and the American Civil Liberties Union of Illinois, published in 2021, on the impacts of Illinois’ Parental Notice of Abortion Act, a law similar to Florida’s Parental Notice of and Consent for Abortion Act.<sup>5</sup> The Illinois legislature repealed the Parental Notice of Abortion Act in 2021, and as of June 1, 2022, it is no longer in effect.

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<sup>2</sup> Keyword search terms included “abortion,” “pregnancy,” “judicial waiver,” “judicial bypass,” “parental notification,” “parental consent,” “Jane Doe,” “minor,” and “390.01114.”

<sup>3</sup> In one case, Human Rights Watch was unable to determine the court’s decision as there was no published opinion and the file is sealed.

<sup>4</sup> A sixth district court of appeal began operation on January 1, 2023. Florida Courts, “District Courts of Appeal,” last updated January 1, 2023, <https://www.flcourts.gov/Florida-Courts/District-Courts-of-Appeal> (accessed January 17, 2023).

<sup>5</sup> Human Rights Watch and the American Civil Liberties Union of Illinois, *“The Only People It Really Affects Are the People It Hurts”: The Human Rights Consequences of Parental Notice of Abortion in Illinois* (New York: Human Rights Watch, 2021), <https://www.hrw.org/report/2021/03/11/only-people-it-really-affects-are-people-it-hurts/human-rights-consequences>.

## Terminology

In this report, we use the terms “youth” and “young people” to refer to anyone under the age of 18. We use these terms for two reasons: 1) to affirm the autonomy and maturity of people under 18 to make the best decisions for themselves regarding their sexual and reproductive health care, and 2) to be inclusive of everyone who can become pregnant, including those who identify as cisgender females, as well as those who are transgender or gender non-binary. However, where quoting interviewees, research studies, international law, or other sources directly, we have not changed the terminology used.

Throughout this report, we use the gender-neutral and inclusive pronouns “they” and “them” to describe young people. When referring to a specific person, we use that person’s individual pronouns.

We use “Black, Indigenous and other young people of color” to describe individuals and communities who may identify as Black or African American; Hispanic, Latino/a, or Latinx of any race; Asian or Pacific Islander; North African or Middle Eastern; Indigenous; or multiracial. We use this terminology to be inclusive of a range of racial and ethnic identities and to bring visibility to the differential impacts of structural racism in a variety of systems on Black and Indigenous communities in the United States. Again, where quoting interviewees or other sources directly, we have not changed the terminology used.

# I. Background

## Abortion Access in Florida

Abortion is legal in the US state of Florida. However, access is restricted, and pregnant people face numerous obstacles when seeking care. According to Florida health authorities, about 75,000 abortions were performed in the state in 2020, about 80,000 in 2021, and about 75,000 in 2022.<sup>6</sup>

In recent years, anti-abortion policymakers in the state have enacted a series of measures to limit or complicate access to abortion care.<sup>7</sup> In April 2022, Florida Governor Ron DeSantis signed into law a ban on abortion after 15 weeks of pregnancy.<sup>8</sup> Several Florida House and Senate Democrats fought for amendments to the bill to at least allow survivors of rape, incest, or human trafficking to seek abortion care after 15 weeks' gestation.<sup>9</sup> The Republican majority rejected those amendments, voting against any exceptions for survivors of violence.<sup>10</sup> The law maintains narrow exceptions for abortion after 15 weeks if two physicians certify that the life or health of the pregnant person is in danger, or that there is a "fatal fetal abnormality."<sup>11</sup> The 15-week ban was briefly blocked by a judge in early July 2022 but was quickly reinstated and remained in effect at time of writing.<sup>12</sup> In

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<sup>6</sup> Florida Agency for Health Care Administration, Abortion Data - Induced Terminations of Pregnancy [ITOP] Reports, Total Cases by Patient County of Residence, by Gestation Reason, and by Trimester, 2020, 2021, and 2022, [https://ahca.myflorida.com/MCHQ/Central\\_Services/Training\\_Support/Reports.shtml](https://ahca.myflorida.com/MCHQ/Central_Services/Training_Support/Reports.shtml) (accessed January 24, 2023).

<sup>7</sup> See, for example, Jim Saunders, "Florida Gov. DeSantis signs parental consent for abortion into law," *Tallahassee Democrat*, June 30, 2020, <https://www.tallahassee.com/story/news/2020/06/30/florida-gov-desantis-signs-parental-consent-abortion-into-law/3285978001/> (accessed January 26, 2023); Wynne Davis, "Florida Gov. Ron DeSantis signs a bill banning abortions after 15 weeks," *NPR*, April 14, 2022, <https://www.npr.org/2022/04/14/1084485963/florida-abortion-law-15-weeks> (accessed January 6, 2023).

<sup>8</sup> Reducing Fetal and Infant Mortality, House Bill (HB) 5 of 2022, Laws of Florida Chapter 2022-69, <https://www.flsenate.gov/Session/Bill/2022/5> (accessed January 6, 2023).

<sup>9</sup> HB 5 of 2022, Committee Amendments, <https://www.flsenate.gov/Session/Bill/2022/5/?Tab=Amendments> (accessed January 6, 2023).

<sup>10</sup> *Ibid.*

<sup>11</sup> Florida Statutes § 390.0111(1)(a)-(b) (termination of pregnancies), <https://www.flsenate.gov/laws/statutes/2021/390.0111> (accessed January 17, 2023).

<sup>12</sup> Patricia Mazzei, "Florida Judge Will Temporarily Block 15-Week Abortion Ban," *New York Times*, June 30, 2022, <https://www.nytimes.com/2022/06/30/us/florida-abortion-ban-blocked.html> (accessed January 6, 2023).

January 2023, the Florida Supreme Court agreed to hear a challenge to the 15-week ban but did not temporarily block the law.<sup>13</sup>

People seeking abortion in Florida also face a mandatory 24-hour waiting period, requiring a minimum of two trips to a health clinic to access care. Patients must receive counseling in-person and then wait at least 24 hours before having an abortion. The 24-hour waiting period went into effect in April 2022 when, after seven years of litigation, a state circuit court judge ruled that it did not violate the right to privacy enshrined in the state's constitution.<sup>14</sup>

A significant body of research has shown that these types of restrictions disproportionately harm people with lower socioeconomic status as well as Black, Indigenous, and other people of color.<sup>15</sup> The financial cost and burdens of securing transportation and time off work for multiple clinic visits are more harmful for people living in poverty. The intersection of systemic racism and entrenched economic inequality in the US means that burdens on people living in poverty translate to burdens on Black, Indigenous, and other people of color.<sup>16</sup>

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<sup>13</sup> *Planned Parenthood of Southwest & Central Florida et al. v. State of Florida et al.*, Order Accepting Jurisdiction, Case No. SC22-1050 (Fla. January 23, 2023) [https://efactssc-public.flcourts.org/casedocuments/2022/1050/2022-1050\\_order\\_257875\\_a01j.pdf](https://efactssc-public.flcourts.org/casedocuments/2022/1050/2022-1050_order_257875_a01j.pdf) (accessed January 24, 2023).

<sup>14</sup> *Gainesville Woman Care, LLC et al. v. State of Florida et al.*, Order Granting Defendants' Motion for Summary Final Judgment, Case No. 2015 CA 1323 (Fla. 2d Cir. Ct. April 8, 2022), <https://www.aclu.org/legal-document/order-granting-defendants-motion-summary-judgment> (accessed January 6, 2023).

<sup>15</sup> See, for example, Amnesty International, the Global Justice Center, the Southern Rural Black Women's Initiative for Economic and Social Justice, and Human Rights Watch, "Joint Submission to the United Nations Committee on the Elimination of Racial Discrimination," July 15, 2022, <https://www.hrw.org/news/2022/07/15/us-joint-submission-united-nations-committee-elimination-racial-discrimination>; Center for Reproductive Rights, "The Disproportionate Harm of Abortion Bans: Spotlight on *Dobbs v. Jackson Women's Health*," November 29, 2021, <https://reproductiverights.org/supreme-court-case-mississippi-abortion-ban-disproportionate-harm/> (accessed January 6, 2023); Amanda Jean Stevenson, "The Pregnancy-Related Mortality Impact of a Total Abortion Ban in the United States: A Research Note on Increased Deaths Due to Remaining Pregnant," *Demography*, vol. 58, no. 6 (2021): pp. 2019–2028, accessed January 6, 2023, doi:10.1215/00703370-9585908; Sarah Green Carmichael, "Criminalizing Abortion Will Hurt Black Women Most," *Bloomberg*, June 25, 2022, <https://www.bloomberg.com/opinion/articles/2022-06-25/abortion-bans-will-disproportionately-affect-black-women> (accessed January 6, 2023); National Birth Equity Collaborative (NBEC) et al., Brief of *Amici Curiae* Birth Equity Organizations and Scholars in Support of Respondents in *Dobbs v. Jackson Women's Health Organization*, September 20, 2021, [https://www.supremecourt.gov/DocketPDF/19/19-1392/193076/20210920174752687\\_19-1392bsacBirthEquityOrganizationsAndScholars.pdf](https://www.supremecourt.gov/DocketPDF/19/19-1392/193076/20210920174752687_19-1392bsacBirthEquityOrganizationsAndScholars.pdf) (accessed January 6, 2023).

