# Confidential and legal access to abortion and contraception, 1960-2019

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**Abstract**

An expansive empirical literature estimates the causal effects of policies governing young women's confidential and legal access to contraception and abortion. I present a new review of changes in the historical policy environment that serve as the foundation of this work. I consult primary sources including annotated statutes, judicial rulings, attorney general opinions, and advisory articles in medical journals, as well as secondary sources including newspaper articles and snapshots of various policy environments prepared by scholars, advocates, and government organizations. Based on this review, I provide a suggested coding of the policy environment from 1960 to present. I also present and compare the legal coding schemes used in the empirical literature and where possible I resolve numerous and substantial discrepancies.

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# 1 Introduction

An expansive empirical literature has attempted to inform the contentious debate surrounding young women's access to reproductive control by addressing the causal effects of the policy environment on outcomes including sexual behavior, fertility, marriage, educational attainment, labor supply, and earnings. The most careful research designs have been quasi-experimental in nature, making a claim at the credible identification of causal effects based on state and year-level variation in policies governing the legality of contraception and also the legal rights of young, unmarried women to consent to reproductive services without involving a parent, a situation I term "confidential access." These literatures includes the expansive "power of the pill" literature (Goldin and Katz 2002; Bailey 2006; Guldi 2008; Hock 2007; Ananat and Hungerman 2012; Steingrimsdottir 2010; Bailey, Hershbein, and Miller 2012; Zuppann 2012b; Myers 2017); papers estimating the effects of historical policies governing the age at which young women could consent to abortion services (Guldi 2008; Hock 2007; Myers 2017); and papers estimating the effects of contemporary parental consent and notification laws (Kane and Staiger 1996; Levine 2003a; Sabia and Rees 2013; Sabia and Anderson 2016; Myers and Ladd 2017). These teams of researchers all adopt "difference-in-difference" research designs that compare changes in outcomes between "experimental" states that enacted new policies to changes in "control" states that did not. Particularly when implemented with data spanning many states and years, this approach requires careful and comprehensive coding of state policy environments over time.

Dismayingly, the snapshots of legal and confidential access to one and/or the

other form of reproductive control in the empirical literature vary substantially. For example, four papers in the ``Power of the pill'' literature that exploits policies governing young women's legal confidential access to the pill in the sixties and seventies differ on the policy coding for 35 of 51 states and the District of Columbia (Goldin and Katz 2002; Bailey 2006; Hock 2007; Guldi 2008). Moreover, these discrepancies are neither limited to one set of authors nor are they small. For instance, Goldin and Katz (2002) and Bailey (2006) differ for 25 states by an average of 2.6 years, Goldin and Katz (2002) and Hock (2007) differ for 25 states by an average of 3.3 years, and Bailey (2006) and Hock (2007) differ for 23 states by an average of 4.0 years.[1] Similarly, the two empirical papers that had previously coded young women's confidential access to abortion in the 1970s differ on the year minors gained confidential access to abortion for 18 states (Hock 2007; Guldi 2008).[2] Given that most of the relevant policy changes took place in the short span of time between the late sixties and mid-seventies, these discrepancies have the potential to substantial impact empirical estimates.

This paper and the accompanying appendix provide a comprehensive and detailed review of the legal environment governing the ability of young, unmarried women to consent to prescription contraception and to abortion over the previous sixty years, from 1960 to 2019. This review covers the invalidation and repeal of Comstock laws following the introduction of the pill in 1960, and continues through the reform and repeal of abortion laws and policies governing young unmarried women's confidential access to the pill and abortion through the late 1970s. I then turn to the contemporary era

[1] See Table 5.
[2] See Table 6. I do not summarize the magnitudes of the discrepancies because these papers differ on whether confidential access was extended at all.

of abortion policy, discussing and providing dates for "parental involvement laws" requiring parental notification or consent for minors' abortions enforced since 1980.

Section 2 provides a broad overview of the legal environment. Section 3 presents and discusses tables summarizing my suggested coding of the years in which policy changes occurred. In Section 4, I attempt to reconcile the differences in coding across several prominent papers in the literatures on the effects of contraceptive and abortion policies.

The appendix provides a detailed state-by-state review of the policy environment. The policy coding that I suggest here and document in the appendix is based on an extensive review of primary sources that include annotated statutes, judicial rulings, and state attorney general opinions, and on historical newspapers and medical journals providing evidence of how policy changes were implemented. I also incorporate information from snapshots of the policy environment afforded by reports from the Council of State Governments (1972, 1973), U.S. Department of Health, Education, and Welfare (1974, 1978), the Center for Adolescent Health and the Law (2006), NARAL (1989-2014) and the Guttmacher Institute (2017a, 2017b), and by a series of scholarly papers published in *Family Planning Perspectives* (Pilpel and Wechsler 1969, 1971, Paul, Pilpel, and Wechsler 1974, 1976). In addition, I review and incorporate information from Merz, Jackson, and Klerman (1995), who reviewed minors' access to abortion through the early 1990s, and from Bailey and Davido (2009), who provide information on the enforcement of state Comstock laws.

