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Legislative
Council
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MEMORANDUM

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August 27, 2007

TO: Senator David Schultheis

FROM: Jessika Shipley, Research Associate, 303-866-3528

SUBJECT: Judicial Bypass of Parental Notification for Abortion

This memorandum responds to your request for information about the judicial bypass of parental notification for abortion. You asked specifically how many bypasses have been granted by the courts over the past several years. You also asked for an explanation as to the circumstances for allowing each bypass.

This memorandum provides a short explanation of the judicial bypass process. Also, Table 1 and Table 2 show specific information about the 168 judicial bypass cases filed between June 1, 2003, and June 30, 2007.

The Judicial Department was unable to provide an explanation about circumstances for granting or denying bypass requests. Case files of this type are held strictly confidential because the petitioners are minors and medical information is often reviewed by the court. Additionally, judges do not generally publish or record their decisions unless the cases are very high-level appellate matters. The case files do not contain the notes of the judge or any written statement as to his or her decision.

Judicial Bypass

Colorado Parental Notification Act. The Colorado Parental Notification Act was adopted by the voters in 1998. It requires doctors who have been asked to perform an

abortion on an unemancipated woman under the age of 18 to provide 48-hour notice of the pending abortion to the parents of the patient.¹ The act also included a provision allowing the minor to petition the court to bypass the notification requirement. *House Bill 03-1376* amended the act to require the court to make a decision within four days of a petition being filed. The bill also:

- set a five-day time limit for appeals of a ruling;
- mandated that if a ruling is not issued within the set time periods, the court is required to automatically issue an order dispensing with the notice requirements;
- exempted the minor filing the petition from paying a filing fee; and
- directed the Colorado Supreme Court to promulgate rules governing the judicial bypass procedure.

Judicial bypass procedure. An unemancipated minor who wishes to bypass the parental notification requirement must file standard petition and notice setting forms with the court. The clerk of the court then provides that petitioner with a hearing date that is within four calendar days of when the petition is filed. The minor (and her lawyer or guardian ad litem, when appropriate) attends the hearing and answers questions from the judge. She may bring witnesses to testify on her behalf. The court makes a decision about bypassing the parental notification requirement based on two factors:

- is the petitioner mature enough to make the decision to have an abortion without notifying her parent or guardian; or
- is it in the best interests of the petitioner to let her have an abortion without notifying her parent or guardian?

If the petition is granted, the court will issue an order to that effect which can be taken to the petitioner's doctor to get the requested abortion.

Appeals. In cases where the court decides not to grant a bypass request, the petitioner may appeal to a higher court. The petitioner must file a Notice of Appeal form with the Colorado Court of Appeals. The form is sent to the petitioner by the district court when a petition is denied. The appellate court must make its decision within five days of the filing of an appeal. As with the lower court, if the Court of Appeals fails to make a decision within five days, an automatic order dispensing with the notice requirement must be issued. The Colorado Supreme Court may hear appeals from the Colorado Court of Appeals, but may also choose not to take those cases. At every stage of the process, the identity of the petitioner is kept confidential.

¹ No notice is required in cases where an attending physician certifies in the pregnant minor's medical record that a medical emergency exists and there is insufficient time to provide parental notice (Section 12-37.5-105 (1)(c), C.R.S.). Also, the notice requirement is dispensed with in cases where the minor declares she is the victim of abuse or neglect by her parent or guardian and the physician properly reports such abuse or neglect (Section 12-37.5-105 (1) (b), C.R.S.).

Bypass Petitions Filed in Colorado

There were 168 judicial bypass requests filed with Colorado district courts between June 1, 2003, and June 30, 2007. Table 1 details the outcome of those 168 cases. Table 2 shows when the cases were decided relative to the statutory deadlines. Only two of the 168 cases were appealed to a higher court and the trial court's decision to deny the bypass request was upheld by the appellate court in both cases.

**Table 1 - Judicial Bypass Requests for the Period
June 1, 2003, to June 30, 2007 by Outcome**

Bypass requests granted	133
Bypass requests denied	3
Bypass requests dismissed at the request of the petitioner	27
Outcome unknown*	5
Total	168

* A representative from the Judicial Department was unable to account for the decisions in five of the 168 cases. The outcomes were not recorded in the department's data management system.

**Table 2 - Judicial Bypass Requests for the Period
June 1, 2003, to June 30, 2007 by Timeliness of Decision**

Cases decided within four days	135
Cases decided outside of four days	6
Not Applicable (<i>cases that were dismissed at the request of the petitioner</i>)	27
Total	168