<sup>16</sup> *Ibid.*



## *Regional Significance*

While Florida maintains harsh restrictions, it provides greater access to abortion care than many neighboring states. In the aftermath of the US Supreme Court’s decision to overturn the constitutional right to abortion, several states near Florida imposed total or near total abortion bans. At time of writing, Alabama and Mississippi banned all abortion with only very limited exceptions.<sup>17</sup> Georgia banned abortion after six weeks of pregnancy, before most people even know they are pregnant.<sup>18</sup> A representative of Planned Parenthood of South, East, and North Florida told Human Rights Watch that their clinics closest to the state border have seen the number of patients more than double since the *Dobbs* decision in June 2022.<sup>19</sup>

## **Forced Parental Involvement**

Young people under 18 seeking abortion care in Florida face the added barrier of navigating the state’s forced parental involvement law. Under state law, a physician must notify and obtain written consent from a parent or guardian before providing abortion care to anyone under 18.<sup>20</sup> The consenting parent or legal guardian must present a government-issued identification and sign a notarized document certifying that they consent to the young person’s abortion.<sup>21</sup> Florida’s burdensome identification requirement disproportionately harms immigrant families of all nationalities. Aurelie Colon Larrauri, Florida State Policy Advocate with the National Latina Institute for Reproductive Justice, told Human Rights Watch: “A young person with an undocumented parent, or someone who is undocumented themselves, would not feel super comfortable getting notarized consent.” They added: “People will forgo care altogether and remain pregnant to make sure there’s no risk of deportation, no risk of involving ICE [Immigration and Customs Enforcement] or police just to ensure family safety....The fear of deportation and family separation leads so many Latinas and Latines to avoid health care altogether, including reproductive health care. Especially in places like Florida ... The climate of fear and anti-

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<sup>17</sup> Guttmacher Institute, “Interactive Map: US Abortion Policies and Access After Roe,” <https://states.guttmacher.org/policies/> (accessed January 24, 2023).

<sup>18</sup> *Ibid.*

<sup>19</sup> Email from Annie Filkowski, policy director, Planned Parenthood of South, East and North Florida, to Human Rights Watch, November 30, 2022.

<sup>20</sup> Florida Statutes § 390.01114 (Parental Notice of and Consent for Abortion Act).

<sup>21</sup> *Ibid.*, §§ 390.01114(5)(a)(1-2).

immigrant beliefs impact people’s [comfort and safety] seeking health care.”<sup>22</sup> These requirements could also force young people who have a supportive parent or guardian to go through a court process for a judicial waiver, simply because their parent lacks a government-issued identification.

Unlike some other states,<sup>23</sup> Florida only allows a parent or legal guardian to receive notice and provide consent under state law. Other supportive adults, including foster parents, do not qualify. A physician who fails to comply with the notice and consent requirement can be charged with a third-degree felony, punishable under the state’s criminal code by up to five years in prison.<sup>24</sup>

The law applies to anyone under 18 except those who have married, already have children, or have been emancipated (had “the disability of nonage removed”) under state law.<sup>25</sup> State law does not require parental notice and consent if, “in the physician’s good faith clinical judgment, a medical emergency exists and there is insufficient time for the attending physician to comply with the notification requirements.”<sup>26</sup>

Florida’s law states that child abuse or sexual abuse by a parent or legal guardian can be the basis for a young person to obtain a waiver of the state’s parental involvement requirement.<sup>27</sup> However, young people in these circumstances must still go through the judicial waiver process and appear before a judge. The law does not include any explicit exemption for young people pregnant from rape or those who have survived abuse perpetrated by someone other than a parent or legal guardian.<sup>28</sup> Young people in the foster system or otherwise in state custody following involvement by the Florida Department of Children and Families are also not exempt and must go to court to seek a

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<sup>22</sup> Human Rights Watch interview with Aurelie Colon Larrauri, Florida state policy advocate, National Latina Institute for Reproductive Justice, January 23, 2023.

<sup>23</sup> For example, in South Carolina, a grandparent may also provide consent; in Iowa, a grandparent may receive notice; and in Delaware, a “licensed mental health professional” may receive notice. *If/When/How: Lawyering for Reproductive Justice*, “Judicial Bypass Wiki,” <https://judicialbypasswiki.ifwhenhow.org/> (accessed January 6, 2023).

<sup>24</sup> Florida Statutes § 390.01114(5)(c)(1).

<sup>25</sup> *Ibid.*, §§ 390.01114(4)(b), (5)(b), 743.015.

<sup>26</sup> *Ibid.*, §§ 390.01114(4)(b)(1), (5)(b)(4).

<sup>27</sup> *Ibid.*, § 390.01114(6)(d) (“If the court finds, by a preponderance of the evidence, that the petitioner is the victim of child abuse or sexual abuse inflicted by one or both of her parents or her guardian...”).

<sup>28</sup> *Ibid.*

judicial waiver because neither the state, nor a foster parent, can provide consent under the parental involvement law.<sup>29</sup>

Until 2020, Florida required only parental notification, not parental consent, meaning a parent did not need to provide explicit permission for a young person to access care. However, the legislature amended state law in the 2020 legislative session to impose the more stringent parental consent requirement.<sup>30</sup> Parental consent requirements effectively amount to a total ban on abortion access for young people who are unable to obtain either consent or a judicial waiver. However, both consent and notice requirements delay care and harm young people. In practice, for many young people, there is no distinction between parental notification and parental consent. When parents are in a position to withhold financial support, restrict young people’s movement or access to communication or transportation, or threaten life-altering consequences, they can effectively block young people’s access to abortion care even if the law requires only notice and not consent.

## Judicial Bypass

Young people who do not wish to involve a parent or legal guardian in their decision can go to court and ask a judge for permission to have an abortion without parental involvement, in a process called judicial bypass.<sup>31</sup>

To grant a waiver, a judge must find either 1) that the young person is sufficiently mature to decide to have an abortion,<sup>32</sup> or 2) that involving a parent or legal guardian under the law is not in their best interest, or 3) that the young person faced “child abuse or sexual abuse” by a parent or guardian.<sup>33</sup> State law specifies that a petitioner’s best interest to have an abortion without parental involvement “does not include financial best interest or

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<sup>29</sup> State law explicitly prohibits workers with the Florida Department of Children and Families from consenting to abortion: “In no case shall the department consent to sterilization, abortion, or termination of life support.” *Ibid.*, § 39.407(2) (medical, psychiatric, and psychological examination and treatment of child; physical, mental, or substance abuse examination of person with or requesting child custody).

<sup>30</sup> Margaret Wurth, “Florida Imposes Forced Parental Consent for Abortion,” commentary, *Human Rights Dispatch*, July 1, 2020, <https://www.hrw.org/news/2020/07/01/florida-imposes-forced-parental-consent-abortion>.

<sup>31</sup> Florida Statutes § 390.01114(6).

<sup>32</sup> *Ibid.*, § 390.01114(6)(d).

<sup>33</sup> *Ibid.*, § 390.01114(6)(d).

financial considerations or the potential financial impact” of the young person continuing the pregnancy.<sup>34</sup>

Under state law, a young person may only petition a court in the circuit in which they reside.<sup>35</sup> Florida has 20 circuits statewide, and, according to the court system, “Within each circuit, there may be any number of judges, depending upon the population and caseload of the particular area.”<sup>36</sup> Young people have the right to be represented by a court-appointed attorney at no cost.<sup>37</sup> Though court-appointed attorneys are paid to take these cases, many are not trained or experienced in providing young people with supportive, non-stigmatizing, and affirming representation. One 17-year-old young person who obtained a judicial bypass in Florida wrote about a challenging experience with an anti-abortion court-appointed attorney: “The court-appointed attorney assigned to my case told me that his wife didn’t want him to work with me because of what my situation was—getting an abortion.”<sup>38</sup>

To protect young people’s privacy, all court proceedings are confidential and closed to the public. The court is required to rule on petitions within three business days, unless the young person or their attorney requests additional time.<sup>39</sup> The court does not charge any fees for the process.<sup>40</sup>

When determining whether a young person has sufficient maturity to decide to have an abortion without involving a parent, the statute states that a court may consider the person’s age; overall intelligence; emotional development and stability; credibility and demeanor as a witness; ability to accept responsibility; ability to assess the short- and long-term consequences of their decision; and ability to understand and explain the health implications of having an abortion. The court may also evaluate whether anyone is unduly

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<sup>34</sup> Ibid.