My intention is to provide a thorough overview of policy changes based on primary sources, augment this with information from secondary sources, consolidate

information from other reviews, and reconcile substantial disparities in previous policy codings. My hope is that this exercise produces a set of unified policy codings, corrects previous errors, and clearly flags states where policy changes were ambiguous and reasonable scholars may disagree. I have used this revised coding in my own new empirical work (Myers 2017; Myers and Ladd 2017), and I hope that it also will be useful to other empirical researchers adopting similar strategies as well as to historians of the reproductive rights movement.

# 2 Overview of the policy environment

## 2.1 The introduction of the birth control pill

The United States Food and Drug Administration (FDA) approved Enovid, the first oral contraceptive, for the treatment of menstrual disorders in 1957. Three years later half a million women were already "on the pill" when the FDA approved it for contraceptive purposes on June 23, 1960. By 1962 approximately 1.2 million married women were on the pill, and this grew to 6.5 million married women by 1965 (Tone 2002).[3]

The pill was not immediately legally available in all states. The federal Comstock Act, which had once prohibited the distribution of contraceptives across state lines, had been invalidated by the time that the pill was introduced, but many states continued to enforce "little Comstock" laws that restricted the advertisement, sale, and/or use of contraceptives within those states. The U.S. Supreme court ruling in *Griswold v. Connecticut* (1965) recognized the right of married people to use birth control without

[3] Usage statistics for unmarried women are not available for this period.

government interference. Seven years later in *Eisenstadt v. Baird* (1972) the court struck down a Massachusetts law restricting access to birth control for unmarried people, stating that unmarried people have the same right to privacy as married ones. The Court's recognition of a constitutional right to privacy in contraceptive decisions altered enforcement of and compliance with state Comstock laws, and in the years following these rulings many states repealed or substantially liberalized their anti-contraception laws. After 1965, new state laws regarding contraception were generally affirmative.[4]

## 2.2 The legalization of abortion

Abortion became legal nation-wide on January 22, 1973 when the Supreme Court ruled in *Roe v. Wade* and *Doe v. Bolton* that women have a fundamental constitutional right to privacy in choosing to abort a fetus. Prior to these rulings, five "repeal" states and the District of Columbia had legalized abortion.[5] In addition, thirteen "reform" states had adopted provisions resembling those set forth by the American Law Institute in the Model Penal Code (MPC). These reform laws made abortion legal if performed by a physician because of substantial risk that continuing the pregnancy would cause grave physical or mental impairment or death of the woman, or the fetus would be born with a grave physical or mental defect or in cases where the pregnancy resulted from rape or incest.[6] In the remaining states, abortion generally was prohibited

[4] An obvious exception is Massachusetts which, in the wake of the *Griswold* decision regarding married people, amended its Comstock law to prohibit the sale of contraceptives to *unmarried* people. This is the law that was challenged and struck down in *Eisenstadt v. Baird* (1972).

[5] These "repeal" states are Alaska (1970), California (1969), District of Columbia (1971), Hawaii (1970), New York (1970), and Washington (1970). California reformed its abortion laws in 1967, but a court ruling in late 1969 regarding the pre-1967 abortion law had the practical effect of legalizing abortion.
Court rulings in Vermont and New Jersey in 1972 overturned anti-abortion statutes in those states, but, for reasons described in detail in the profiles of these states in the appendix, I do not code them as repeal states in this paper because providers appear to have been uncertain about the effect of the legal rulings and did not begin routinely performing abortions.

[6] These "reform" states are Arkansas (1969), California (1967), Colorado (1967), Delaware (1969), Florida (1972), Georgia (1969), Kansas (1970), Maryland (1968), New Mexico (1969), North Carolina (1967), Oregon

except to save the life of the mother.

The Centers for Disease Control began collecting abortion surveillance data on legally induced abortions in 1969 (Smith and Bourne 1973). By the beginning of 1971, the CDC was receiving information from 17 state health departments and from one or more hospitals in 8 other states and the District of Columbia. The reported number of legally induced abortions and the abortion ratio (abortions per 1,000 live births) for these states are presented in Table 1. The variation in reported legal abortions among the reform states is notable; abortion ratios range from 13.7 in South Carolina to 277.1 in Kansas, the latter figure exceeding the abortion ratio in three repeal states. Some of the variation in legal abortion ratios among reform states likely reflects differences in reporting requirements and accuracy as well as inter-state travel from neighboring states. It likely also reflects differences in how the subjective mental health standard was applied by physicians and therapeutic abortion committees. In Maryland, one of the reform states with a high abortion ratio, "mental health" was the indication for 96 percent of legal abortions performed in the first six months of 1971 (Melton et al. 1972). In Colorado, another reform state with a high abortion ratio, the Denver General Hospital Therapeutic Abortion Board approved 62 percent of applications for therapeutic abortions, the majority for mental health reasons (Thompson, Cowen, and Berris 1970).