<sup>35</sup> Ibid., § 390.01114(6)(a).

<sup>36</sup> Florida Courts, “Trial Courts – Circuit,” last modified November 17, 2022, <https://www.flcourts.org/Florida-Courts/Trial-Courts-Circuit> (accessed January 6, 2023).

<sup>37</sup> Florida Statutes § 390.01114(6)(a).

<sup>38</sup> N., a 17-year-old high school student living in Florida, “I’m Working to Make Sure Young People Like Me Can Make Decisions About Their Own Bodies,” *If/When/How Guest Voice*, July 21, 2020, <https://www.ifwhenhow.org/judicial-bypass-covid-florida-youth-abortion-access-week/> (accessed January 6, 2023).

<sup>39</sup> Florida Statutes § 390.01114(6)(b)(1).

<sup>40</sup> Ibid., § 390.01114(6)(h).

influencing the young person’s decision to have an abortion...<sup>41</sup> Judges—most of whom are elected—have significant discretion to determine how much weight to give to each of these factors when evaluating a young person’s maturity and best interest.

## Appeals

If a trial court judge denies the petition for a judicial waiver, a young person has the right to appeal. A three-judge panel reviews the petition the young person filed, the transcript from their hearing, as well as any supporting documents a young person or their lawyer submits. When no additional legal briefs or memoranda are filed, the appeals courts “is left to ascertain for itself and then adjudicate the issues the record presents on its own volition,” as one justice in the First District Court of Appeal explained in a 2022 opinion...<sup>42</sup> The court must rule within seven days of receiving the appeal...<sup>43</sup>

Under Florida law, “the reason for overturning a ruling on appeal must be based on abuse of discretion by the court and may not be based on the weight of the evidence presented to the circuit court since the proceeding is a nonadversarial proceeding,” meaning there is no one opposing the young person’s petition...<sup>44</sup>

## The Experience of Navigating Judicial Bypass

Research in Florida and many other states has shown that forced parental involvement harms young people and delays their access to care. In the state of Illinois, for example, joint research by Human Rights Watch and the American Civil Liberties Union of Illinois showed that young people who were unable to pursue judicial bypass or found the process too daunting were compelled to continue pregnancies against their will or pushed to involve unsupportive or even abusive parents who threatened their safety, interfered in their decision-making, or humiliated them...<sup>45</sup> Even when young people were able to

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<sup>41</sup> *Ibid.*, § 390.01114(6)(c).

<sup>42</sup> *In re Jane Doe 22-A*, Case No. 1D22-0103 (Fla. 1st Dist. Ct. App. January 19, 2022) (per curiam) (dissenting opinion of Makar, J), p. 3, [https://1dca.flcourts.gov/content/download/823554/opinion/220103\\_DC05\\_01192022\\_170006\\_i.pdf](https://1dca.flcourts.gov/content/download/823554/opinion/220103_DC05_01192022_170006_i.pdf) (accessed January 20, 2023).

<sup>43</sup> Florida Statutes § 390.01114(6)(b)(2).

<sup>44</sup> *Ibid.*, § 390.01114(6)(b)(2).

<sup>45</sup> Human Rights Watch and the American Civil Liberties Union of Illinois, “*The Only People It Really Affects Are the People It Hurts*”: *The Human Rights Consequences of Parental Notice of Abortion in Illinois*, (New York: Human Rights Watch, 2021), <https://www.hrw.org/report/2021/03/11/only-people-it-really-affects-are-people-it-hurts/human-rights-consequences>.

navigate the judicial bypass process, it was burdensome and delayed their access to abortion care, typically adding a week to their abortion-seeking timeline.<sup>46</sup> In Illinois, the overwhelming majority of petitions for judicial waivers were granted during the nine years that the law was in effect, but our research showed that the process still had devastating effects on many young people who had to go through it.<sup>47</sup>

Florida youth face an even more daunting process. While nearly all petitions filed in Illinois were granted, Florida judges deny a significant proportion of petitions, as described in detail later in this report.

In 2019, the nongovernmental organization If/When/How: Lawyering for Reproductive Justice evaluated the preparedness of Florida’s Clerks of Court to help young people navigate the judicial bypass process. Researchers called county courts and sought information regarding the judicial bypass process, including questions related to confidentiality, access to court-appointed counsel, and fees, and found that of the state’s 67 counties, only 11 were classified as prepared or knowledgeable about the process. Fifteen counties were classified as semi-prepared, 37 counties were unprepared, and 4 counties were completely unreachable.<sup>48</sup>

Florida experts on youth access recounted cases in which young people received conflicting information from clerks, inadequate support or outright hostility from their court-appointed attorneys, or outdated forms that clinics could not accept. They also described cases in which young people risked their safety and confidentiality to participate in their judicial bypass hearing.

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<sup>46</sup> A 2020 research study published in the *Journal of Adolescent Health* based on analysis of data collected by the ACLU of Illinois in 2017 and 2018 found that the judicial bypass process added, on average, nearly a week (6.4 days) to young people’s abortion-seeking timeline in Illinois. The authors explained that the time elapsed between first contact with the ACLU’s Judicial Bypass Coordination Project and the young person’s court hearing ranged from 0 to 27 days. On average, an additional 6.3 days passed between the court hearing and the scheduled abortion care. Human Rights Watch analyzed data collected by the ACLU over a longer period of time—between 2017 and 2020—and found a slightly higher average of 6.9 days elapsed between a young person’s initial contact with the Judicial Bypass Coordination Project and their hearing, with a range from 0 to 47 days. Lauren J. Ralph, Lorie Chaiten, Emily Werth, et al., “Reasons for and Logistical Burdens of Judicial Bypass for Abortion in Illinois,” *Journal of Adolescent Health*, vol. 68, no. 1 (2020), accessed December 1, 2020, doi:10.1016/j.jadohealth.2020.08.025.

<sup>47</sup> Human Rights Watch and the American Civil Liberties Union of Illinois, “*The Only People It Really Affects Are the People It Hurts*”: *The Human Rights Consequences of Parental Notice of Abortion in Illinois*.

<sup>48</sup> If/When/How: Lawyering for Reproductive Justice, “The Judicial Waiver Process in Florida Courts: A Report,” 2019, <https://www.ifwhenhow.org/resources/the-judicial-waiver-process-in-florida-courts-a-report/> (accessed January 6, 2023).

Appearing before a judge to request permission to see through an abortion decision is highly stressful for young people, and even traumatizing for some.<sup>49</sup> Young people must be prepared to answer intimate and invasive questions about their sexual health and behaviors, family trauma, and other highly sensitive topics.

Stephanie Loraine Piñeiro, a social worker, reproductive justice advocate, and the executive director of the Florida Access Network, had a judicial bypass in her youth. She wrote: “My experience in obtaining the judicial bypass was filled with uncertainty, hope, fear, and many questions.”<sup>50</sup> She urged advocates supporting youth through judicial bypass to emphasize young people’s self-determination and strengths, plan for their safety, and respect their autonomous decision making.<sup>51</sup>

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<sup>49</sup> Kate Coleman-Minahan, Amanda Jean Stevenson, Emily Obront, and Susan Hays, “Young Women’s Experiences Obtaining Judicial Bypass for Abortion in Texas,” *Journal of Adolescent Health*, vol. 64, no. 1 (2018): pp. 20-25, accessed January 9, 2023, doi:10.1016/j.jadohealth.2018.07.017.

<sup>50</sup> Stephanie Loraine, “For the ‘Helpers’: How to Be a More Compassionate, Effective Advocate for Young Folks Who Need Abortion Care,” *If/When/How Guest Voice*, July 17, 2018, <https://www.ifwhenhow.org/best-practices-judicial-bypass-abortion-advocates/> (accessed January 6, 2023).

<sup>51</sup> *Ibid.*

## II. Findings: Florida Judges Block Youth Abortion Access

According to data provided to Human Rights Watch by the Florida Office of the State Courts Administrator, around two hundred young people go through judicial bypass in Florida courts each year.<sup>52</sup> In 2020 and 2021, Florida judges denied more than 12 percent of these petitions.<sup>53</sup> Between January and November 2022, state courts heard 210 petitions for judicial bypass and denied 18 of them. The statewide denial rate more than doubled between 2018 and 2021. The highest rate of denials was in the year 2020, when judges denied 13.3 percent of petitions.

Year	Number of Petitions Disposed	Number of Petitions Granted	Number of Petitions Denied	Percentage Denied
2018	193	182	11	5.7%
2019	208	189	19	9.1%
2020	195	169	26	13.3%
2021	214	188	26	12.1%
2022*	210	192	18	8.6%

\*2022 data includes January through November.

Source: Florida Office of the State Courts Administrator, “Parental Notice of and Consent for Abortion Act: Petitions Filed and Disposed,” 2018 through 2022.

### 15-Year Trends: 2007-2022

The American Civil Liberties Union Foundation of Florida collected and analyzed data from the Office of the State Courts Administrator from the years 2007 to 2017 and shared that data with Human Rights Watch for this report. We then combined the datasets to look at

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<sup>52</sup> The Office of the State Courts Administrator reports the number of petitions disposed each year, as opposed to the number of young people who file petitions. Some young people who are initially denied may refile again. Therefore, the total number of petitions disposed may be slightly higher than the total number of young people who go through the judicial bypass process.

<sup>53</sup> Florida Office of the State Courts Administrator, “Parental Notice of and Consent for Abortion Act: Petitions Filed and Disposed, By Circuit and County, January through December 2021,” Data as of January 15, 2022. On file with Human Rights Watch.



statistics over a 15-year period from 2007 to 2022. Several clear trends emerge in Florida’s judicial bypass statistics during that period.

- **Fewer young people are using judicial bypass in Florida:** The number of petitions disposed annually has decreased by 65 percent, from 609 petitions disposed in 2007 to 214 in 2021. Further research is needed to understand the factors behind this decrease.
- **The rate of judicial bypass denials in 2020 was quadruple the rate in 2007:** In 2007, 20 young people’s petitions were denied, only 3.3 percent of the petitions disposed that year. In 2020, in contrast, 13.3 percent of young people’s petitions were denied (26 out of a total of 195 petitions).
- **When parental involvement laws become more stringent, denials increase:** Researchers at the University of Colorado, Boulder have analyzed data on judicial bypass denials in Florida and Texas and found that denial rates increased in both states when state laws and policies changed to make the bypass process more burdensome.<sup>54</sup> The greatest increases in the rate of denials in Florida from one year to the next occurred between 2011 and 2012, when denials jumped from 4.6 percent to 10.7 percent; and between 2019 and 2020, when the denials rate jumped from 9.1 percent to 13.3 percent. The Florida state legislature passed legislation in 2011 to make the requirements of the state’s Parental Notice of Abortion Act more stringent.<sup>55</sup> For example, the legislation required young people to file petitions in the circuit court in which they reside, where previously they could file in any court within the larger District Court of Appeal. In addition, as described above, Florida changed state law from requiring parental notification for abortion to requiring parental consent in 2020.
- In 2020 and 2021, a greater percentage of young people had their right to access abortion vetoed by a judge than in prior years.

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<sup>54</sup> Amanda Jean Stevenson and Kate Coleman-Minahan, “Use of Judicial Bypass of Mandatory Parental Consent to Access Abortion and Judicial Bypass Denials, Florida and Texas, 2018–2021,” *American Journal of Public Health* (2023): pp. e1–e4, accessed January 13, 2023, doi:10.2105/AJPH.2022.307173; Amanda Jean Stevenson, Kate Coleman-Minahan, and Susan Hays, “Denials of Judicial Bypass Petitions for Abortion in Texas Before and After the 2016 Bypass Process Change: 2001–2018,” *American Journal of Public Health*, vol. 110, no. 3 (2020): pp. 351–353, accessed January 9, 2023, doi:10.2105/AJPH.2019.305491.

<sup>55</sup> Parental Notice of Abortion, House Bill (HB) 1247 of 2011, <https://www.myfloridahouse.gov/sections/Bills/billsdetail.aspx?BillId=46399> (accessed January 9, 2023).

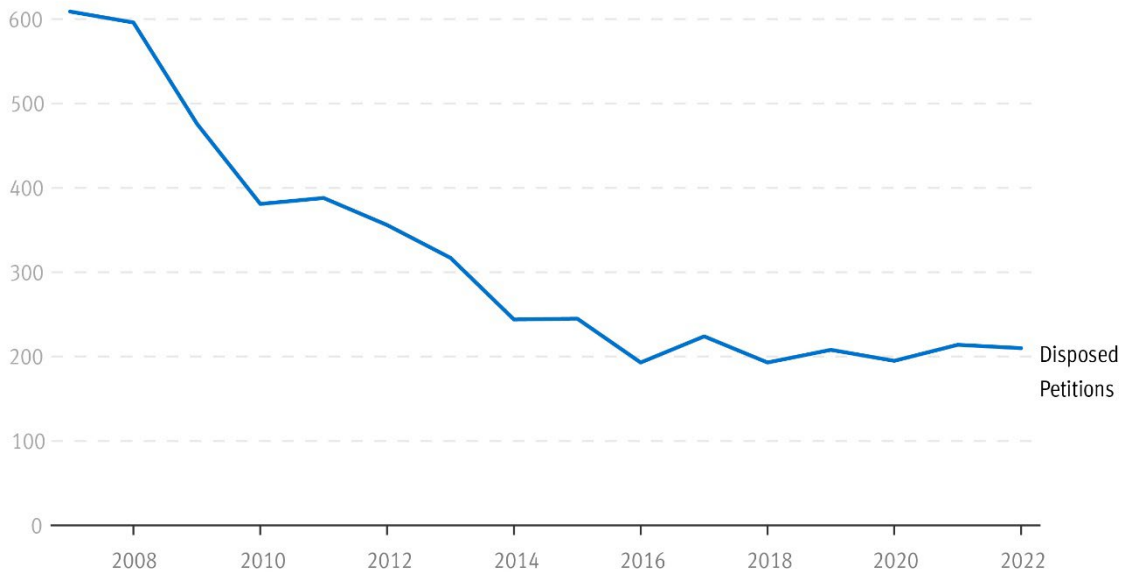
**Table 2. Rate of Judicial Bypass Denials Statewide, 2007-2022**

<b>Year</b>	<b>Number of Petitions Disposed</b>	<b>Number of Petitions Granted</b>	<b>Number of Petitions Denied</b>	<b>Percentage Denied</b>
<b>2007</b>	609	589	20	3.3%
<b>2008</b>	596	569	27	4.5%
<b>2009</b>	476	449	27	5.7%
<b>2010</b>	381	371	10	2.6%
<b>2011</b>	388	370	18	4.6%
<b>2012</b>	356	318	38	10.7%
<b>2013</b>	317	284	33	10.4%
<b>2014</b>	244	221	23	9.4%
<b>2015</b>	245	232	13	5.3%
<b>2016</b>	193	178	15	7.8%
<b>2017</b>	224	206	18	8.0%
<b>2018</b>	193	182	11	5.7%
<b>2019</b>	208	189	19	9.1%
<b>2020</b>	195	169	26	13.3%
<b>2021</b>	214	188	26	12.1%
<b>2022</b>	210	192	18	8.6%

\*2022 data includes January through November.

Source: Florida Office of the State Courts Administrator, “Parental Notice of and Consent for Abortion Act: Petitions Filed and Disposed,” 2007 through 2022.