Sociologist Carol Joffe's (1996) summary of interviews with abortion providers form this era provide anecodtal evidence of substantial inter-state and even inter-hospital variation in the ease with which physicians could obtain approval to perform abortions

(1969), South Carolina (1970), and Virginia (1970). In addition, the District of Columbia had legalized abortions to preserve the life or health of the mother in 1901, and in 1944 the Massachusetts Supreme Court had interpreted that state's anti-abortion law to exempt abortions to preserve the woman's life or physical or mental health.

under mental health standards. Victor Black, a physician in California at the time that the state enacted abortion reforms, recalled that after abortion reforms "the floodgates were opened…. We found three of four sympathetic doctors in the area that agreed to see these patients immediately and always agreed that the patient needed an abortion. All had the same diagnosis: 'situational anxiety.' These were normal women, in my opinion, with no psychiatric problems" (As quoted in Joffe 1996). Other providers, however, indicated that dealing with abortion committees was frustrating, time-consuming, and that many boards were extremely reluctant to approve abortions. One physician stated that he was reluctant to perform even approved abortions because he feared a zealous anti- abortion activist might still try to push prosecution jeopardizing his medical license (Joffe 1996).

## 2.3 Confidential access to contraception and abortion, 1960-1979

Comstock laws and abortion reforms and repeal determined the legality of prescription contraception and abortion for adult women, but minor women are subject to additional regulations determining whether they can provide legal consent to medical services. If statutory or case law has not extended this right to minors, or if a statutory parental involvement law offers a valid restriction, then minors must involve a parent in their decision to obtain contraception or abortion. For this reason, I refer to environments in which minors can provide legal consent without involving a parent as ones granting "confidential" access.

Under the system of legal precedent known as "common law," informed consent is necessary for a physician to provide medical services, and minors are generally

considered incapable of providing informed consent to medical care. Accordingly, at the time of the introduction of the birth control pill, unmarried women under the age of majority—21 in most states— who had not previously given birth generally could not provide legal consent to contraceptive services (Pilpel and Wechsler 1969).[7] Exceptions arose in states that had enacted medical consent statutes specifically granting minors capacity to consent to medical care, as well as in states in which the legislature or courts had recognized a mature minor doctrine whereby a minor can consent to medical care if she is judged capable of understanding the nature and potential consequences of treatment. In addition, in some states minors attained majority upon marriage, emancipation, or giving birth, and presumably could consent to contraception under these circumstances.

By the mid-seventies, most states had lowered the age of majority to 18, permitting women aged 18 and over to consent to contraception and, once it was legalized, to abortion as well. Confidential access to contraception and abortion for women under the age of majority continued to depend on the presence of state mature minor doctrines or other laws granting minors the right to consent to medical care without involving a parent. By 1979, 29 states had medical consent laws and/or mature minor laws that affirmed minors' ability to legally and confidentially access contraception from any provider. Two additional states, Hawaii and Montana, had passed laws permitting minors to consent to contraceptive services, but these policies explicitly permitted physicians to choose to notify a minor's parents.

Minors also gained increasing access to contraception through federally-funded

[7] See also the Harvard Law Review (1975). The anonymous author cites contemporary physicians' manuals that advise providers to obtain parental consent before providing services.

family planning clinics. On December 24, 1970 Title X of the federal Public Health Service Act was signed into law, establishing a program of federally-funded family planning clinics that were required to make contraceptive services available to "all persons desiring such services…without regard to religion, creed, age, sex, parity, or marital status" (*Public Health Service Act* 1970; 1978) Program regulations adopted in 1972 expressly protected the confidentiality of patients (Maradiegue 2003). In 1978, Congress, which was concerned that minors were not taking advantage of the services offered by these clinics, amended the Act to explicitly mandate Title X to provide confidential contraception services to adolescents (Reimer 1986; Boonstra and Nash 2000). In 1981 Title X was again amended to "encourage family participation" under the grants. Pursuant to that language and with the encouragement of the Reagan administration, the Department of Health and Human Services adopted regulations mandating that parents be notified with ten days of the prescription of contraceptives to their minor children at Title X clinics. This rule, commonly known as the "Squeal Rule" was challenged The U.S. Court of Appeals and struck down (Planned Parenthood v. Heckler 1983). Currently more than 1/3 of teenagers who visit reproductive health clinics obtain services at a Title X clinic (Jones and Boonstra 2004).

In contrast to this generally affirmative trend for contraception, legislation related to minors' access to abortion in the 1970s was more mixed. While some medical consent laws permitted minors to consent to abortion, many, particularly those passed after 1973, excluded abortion from the services to which a pregnant minor could consent. In the wake of *Roe v. Wade*, other states enacted parental notification and/or consent requirements which served to explicitly restrict minors' confidential access.