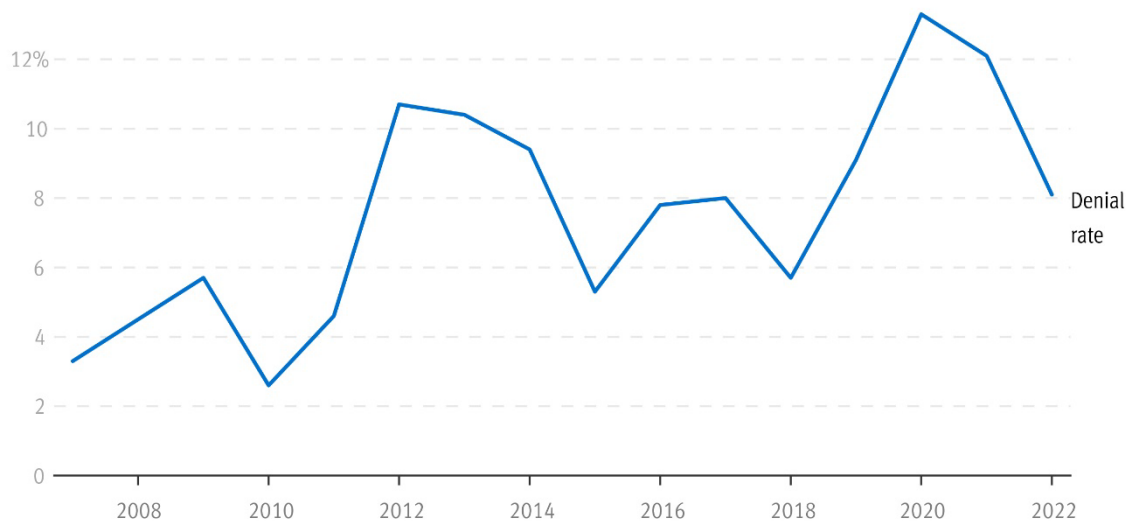
### Figure 1. Petitions Disposed



Data from 2022 does not include the month of December.  
Source Human Rights Watch analysis of Florida Office of the State Courts Administrator data.

### Figure 2. Denial Rate

Percentage of disposed petitions that are denied statewide



Data from 2022 does not include the month of December.  
Source Human Rights Watch analysis of Florida Office of the State Courts Administrator data.

## County-Level Analysis

The Florida Office of the State Courts Administrator disaggregates the judicial bypass data by county and circuit. Human Rights Watch compared the rate of judicial bypass denials among the counties receiving the majority of petitions. We found dramatic differences.

In 2021, seven out of Florida’s 67 counties received ten or more judicial bypass petitions: Broward, Hillsborough, Lee, Miami-Dade, Orange, Palm Beach, and Pinellas. Taken together, these seven counties received 65 percent of the state’s judicial bypass cases that year.<sup>56</sup> According to data from Florida’s Agency for Health Care Administration, about 61 percent of patients who had abortions in Florida in 2021 resided in these seven counties.<sup>57</sup>

Hillsborough County, where the city of Tampa is located, denied a far greater number and proportion of cases than any of the other six counties. Judges in that county denied more than half of the bypass petitions they heard in 2021. Palm Beach County denied one in ten cases, and Broward denied one in sixteen. The other four counties did not deny any petitions in 2021.

Table 3. Rate of Judicial Bypass Denials by Florida County, 2021

County	Number of 2021 Petitions Disposed	Number of 2021 Petitions Denied	Percentage Denied
Broward	32	2	6.25%
Hillsborough	21	11	52.4%
Lee	11	0	0%
Miami-Dade	26	0	0%
Orange	18	0	0%
Palm Beach	20	2	10%
Pinellas	11	0	0%

Source: Florida Office of the State Courts Administrator, “Parental Notice of and Consent for Abortion Act: Petitions Filed and Disposed, By Circuit and County,” January through December 2021.

<sup>56</sup> The seven counties heard 139 of the 214 petitions disposed in the state in 2021. The seven counties include the state’s most populous counties.

<sup>57</sup> Agency for Health Care Administration, “Reported Induced Terminations of Pregnancy (ITOP): Total Cases by Patient County of Residence,” 2021, [https://ahca.myflorida.com/MCHQ/Central\\_Services/Training\\_Support/docs/TotalsByCounty\\_2021.pdf](https://ahca.myflorida.com/MCHQ/Central_Services/Training_Support/docs/TotalsByCounty_2021.pdf) (accessed July 22, 2022). This data does not include people who traveled to Florida from out of state to access care in one of these counties.

Analysis of 2020 data shows similar patterns, with Hillsborough County denying the greatest number and greatest proportion of young people’s petitions for judicial bypass. In 2020, only five Florida counties received 10 or more judicial bypass petitions: Broward, Hillsborough, Miami-Dade, Palm Beach, and St. Lucie. About 50 percent of people who had abortions in Florida in that year resided in these five counties...<sup>58</sup>

Hillsborough County denied 38.5 percent of petitions (5 out of 13). St. Lucie County denied 30 percent; Palm Beach County denied 6.9 percent, and Broward 3.1 percent. Miami-Dade County did not deny any petitions in 2020.

<b>County</b>	<b>Number of 2020 Petitions Disposed</b>	<b>Number of 2020 Petitions Denied</b>	<b>Percentage Denied</b>
<b>Broward</b>	32	1	3.1%
<b>Hillsborough</b>	13	5	38.5%
<b>Miami-Dade</b>	19	0	0
<b>Palm Beach</b>	29	2	6.9%
<b>St. Lucie</b>	10	3	30%

Source: Florida Office of the State Courts Administrator, “Parental Notice of and Consent for Abortion Act: Petitions Filed and Disposed, By Circuit and County,” January through December 2020.

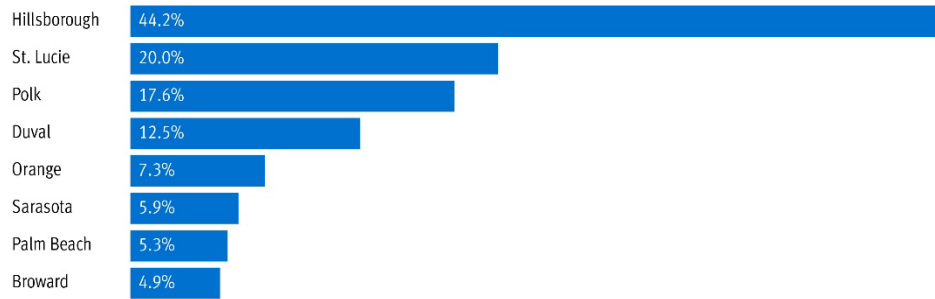
Human Rights Watch also analyzed data from the Office of the State Courts Administrator on cases between January and November 2022 and found that about 8.6 percent of petitions filed in that time period were denied (18 out of 210)...<sup>59</sup>

<sup>58</sup> Agency for Health Care Administration, “Reported Induced Terminations of Pregnancy (ITOP): Total Cases by Patient County of Residence,” 2020, [https://ahca.myflorida.com/MCHQ/Central\\_Services/Training\\_Support/docs/TotalsByCounty\\_2020.pdf](https://ahca.myflorida.com/MCHQ/Central_Services/Training_Support/docs/TotalsByCounty_2020.pdf) (accessed July 22, 2022). This data does not include people who traveled to Florida from out of state to access care in one of these counties.

<sup>59</sup> Florida Office of the State Courts Administrator, “Parental Notice of and Consent for Abortion Act: Petitions Filed and Disposed, By Circuit and County,” January through November 2022.

### Figure 3. Judicial Bypass Denial Rates

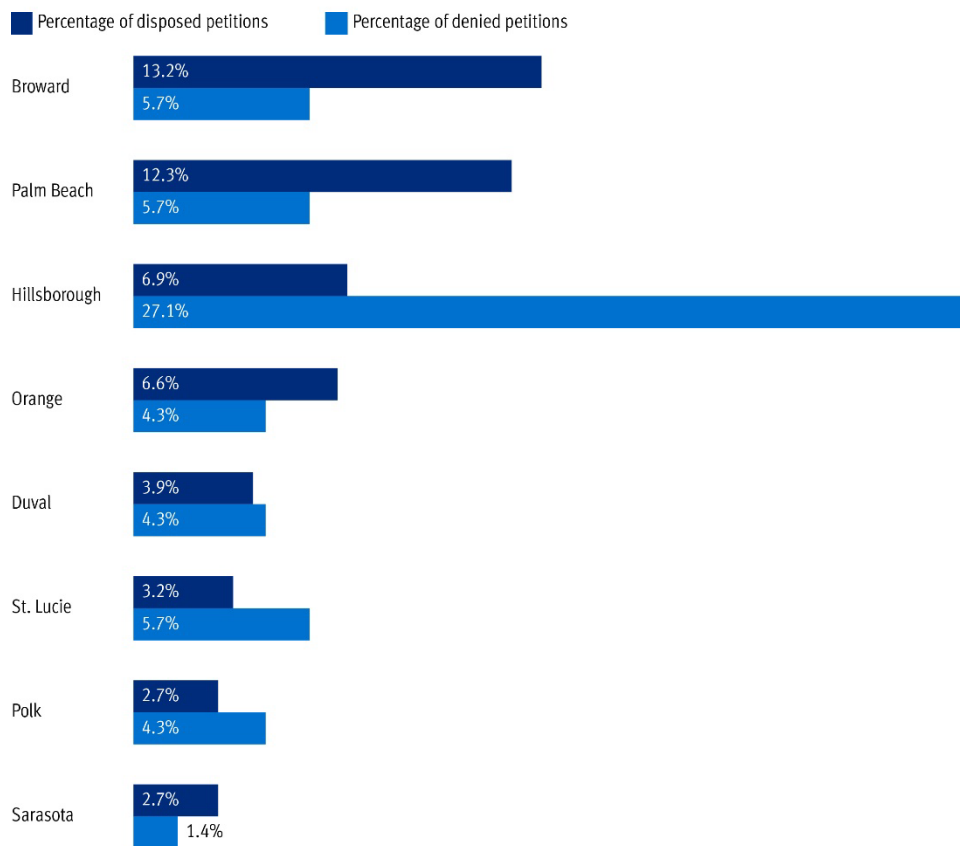
Percentage of petitions that county judges denied, 2020–2022



Data from 2022 does not include the month of December. Includes counties that heard more than 15 petitions between January 2020 and November 2022 and that had at least one denial.  
Source: Human Rights Watch analysis of Florida Office of the State Courts Administrator data.