As a result of the timing of the introduction of the contraceptive pill, the legalization of abortion and of distinctions made in states laws between minors' ability to consent to each, in a given state in a given year between 1960 and 1976, a minor seeking reproductive services might be legally able to consent to neither contraception or abortion, to both, or to one and not the other. Three Supreme decision in the late seventies— *Planned Parenthood of Central Missouri v. Danforth* (1976), *Carey v. Population Services International* (1977), and *Bellotti v. Baird* (1979)—helped to establish guidelines about the types of restrictions that could be imposed on minors seeking reproductive services. These decisions also served to clarify minors' ability to consent absent an enabling statute.

In *Planned Parenthood v. Danforth* (1976), the court ruled that a Missouri parental consent law for abortion was unconstitutional, stating that a state does not "have the constitutional authority to give a third party an absolute, and possibly arbitrary, veto over the decision of a physician and his patient to terminate the patient's pregnancy, regardless of the reason for withholding consent." This ruling established that states may not impose a blanket prohibition on minors seeking abortion, nor can they impose parental consent laws that do not have a bypass option. The ruling invalidated parental consent laws in a number of states that did not contain a judicial bypass option, although some of these states did not immediately cease enforcing them (DHEW 1978).

The following year in *Carey v. Population Services International* (1977), the Supreme Court declared a New York State statute that prohibited the sale or distribution of contraceptives to minors under 16 unconstitutional with respect to non-prescription contraceptives. The court affirmed that, like adults, minors have a right to privacy in

choosing whether to "bear of beget a child," and that, just as a state could not impose a blanket prohibition on minors seeking abortions, it similarly could not prohibit the distribution of contraception to minors. Although the ruling specifically regarded non-prescription contraceptives, which Population Services International manufactured, the court's reasoning suggested that its conclusions would also apply to prescription contraceptives.

In *Bellotti v. Baird* (1979) the court offered more detailed guidance on what types of parental involvement requirements could be imposed on minors seeking abortions. It clarified that a bypass procedure must allow the judge to rule in an immature minor's interest or to determine that a minor is mature enough to make her own decision in consultation with a physician.[8] The ruling invalidated parental consent laws enacted after *Danforth* that did not provide a confidential judicial bypass procedure that allowed a judge to determine that a minor was mature enough to make her own decision in consultation with a physician. *Bellotti* also established that parental notification laws must meet similar requirements as parental consent laws, invalidating parental notification laws without judicial bypass options. The opinion written by Justice Powell for *Bellotti* illustrates the court's reasoning in extending the right to privacy in childbearing decisions to minors:

> *"The abortion decision differs in important ways from other decisions that may be made during minority….The pregnant minor's options are much different from those facing a minor in other situations, such as deciding whether to marry. A minor not permitted to marry before the age of majority is required simply to postpone her decision….A pregnant adolescent, however, cannot preserve for*

[8] This decision is often referred to as *Bellotti II* because the state had heard the case in 1976 and sent it back to the Massachusetts Supreme Court for a clearer interpretation. The state Supreme Court's ruling was again appealed back to the U.S. Supreme Court, resulting in the 1979 opinion.

*long the possibility of aborting, which effectively expires in a matter of weeks from the onset of pregnancy."*

## 2.4 Confidential legal access to contraception and abortion, 1980-2019

By 1980, following the decisions in *Danforth* and *Bellotti*, the rights of minors to consent to abortion absent a parental involvement law had been established. States could limit minors' confidential access by passing statutes requiring parental involvement, but such laws had to include a judicial bypass option whereby a judge could declare a minor competent to consent or make a decision in the minor's best interest. At the beginning of 1980, only one state, Utah, had an enforceable parental involvement law on the books, and that law had been ruled constitutional only as applied to immature minors.

Over the following decade, several more states enacted parental involvement laws, and by the end of 1990, 13 states were actively enforcing them. However, the application of the judicial precedents established by *Danforth* and *Bellotti* remained somewhat mixed, and legal challenges created a turbulent policy environment in some states. Abortion- rights advocates frequently filed suit in response to each new parental involvement law, and it was and remains common for enforcement of a new law to be enjoined pending a judicial review process. For instance, Pennsylvania's 1982 parental consent law did not take effect until 1994. Nevertheless, the number of states that were actively enforcing parental involvement laws grew, from a single state in 1980 to 20 by the end of 1991. The following year, the Supreme Court decision in *Planned Parenthood of Southeastern Pennsylvania v. Casey* (1992) upheld several provisions of a Pennsylvania law, including a parental consent requirement. In this decision, the

Supreme Court for the first time applied the "undue burden" standard to abortion regulations, which it defined as a law placing "a substantial obstacle in the path of a woman seeking an abortion before the fetus attains viability." In the wake of this ruling, the number of enforced parental involvement laws continued to grow, to 36 states at present in 2017.