### Figure 4. Florida Judicial Bypass Petitions by County

Percentage of all judicial bypass petitions and denials in Florida, 2020–2022



Data from 2022 does not include the month of December. Includes counties that heard more than 15 petitions between January 2020 and November 2022 and that had at least one denial.  
Source: Human Rights Watch analysis of Florida Office of the State Courts Administrator data.

## Appeals

Few judicial bypass denials reach Florida appeals courts. Human Rights Watch identified four appeals filed in the state in 2020, two in 2021, and three in 2022. We identified these cases by searching publicly available archives and through information requests.

Court of Appeals	2020 Cases	2021 Cases	2022 Cases
First District*	0	0	2
Second District	2	2	1
Third District	0	0	0
Fourth District	1	0	0
Fifth District	1	0	0
<b>TOTAL</b>	<b>4</b>	<b>2</b>	<b>3</b>

\*At time of writing, Human Rights Watch had not received a response from the First District Court of Appeal to our request for information. The numbers we present for the First District Court of Appeals are based solely on cases identified through desk research.

Appeals courts affirmed lower courts' denials in five cases, sending young people away without the necessary court orders to access abortion care. In three cases, appeals courts reversed the lower court's denial. In one case, Human Rights Watch was unable to determine the court's decision as there was no published opinion and the file is sealed.

## Findings from Court Records

Court documents highlight some of the challenges young people face in the bypass process, including a lack of support to understand what the statute requires, a lack of access to counsel before filing their petitions, intrusive and dehumanizing questions about their lives, and judges with broad leeway and discretion to make highly subjective determinations on their maturity and interests. The cases provide a window into the arbitrary decision-making that underlies the state's high rate of denials.

### *Arbitrary Decision-Making*

State law directs Florida courts to consider a list of vague criteria when assessing whether a young person is sufficiently mature to choose abortion. These criteria include overall intelligence; emotional development and stability; credibility and demeanor as a witness;

ability to accept responsibility; ability to assess the short- and long-term consequences of their decision; and ability to understand and explain the health implications of having an abortion. These criteria lend themselves to arbitrary decision-making, with judges deciding on young people’s access to health care based on things like their grades and impressions of their demeanor during a nerve-wracking hearing.

A 2022 appeals court decision reveals the highly subjective nature of judges’ evaluations of young people’s maturity and interests, and how these determinations easily become arbitrary.<sup>60</sup> This case, which received widespread media attention when the opinion was published,<sup>61</sup> involved a young person who hoped to attend college and pursue a career as a health worker.

The opinion from Florida’s Second District Court of Appeals provides significant detail on the young person’s decision-making process. The court document shows she spoke to the trial court judge about the implications of choosing abortion. She had carefully considered her options and determined abortion was best for her. She described how her boyfriend and his family would provide financial, emotional, and logistical support to her throughout the process.

A judge denied her petition, citing her high school grade point average (GPA) and lack of a driver’s license as evidence that she did not possess sufficient intelligence to make her own healthcare decisions. The appeals court opinion explains,

[A]ddressing her “overall intelligence,” the court found her intelligence to be less than average because “[w]hile she claimed that her grades were ‘Bs’ during her testimony, her GPA is currently 2.0. Clearly, a ‘B’ average would not equate to a 2.0 GPA.” The court reasoned, “Petitioner’s testimony evinces either a lack of intelligence or credibility, either of which weigh against a finding of maturity pursuant to the statute.”<sup>62</sup>

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<sup>60</sup> *In re Petition for Judicial Waiver of Parental Notice and Consent or Consent Only to Termination of Pregnancy, Second District Court of Appeal*, Case No. 2D22-51 (Fla. 2d Dist. Ct. App. January 18, 2022).

<sup>61</sup> See, for example, Anne Branigin, “How hard is it to get a court-approved abortion? For one teen, it came down to GPA,” *Washington Post*, January 7, 2022, <https://www.washingtonpost.com/lifestyle/2022/01/27/florida-abortion-judicial-bypass-case-gpa/> (accessed January 9, 2023); Carter Sherman, “A Judge Tried to Deny a Teen’s Abortion Partly Because of Her GPA,” *Vice News*, January 21, 2022, <https://www.vice.com/en/article/akv7xg/judge-abortion-gpa> (accessed January 26, 2023).

<sup>62</sup> *Petition for Judicial Waiver*, I, Case No. 2D22-51, pp. 9-10.



The appeals court found, “[A] lack of credibility is not supported by this record. Further, the evidence certainly did not show that her overall intelligence was ‘less than average.’”<sup>63</sup> While ruling in the young person’s favor, the appellate court did not challenge the premise that a young person’s grade point average can be considered a relevant indicator of maturity in these cases, stating “a C average or the making of Bs demonstrates an appropriate level of intelligence.”<sup>64</sup>

In addition to the young person’s GPA, the circuit court judge’s denial in this case also cited several factors that highlight the arbitrary and subjective nature of these hearings. The judge pointed to the fact that the young person had never had a car, driver’s license, or driver’s permit even though she stated to the judge that her father wanted her to wait until she turned 18.<sup>65</sup> The judge cited that she did not take responsibility for any younger siblings, an impossible criterion to fulfill because she had no younger siblings.<sup>66</sup> And despite telling the judge that she worked between 27 and 34 hours per week, had \$1,600 in savings, and two credit cards, the judge found that she did not have financial responsibilities and weighed this against her in his decision.<sup>67</sup>

The appeals court ruled in the young person’s favor, stating, “Because the statutory factors the circuit court addressed show that the Petitioner met her burden of proof, yet the circuit court denied the petition for reasons not supported by the record, we conclude the circuit court abused its discretion.”<sup>68</sup> The appeals court reversed the denial and granted the young person a waiver of the state’s parental consent requirement, enabling her to access clinical abortion care.<sup>69</sup> Although this young person was ultimately able to access care, she was significantly delayed by being forced to go through both a judicial waiver hearing and the appeals process.

The case was not unique in treating young people’s grades as relevant indicators of their ability to make autonomous healthcare decisions. In a 2021 decision, an appeals court

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<sup>63</sup> *Ibid.*, p. 11.

<sup>64</sup> *Ibid.*, p. 15.

<sup>65</sup> *Ibid.*, pp. 11-12.

<sup>66</sup> *Ibid.*, p. 12.

<sup>67</sup> *Ibid.*, p. 13.

<sup>68</sup> *Ibid.*, p. 14.

<sup>69</sup> *Ibid.*, p. 22.

ruled in favor of a “high school student with a 3.5 grade point average who plans to attend college” when a lower court denied her petition for a waiver.<sup>70</sup> Another 2021 appeals court reversal describes how all of a young person’s school classes “are accelerated classes or A.P. [Advanced Placement] classes, some of which qualify for college credit.”<sup>71</sup> In the appeals court’s decision, the appellate judge writes, “When one considers her home life in addition to the fact that she has a stellar GPA, volunteers ... and still has time to participate in school-sponsored extracurricular activities, one can only marvel at the level of responsibility that [she] has undertaken.”<sup>72</sup> In these two cases, a young person’s grade point average and participation in extracurricular activities were interpreted favorably by the court, but no one’s right to bodily autonomy, choice to parent or not parent, or access to health care should be influenced by their academic performance.

Court records from some cases read like the results of a personality test. One court document describes a young person as “soft spoken and shy.”<sup>73</sup> Bafflingly, the young person’s shy demeanor seemed to be a factor in the trial court judge’s denial of her petition. In its decision, the appeals court explains,

Although the order states that Doe appeared soft spoken and shy, that observation was not tethered to any rationale that would support a lack of maturity. Without more, this observation may simply be the court’s perception of Doe’s inherent personality traits, fear (i.e., stage fright—being before a judge for the first time), or deferential respect to the circuit court and the proceedings. More important, the order contains no findings, discussion, or conclusion with regard to credibility.<sup>74</sup>

In this case, the appeals court reversed the trial court’s denial, and the young person was granted the court order needed to access clinical abortion care without parental involvement.<sup>75</sup>

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<sup>70</sup> *In re Petition of Jane Doe for a Judicial Waiver of Parental Notice of Termination of Pregnancy*, 319 So. 3d 184, 185 (Fla. 2d Dist. Ct. App. May 13, 2021).

<sup>71</sup> *In re Petition of Jane Doe for a Judicial Waiver of Parental Notice of Termination of Pregnancy*, 312 So. 3d 1082, 1084 (Fla. 2d Dist. Ct. App. March 23, 2021).

<sup>72</sup> *Ibid.*, at 1085.

<sup>73</sup> *Ibid.*, at 1084.

<sup>74</sup> *Ibid.*, at 1084-85.

<sup>75</sup> *Ibid.*, at 1085.

Another appeals court decision reveals that a trial court judge described a young person as “curt” in denying her petition for a judicial waiver.<sup>76</sup> While the appeals court reversed the lower court’s denial, the appellate decision reinforces the notion that a young person’s personality traits are relevant in determining their access to health care.

The decision states,

As to the Petitioner’s credibility and demeanor, there is no question that the circuit court was in a superior vantage point in this regard. But the court did not find, for example, that the Petitioner was timid or hesitant in her answers or that she appeared to seek validation from counsel, which we agree could be construed as evidence of lack of maturity. To the contrary, it found that she was “curt” and that she even cut off the court from time to time. Regardless of what this may have said about her courtroom manners, we fail to see how it reflected on her ability to understand and assess the procedure and its attendant psychological and physical risks.<sup>77</sup>

In some cases, the court’s finding that a young person has not demonstrated sufficient maturity or shown that parental involvement was not in their best interests border on absurd.

One court record describes a young person who was the sole caregiver for her one-year-old child and worked full-time. She would soon turn 18, and was completely independent of her parents, who had kicked her out of the house and cut her off completely while she was pregnant with her dependent child. She testified before the court that she was not financially or emotionally prepared to care for another child.<sup>78</sup> As a parent to a dependent child, the young person was exempt from the state’s parental involvement requirement,<sup>79</sup> but neither her attorney nor the trial judge appeared to understand this. The trial court denied the young person’s request for a judicial waiver, concluding that she did not show sufficient maturity to make her own healthcare decision. Though the facts of the case seem to show irrefutably that parental involvement was not in the young person’s best interest,

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<sup>76</sup> *Petition for Judicial Waiver*, Case No. 2D22-51, p. 12.

<sup>77</sup> *Ibid.*

<sup>78</sup> See *In re Jane Doe 22-A*, Case No. 1D22-0103 (dissenting opinion of Makar, J.), pp. 3-4.

<sup>79</sup> See *ibid.* (quoting Florida Statutes §§ 390.01114(4)(b)4, (5)(b)(1)).

the trial court did not rule on the petitioner’s interest. Shockingly, the appeals court affirmed the lower court’s denial.<sup>80</sup> The young person was eventually able to access care in Florida with the help of advocates who intervened following publication of the appeals court’s decision.

Other court records describe young people who seem to clearly demonstrate to the court that they are extremely thoughtful and well-informed about their abortion decisions, but somehow are still denied. For example, one 2022 appellate court decision states,

Based on the hearing transcript and her written order, the trial judge apparently sees this matter as a very close call, finding that the minor was “credible,” “open” with the judge, and non-evasive. Indeed, the minor “showed, at times, that she is stable and mature enough to make this decision.” The transcript demonstrates that the minor was knowledgeable about the relevant considerations in terminating her pregnancy along with other statutory factors. She had done Google searches and reviewed a pamphlet (that she and a family member got from their visit to a medical clinic) to gain an understanding about her medical options and their consequences.... The trial court noted that the minor “acknowledges she is not ready for the emotional, physical, or financial responsibility of raising a child” and “has valid concerns about her ability to raise a child.”<sup>81</sup>

Despite this, the trial court judge denied the young person’s petition, expressing concern that the young person’s “evaluation of the benefits and consequences of her decision is wanting,”<sup>82</sup> but introduced the possibility of a second hearing, stating, “Court finds [the minor] may be able, at a later date, to adequately articulate her request, and the Court may re-evaluate its decision at that time.” The judge seemed to disregard the potential ongoing harm to the young person of remaining pregnant against their wishes, and the fact that abortion care is time-sensitive, particularly in light of the state’s 15-week ban. The appeals court agreed with the lower court and affirmed the denial.<sup>83</sup>

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<sup>80</sup> Ibid. (per curiam), p. 1.

<sup>81</sup> *In re Jane Doe 22-B*, Case No. 1D22-2476, (Fla. 1st Dist. Ct. App. August 15, 2022), pp. 3-4.

<sup>82</sup> Ibid., p. 4.

<sup>83</sup> Ibid.

In an especially painful case, a 14-year-old young person petitioned for a waiver of the state’s parental involvement law out of fear that she would face abuse or loss of housing if she involved a parent in her abortion decision.<sup>84</sup> A lower court judge found that she “presented as a very young, immature woman” and “the Court does not find credible that she is unable to contact either parent,” citing discrepancies in her testimony about her parents’ whereabouts.<sup>85</sup> The court record states further,

She also did not provide clear and convincing evidence that it would not be in the minor child’s best interest to notify her parents. Her testimony only indicated that they would be upset and her Father would punish her. In her petition, she indicates her reason was a “fear of her mother kicking her out of the house,” but in her testimony she says that her Mother allegedly lives in [another country], so those reasons do not meet her burden to prove it would not be in her best interest.<sup>86</sup>

The appeals court affirmed the lower court’s denial of the young person’s petition, sending her away without the documentation she would need to access abortion, and in practice, leaving her to continue a pregnancy against her wishes, travel outside the state, or seek a way to manage abortion outside the health system. The appeals court noted “the difficult situation [she] finds herself in where the statute requires notice to and the consent of her parents while at the same time her parents may not be available to accompany her and provide such consent.”<sup>87</sup> Advocates were unable to confirm whether the young person ultimately accessed the health care she was seeking.

### *Intrusive and Stigmatizing Questions*

Appearing before a judge to justify an abortion decision is highly stressful and emotionally taxing. The court records reviewed for this report show young people forced to respond to deeply personal, and often highly stigmatizing, questions from both attorneys and judges during hearings.

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<sup>84</sup> *In re Petition of Jane Doe for a Judicial Waiver of Parental Notice of Termination of Pregnancy*, Case No. 2D20-2368 (Fla. 2d Dist. Ct. App. August 17, 2020).

<sup>85</sup> *Ibid.*, p. 3.

<sup>86</sup> *Ibid.*

<sup>87</sup> *Ibid.*, p. 6.

In an attempt to demonstrate that a young person has sufficient maturity to choose abortion, attorneys often ask young people to speak about why they do not feel ready to parent, why they are not choosing adoption, their understanding of the health implications of abortion, and plans for preventing unintended pregnancy in the future. To demonstrate parental involvement is not in their best interest, attorneys will ask young people about their family dynamics. For some, answering these questions—in preparation for a hearing, and then again during the hearing—can require reliving or retelling painful histories of abuse, neglect, or estrangement.

For example, a 2021 case involved a young person who lived with a legal guardian who, according to court records, had “never been there for her” and “never really cared.”<sup>88</sup> Court records state that the legal guardian was “not nurturing or caring towards” the young person, and “would kick her out [of the home] if notified about the pregnancy.”<sup>89</sup> It is clear from the court record that the young person was asked to provide substantial, detailed testimony about the nature of her relationship with the guardian and the impact it had on her life. Providing this kind of testimony to a stranger in a position of authority can be traumatizing and carry a heavy emotional and psychological burden, particularly for a young person who may be experiencing the stress of an unintended pregnancy and who is seeking time-sensitive health care.