> *In contrast to states' efforts to restrict minors' access to abortion, there have been few efforts to restrict minors' access to contraception since 1980. In 1983, Utah attempted to enact a parental notification requirement for minors seeking contraception. Enforcement of the law was enjoined before it could go into effect, and it was stuck down by a district court in Planned Parenthood Association of Utah v. Matheson (1983). The court tied its decision to judicial precedent regarding abortion, stating"The Court acknowledges that a decision concerning the use of contraceptives is not fraught with the time limitations inherent in a decision concerning termination of a pregnancy through abortion. Nonetheless, decision whether to accomplish or to prevent conception are among the most private and sensitive. Moreover, in contrast to the decision to marry, a decision concerning the use of contraceptives is similar to the decision whether to have an abortion in that it cannot be delayed until the minor reaches the age of majority without posting the risk of serious harm to the minor."*

At present, no states have laws in place that explicitly restrict the ability of private providers to provide confidential contraceptive services to minors.[9] Twenty-one states and the District of Columbia have enacted laws granting *all* minors the capacity to consent to health care services in general and/or contraceptive services in particular, and all but four states have some type of confirmatory law stating the conditions under

[9] Two states, Texas and Utah, have laws that require parental consent for minors to obtain birth control at clinics receiving state funds. These laws do not apply to private providers receiving no public funds or to providers receiving federal Title X funds which require that confidential services be made available to adolescents. In 1998 McHenry County, Illinois began requiring parental consent for minors seeking contraception at a Title X-funded clinic (Zavodny 2004). Because this violates federal law, the county had to use its own funds to pay for services.

which a minor may consent (Guttmacher Institute 2017a). Absent a law explicitly authorizing a minor to consent, the decision to provide confidential contraceptive services rests with the provider. A provider may be encouraged to provide contraceptive services to minors by legal scholars who interpret the *Carey* decision as affirming minors' rights to consent to contraception.[10] The Center for Adolescent Health and the Law (2006) advises that the right of privacy extends "protection to contraceptive decisions by minors as well as adult women." In a report published by the same organization, English et al. (2010) advise that "even in the absence of a statute authorizing minors to consent for family planning services or contraceptive care, if there is no valid statute or case prohibiting them from doing so, it would be reasonable to conclude that minors may give their own consent for these services." But the American College of Obstetricians and Gynecologists (ACOG) adopts a more conservative attitude, advising that "adolescents' legal rights to confidential contraceptive services vary by state and change over time. Where allowed, obstetrician-gynecologists should provide adolescents the opportunity to discuss [contraceptive services] without a parent or guardian for at least part of the visit." The advisory opinion recommends referral to a Title X health clinic if the policy environment does not permit confidential counseling (ACOG 2017).

There is little empirical evidence on whether, in practice, providers typically choose to provide confidential contraceptive services in the absence of state laws expressly authorizing them to do so. A policy report from the Guttmacher Institute

[10] Immediately following the *Carey* decision in 1977, publications in state medical journals began to advise that doctors could prescribe contraceptives to minors without parental involvement. See, e.g., Weinstock and Paul (1978). More recently, see Maradiegue (2003).

asserts that physicians “commonly provide medical care to a mature minor without parental consent” (Guttmacher Institute 2017a), and a reference manual for school health officials advises providers that contraceptive services "are" provided in states without explicit consent laws and that most providers "will use every effort to resist providing information to a parent against the wishes of the minor patient" (Cohn, Gelfman, and Schwab 2005).

### 2.5 Emergency contraception (EC)

When the FDA approved the emergency contraceptive Plan B in 1999, it was initially available only as a prescription contraceptive and hence subject to the same policies (or lack thereof) governing minors’ access as other prescription contraceptives. From this time until 2006, eight states chose to legislate over-the-counter access (Zuppann 2012a), and the relevant laws did not make mention of an age restriction.[11] In 2006 the FDA promulgated new rules approving Plan B for over-the-counter distribution for women aged 18 and older. In 2009 the FDA lowered the age at which Plan B could be provided without a prescription from 18 to 17. In 2013 this age restriction was lifted all together as a result of a court order (NARAL 2017).

## 3 Summary of dates of legal changes

In this paper I provide suggested policy coding for researchers who wish to demarcate the dates of important policy changes affecting young women’s legal and confidential access to prescription contraception and abortion. I focus on two broad

[11] These states are Alaska (2003), California (2002), Hawaii (2003), Maine (2004), Massachusetts (2005), New Hampshire (2006), New Mexico (2003), and Vermont (2006). These laws are described in the state- by-state appendix to this paper, and also documented by Zuppann (2012a).

categories of policy: those governing the legal provision of prescription contraceptives and abortion to adult unmarried women, and those governing the age of majority and minors' legal rights to consent to services without a parent's involvement.[12] Below I will describe my criteria for coding these policy changes. The online appendix contains a detailed state-by-state review.