A 2022 court record provides another example of a young person subjected to extensive and potentially retraumatizing questioning by a judge.<sup>90</sup> The court record describes a young person who had recently experienced a very traumatic event: “The minor experienced renewed trauma ... shortly before she decided to seek termination of her pregnancy.”<sup>91</sup> According to the appeals court decision, the trial court judge “asked difficult questions of the minor on sensitive personal matters.” The appeals court said the judge questioned the minor “in a compassionate manner” and that the judge’s “tone and method of questioning were commendable.”<sup>92</sup> However, even compassionate and careful questioning can lead to re-traumatization and harm, especially for a person navigating a

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<sup>88</sup> *In re Petition of Jane Doe*, Case No. 2D21-1333, p. 7.

<sup>89</sup> *Ibid.*, p. 8.

<sup>90</sup> *In re Jane Doe 22-B*, Case No. 1D22-2476.

<sup>91</sup> *Ibid.*, p. 2.

<sup>92</sup> *Ibid.*, p. 3.

highly stressful life event, and for whom a traumatic event occurred recently<sup>93</sup>—both of which seemed to be factors in this young person’s case.

In some cases, judges asked questions that were irrelevant and seemed aimed at shaming the young person before them. For example, one 2022 case reveals that a trial court judge asked a young person who already had a one-year-old child whether her current pregnancy was “the same or a different father,” and whether she had sought child support from her child’s father.<sup>94</sup>

### *Lack of Adequate Support*

Published opinions from appeals court decisions offer glimpses of young people navigating an intimidating and confusing court process without sufficient support.

In Florida, young people often are not connected to a court-appointed attorney until *after* they have filed a standard petition form requesting a judicial waiver of the state’s parental consent and notice requirements. Young people may not have received full information about the process at the time they complete the form. Some young people may face language barriers in completing the form. Some may not realize that the form is a sworn declaration that will be reviewed by a judge. Some young people may not provide all the relevant information about their circumstances on the forms. However, in deciding on young people’s petitions, judges consider the responses young people provide on the form and how those responses correspond with their testimony in the hearing.

For example, a 2020 appeals court decision describes a young person who knew very clearly that her parents would not support her abortion decision. On the petition form, she wrote that parental involvement was not in her best interest because she feared her mother would kick her out of the house. The explanation she offered in her sworn testimony before the judge differed from her response on the form, and this discrepancy was interpreted as a lack of credibility and was a reason the trial court and appeals court

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<sup>93</sup> See, for example, National Council of Juvenile and Family Court Judges, “Assessing Trauma for Juvenile and Family Courts From Development to Implementation,” 2019, [https://www.ncjfcj.org/wp-content/uploads/2019/07/NCJFCJ\\_Assessing\\_Trauma\\_Final.pdf](https://www.ncjfcj.org/wp-content/uploads/2019/07/NCJFCJ_Assessing_Trauma_Final.pdf) (accessed January 27, 2023).

<sup>94</sup> *In re Jane Doe 22-A*, Case No. 1D22-0103 (dissenting opinion of Makar, J.), pp. 5, 7.

denied her request.<sup>95</sup> With greater support to navigate the process, this young person might not have had her request denied.

In the 2022 case described above of the pregnant young person who was legally exempt from the parental involvement requirement because she already had a child, apparently neither the young person’s attorney nor the trial court judge understood the exemption.<sup>96</sup> The young person never needed to go to court in the first place, but instead, she had a hearing, after which a trial court judge denied her petition. A two-judge majority in an appeals court affirmed the denial. The third judge’s dissenting opinion states,

As typically occurs in these cases, the minor did not have an attorney at the time she filled out by hand the standard form petition made available at the court clerk’s office. In that form, she stated her desire to terminate her pregnancy without her parents’ consent.... She indicated that she was sufficiently mature to make the medical decision on her own and that consent was not in her best interests because she already has a child.... She checked the box asking for legal counsel. A ten-minute Zoom hearing was held during which the minor now had appointed counsel, who appeared virtually and began by saying that the minor “already has a child who she is responsible—solely responsible for.” At that point, the statutory basis for dismissal of the petition was established, eliminating the need to proceed further in the hearing.<sup>97</sup>

However, the hearing continued, and the young person and her attorney argued she possessed sufficient maturity to have an abortion without parental involvement. The trial court dismissed the young person’s petition, concluding that she did not show sufficient maturity to make her own healthcare decisions, and the appeals court affirmed that denial.<sup>98</sup>

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<sup>95</sup> *In re Petition of Jane Doe*, Case No. 2D20-2368.

<sup>96</sup> *In re Jane Doe 22-A*, Case No. 1D22-0103.

<sup>97</sup> *Ibid.* p. 4.

<sup>98</sup> *Ibid.*



After the appeals court published its decision, advocates intervened to help ensure the young person could access the care she was legally entitled to, given the exemption for minors with dependent children. The time spent in court and the stress of appearing before a judge and waiting for an appeals court ruling were entirely unnecessary and only delayed her care.

Another 2022 appeal involved a young person who waived her right to have an attorney represent her, for reasons the court did not understand.<sup>99</sup> An attorney with experience representing several young people whose judicial bypass petitions were initially denied expressed concern that clerks are not consistently telling young people that they have a right to an attorney free of charge: “They [young people] don’t understand that they don’t have to pay if someone is giving them legal advice.” She said that a supportive attorney helps young people prepare for the kinds of personal and intrusive questions that come up in a hearing.<sup>100</sup>

In this case, the young person was accompanied by a case worker and a guardian ad litem child advocate manager, but no attorney was present during the hearing. The young person included information in her petition form that indicated either she may not have understood a question or that she may not have needed to go through the bypass process. The court record states,

The minor wrote that her guardian “was fine” with the minor’s decision. This statement was written in the section of the form petition related to whether it was in the “best interest of the minor” for a parent/guardian to not be notified, which was out of place on the form but not a basis to disregard the apparent possibility of guardian consent. If the minor’s guardian consents to the minor’s termination of her pregnancy, all that is required is a written waiver from the guardian.... Such a written waiver would be self-executing, meaning that the minor need not invoke the judicial bypass procedure at all.<sup>101</sup>

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<sup>99</sup> *In re Jane Doe 22-B*, Case No. 1D22-2476.

<sup>100</sup> Human Rights Watch interview with attorney, August 10, 2022.

<sup>101</sup> *In re Jane Doe 22-B*, Case No. 1D22-2476, p. 5.

The trial court judge denied the young person’s petition. The appeals court agreed with the lower court and affirmed the denial.<sup>102</sup> With greater support and understanding of the judicial bypass process, the young person might not have had to go through the burdensome court process, or at the very least, might not have had her petition for a waiver denied.

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<sup>102</sup> Ibid.

### **III. Conclusion**

The cases presented in this report show young people confronting an opaque and intimidating legal process without sufficient support. It shows young people overcoming tremendous barriers and hurdles to petition courts to allow them to exercise their basic right to make their own healthcare decisions. It shows young people enduring intimate and intrusive questioning from strangers in a position of authority, and those strangers denying their ability to access time-sensitive care and turning them away, forcing them to continue pregnancies against their wishes. Elected judges have significant discretion to make highly subjective assessments, which in some cases appear arbitrary, of young people's maturity and best interests, based on a short and stressful encounter with them during a hearing. There is wild discrepancy in the number of denials between counties, leading to a situation where the county where a young person lives can become the relevant deciding factor of whether or not their petition is approved.

This denial of young people's rights and dignity must end. Florida must repeal the harmful Parental Notice of and Consent for Abortion Act to ensure all young people in the state can safely access basic health care. Florida lawmakers have a responsibility to keep youth safe, and that requires removing unnecessary and dangerous hurdles that interfere with their access to abortion care.

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# Access Denied

## How Florida Judges Obstruct Young People's Ability to Obtain Abortion Care

Since the US Supreme Court's decision to eliminate the constitutional right to access abortion, Florida remains one of few states in the US South where abortion is still legal. Under current state law, anyone under 18 must obtain consent from a parent or legal guardian for an abortion. Those without a supportive parent or guardian can seek a judicial waiver through a burdensome, potentially traumatizing, and highly arbitrary court process called "judicial bypass."

Each year, about 200 young people go through the process in Florida. In 2020 and 2021, judges denied more than 1 out of every 8 petitions, forcing young people to continue a pregnancy against their wishes, travel outside the state, or seek a way to manage abortion outside the health system.

Based on analysis of data from Florida courts, court records, and expert interviews, *Access Denied: How Florida Judges Obstruct Young People's Ability to Obtain Abortion Care*, documents how Florida judges too often deny young people under 18 their right to access abortion care. Human Rights Watch calls on Florida lawmakers to repeal the state's harmful forced parental consent law and to keep abortion legal and accessible.



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