Table 2 provides a state-level summary of the years in which young, unmarried women gained legal and confidential access to prescription contraception over the period 1960 to 2017. By "legal" I mean that physicians and pharmacists were legally permitted to distribute contraceptives to unmarried women, and by "confidential" I mean that women in a given age range could provide legal consent to contraceptive services without a parent's knowledge.

The period I consider begins with the FDA approval of Enovid for contraceptive purposes in 1960. In this year women aged 21 and older were legal adults in all states, and as such could provide legal consent to medical services. However, extant Comstock laws prohibited physicians and pharmacists from distributing the birth control pill in several states.[13] In these states, married adult women gained legal access between 1960 and 1965, as extant Comstock laws were repealed, struck down, or invalidated by *Griswold v. Connecticut* in 1965.[14] I assume that unmarried adult women gained legal

[12] I do not focus on spousal consent requirements, which were present in several state regulatory statutes governing abortion in the years immediately following *Roe*, and in several cases apparently enforced for the 3 year period until *Danforth*. I do note the presence of these requirements so far as I am aware of them in the appendix.

[13] Information about Comstock statutes is based on Bailey (2010) and Bailey and Davido (2009). The authors divide physician exemptions to Comstock laws into two broad categories: blanket exemptions, which they argue allowed for the dissemination of the birth control pill, and more ambiguous "legitimate business exemptions," which, in practice, did seem to limit the sale of the pill. I follow Bailey and Davido in treating a Comstock law as restrictive only if it did not include a blanket exemption.

[14] In assuming that married women in states with Comstock laws gained access with the 1965 *Griswold* decision, I follow the approach of Bailey (2010). Many states with restrictive Comstock laws in place did not immediately repeal them following *Griswold*, and they were not clearly unconstitutional under Griswold because it was applied narrowly to Connecticut's unique ban on the use (as opposed to the sale) of contraceptives. However, *Griswold*

access to the pill at the same time as married adult women unless a state had a Comstock law that differentiated between married and unmarried persons.[15] It is likely that in practice unmarried women did not gain legal access at the same pace as married women. Indeed, whether the right to privacy in contraceptive choices extended to unmarried adult women as well seems to have been a gray area in the law, one not firmly established until *Eisenstadt v. Baird* (1972). Absent a legislative statute, judicial ruling, or attorney general's opinion explicitly denying or affirming the right of unmarried adult women to consent, however, I assume that the date that birth control became legally available to married adult women also demarcates the date at which it became more available to unmarried adult women, even if the rate of increase in access was lower during subsequent years.

Columns 3-4 of Table 2 indicate the year that a legal change extended confidential access to women aged 18-20 (who were defined as adults in most states after the lowering of the age of majority) and 15-17 (defined as minors in all states). Columns 5-6 report the type of policy that granted women in each of these ages ranges confidential access. In coding these columns, I assume that women under 21 gained legal confidential access to contraception as soon as those services were available to older unmarried women, and a regulatory change affirmed the right of women under age 21 to consent to contraceptive services. I interpret affirmative changes in the legal environment to include age of majority statutes (AOM), medical consent statutes specifically granting all minors capacity to consent to reproductive services (MCL),

caused a dramatic erosion in compliance with and enforcement of Comstock laws, and Bailey points out that it is difficult to tell whether the repeal of Comstock laws after 1965 caused a change in enforcement, or reflected changes that had already occurred in practice.

[15] Only two states, Massachusetts and Wisconsin, had such laws.

medical consent statutes granting providers permission to provide confidential services to minors if in the provider's opinion the failure to provide services would be hazardous to a minor's health (HH), legislative or judicial mature minor doctrines (LMM and JMM), affirmative attorney general opinions (AG), and judicial rulings that affirmed minors' rights to consent (J).

I do not code laws permitting minors to consent to contraception at state-funded public health clinics as granting broad access, because these legal changes likely did not affect as broad or representative a group of women as those that permitted all types of providers to supply confidential reproductive services to minors. This is a subjective choice. The online appendix makes note of all such laws, and researchers might reasonably choose to code them differently. This will result in a relatively small number of changes. When looking at laws granting access to women aged 18-20, the dates would be different only for Georgia (1968 instead of 1971) and Wyoming (1969 instead of 1973), both of which permitted publicly-funded clinic to provide confidential services to minors before they lowered the age of majority. I also do not code as affirmative confidential access laws in Hawaii and Montana that grant minors capacity to consent to contraceptive services, but explicitly grant physicians the right to inform a minor's parents.

For an illustrative example of the coding, consider the timing of affirmative legal changes in Iowa, which are described and documented in detail in the appendix. Iowa did not have an extant Comstock law when Enovid was approved in 1960, and so the pill became legally available to unmarried women aged 21 and over at that time. In 1972, the Iowa legislature lowered the age of majority from 21 to 19, extending confidential

legal access to women aged 19 to 20. The following year the legislature lowered the age of majority to 18, extending confidential legal access to this group. Iowa is unusual in enacting an affirmative policy governing minors' access after 1980. (Only two other states have done so.) In 1999 the Iowa legislature passed a bill related to HIV testing that also granted minors the legal right to consent to confidential services. This is the year that I code women aged 15-17 as gaining legal and confidential access. However, I again wish to emphasize that the post-1976 policy environment governing minors' right to consent to contraception is somewhat ambiguous in those states without affirmative laws, and many providers may choose to provide confidential services to minors.

Table 3 presents suggested policy coding for minors' legal and confidential access to abortion over the period 1969 to 1979. With respect to adults' legal access to abortion services, I code the earlier of the repeal of abortion restrictions or *Roe v. Wade* as the determining date.[16] As with the case of affirmative laws for contraception women under the age of 21 are coded as gaining confidential legal access due to the lowering of the age of majority, mature minor doctrines, and medical consent laws. It is noteworthy that in several states, medical consent laws enacted prior to *Roe* granted pregnant minors the right to consent to pregnancy-related medical care. Although these laws appear to have been intended to facilitate prenatal medical care, they had the probably unintended consequence of allowing pregnant minors to consent to abortion at the time it was legalized. In the wake of *Roe*, many states amended these laws to exclude abortion from the lists of services to which minors could consent, while others enacted parental

[16] I code legal access beginning in 1974 in North Dakota. In the appendix, I present evidence that the North Dakota attorney general threatened to prosecute abortion providers in that state even after *Roe*. The North Dakota abortion prohibitions were then challenged, and struck down by the state Supreme Court in 1974.

involvement laws to explicitly restrict minors' confidential access to abortion. In this complex policy environment, I code minors as gaining confidential legal access only if a state law explicitly granted this legal right, or if a state restriction was struck down by a court ruling. Such rulings were largely issued in the 1976-1979 policy period that I regard as ambiguous, and I caution researchers against an attempt to treat policy variation as clear or objectively defined in this span of years.

Table 4 covers the next three decades of abortion policy, summarizing minors' abilities to consent to abortion services from 1980 to 2017, an era in which a series of Supreme Court decisions had established minors' default right to consent to abortion services absent a valid state restriction. At the beginning of 1980, nearly all parental involvement statues had been invalidated by *Casey* and *Bellotti*. Within a few years legislatures around the country had moved to enact new and valid parental involvement laws.[17] In this table, I indicate enforcement of a parental involvement law if a policy was being enforced that mandated parental notification or consent for all minors under a certain age (usually 18), and if the only bypass option involved consulting a judge, independent health care provider, or other adult family member. A handful of laws only recommended but did not require parental involvement, or explicitly permitted the providing physician to apply a mature minor standard. I do not regard these as sufficiently restrictive to indicate enforcement in Table 4, but they are noted in the footnotes to the table and discussed in the appendix for researchers who wish to make a different subjective decision.

The case of Kentucky offers an illustrative example of the shifting abortion

[17] There were almost no similar efforts with respect to minors' access to contraception, though I do note the handful of exceptions in the state-by-state policy appendix.

policy environment by both Tables 3 and Table 4. As described in detail in the state-by-state policy appendix, in the wake of *Roe*, Kentucky enacted new legislation regulating the conditions under which women could seek abortions. The provisions included a spousal consent requirement for married women and a parental consent requirement for women under age 18, which was the legal age of majority. The law was challenged by two Kentucky physicians, and before it took effect a District Court invalidated both consent requirements. In this ruling, the judge stated that although he was not issuing an injunction against enforcement, Kentucky would presumably "give full credence to this decision" (*Wolfe v. Schroering* 1974). In Table 3, I code this as the date that minors under age 18 could legally and confidentially access abortion in Kentucky.

On August 18, 1976, six weeks after *Danforth*, the Sixth Circuit Court of Appeals ruled that both consent requirements in the Kentucky law were unconstitutional (*Wolfe v. Schroering* 1976). In January 1978, a bill was introduced in the Kentucky legislature to again implement a parental consent requirement, but the state assistant attorney general issued an advisory opinion that the provisions would not be enforceable under *Danforth*, and the bill died in session. In 1980, following the Supreme Court decision in *Bellotti v. Baird* clarifying the circumstances under which a parental involvement law might pass constitutional muster, two bills were introduced in the Kentucky legislature related to minors' abortion access. The first, requiring a court order before a minor could obtain an abortion did not pass the Kentucky House. The second passed the House, but reached the Kentucky Senate too late for a vote. This bill was reintroduced and enacted in early 1982. Before it could take effect, however, the United States District Court for the Western District of Kentucky issued a temporary restraining order, and ultimately

struck down the law on the grounds that it did not specify a time period in which a decision must be made in the case of a judicial bypass (Eubanks v. Brown 1984). The Kentucky legislature amended the law in the following legislative session, and the new version was scheduled to go into effect in July 1986. However, the district court again issued a temporary restraining order, and then issued a ruling striking and amending language related to the notification of two parents. This revised version of the parental consent law took effect for nine months in 1989, before the Sixth Circuit Court of Appeals issued a three- paragraph order instructing the state to cease enforcement, and then remanded the case to the district court (Eubanks v. Wilkinson 1991). In the meantime and in the wake of the 1992 Danforth decision, the Kentucky legislature drafted a new parental involvement law requiring the consent of only one parent. This law took effect on July 15, 1994 and is still enforced. In the appendix, I also note and cite newspaper articles covering these legal changes, which suggest that providers were responsive to the policy environment.

The sum effect of all of this legal wrangling in Kentucky is reported in Tables 3 and 4. Table 3 indicates that women under age 18 gained confidential legal access to abortion in Kentucky in 1974. Table 4 indicates that for the 1980-2017 period, a parental involvement law was enforced in Kentucky in 1989, and from 1994 to present.

# 4 Comparison to previous coding

## 4.1 Coding of confidential and legal access to the pill, 1960-1976

To my knowledge, four previous researchers (or research teams) have coded the date that a legal change first granted young unmarried women confidential access to the

pill: Goldin and Katz (2002), Bailey (2006), Hock (2007), Guldi (2008). While the paper by Hock remains unpublished, those by the other research teams are influential and widely-cited.[18] Table 5 reproduces that year in which I have coded a legal change first granting women under age 20 confidential access to the pill and the years in which each of these four other research teams coded these events.[19] The last two rows of this table summarize the number and magnitudes of discrepancies relative to the suggested coding in this paper.

As reported in the introduction, the coding of the age at which unmarried teenage women could first consent to the pill is inconsistent for 35 of 51 states and the District of Columbia between Goldin and Katz (2002), Bailey (2006), Hock (2007), and Guldi (2008), all papers that used this coding to estimated causal effects of early legal access to the pill on various outcomes. The last two rows in Table 5 summarize the number of discrepancies between each set of coding and the coding that I suggest in this paper, as well as the mean and median of the magnitude of the discrepancy. My own, independent, coding differs from that of Goldin and Katz for 27 states and by an average of 3.6 years; from Bailey for 20 states and by an average of 3.6 years, from Guldi for 16 states and by an average of 3.9 years, and from Hock for 8 states and by an average of 3.3 years. The differences cannot, for the most part, be attributed to different interpretations of the same law. Of the 20 states for which the coding differs from Bailey's, for example, I view only 5 (Florida, Georgia, Kentucky, Mississippi, Wyoming) as the result of differences

[18] As of October 6, 2017, Google Scholar reports 1,046 citations of Goldin and Katz (2002), 446 citations of Bailey (2006), 98 of Guldi (2008), and 39 of Hock (2007).

[19] Bailey and Hock published the reported years in their respective papers. Goldin and Katz supplied me with their coding. Guldi does not report the year in her published paper, but it is reproduced in Bailey et al. (2011).

in interpretation of an ambiguous legal environment.

Shortly after the first draft of this paper became available, a research team whose members include Martha Bailey and Melanie Guldi, two authors who had previously published papers coding access to the pill, released a working paper that reviews the coding of state-level access to the pill (Bailey et al. 2011). Their suggested coding is reproduced in the last column of Table 5. Bailey et al. corrected several errors in the coding in Bailey (2006) and Guldi (2008), but 14 discrepancies remain between our two sets of independent coding. These discrepancies are quite large in magnitude: an average of 7.4 years. For 8 of these states (Arkansas, Idaho, Illinois, Montana, Nevada, North Dakota, Oklahoma, and Utah), the differences arises because these states had established the age of majority at 18 for women and 21 for men as of 1960. I interpret this as permitting women aged 18 and older to consent to the pill at the time that it was introduced. Bailey et al., on the other hand, assume that women under the age of 21 did not gain access to the pill in these states until either the age of majority was equalized for men and women or another legal change granted minors access. Bailey et al. justify this decision by indicating, variously, that the age of majority statutes likely were only intended to apply to marriage or that the scope of the statute did not clearly apply to medical care. They do not cite supporting evidence for these assertions.

In the case of Stanton v. Stanton (1974; 1975) the Utah Supreme Court and United States Supreme Court offer a different perspective than Bailey et al on the intent and effects of differential age of majority statutes. In this case, a plaintiff mother challenged a child support judgment that ended child support for her daughter at age 18 (the age of majority for females in Utah) but for her son at age 21 (the age of majority

for males in Utah). The Utah Supreme Court affirmed a lower court's denial of the petition, explaining that

> *"[T]he belief held by many that generally it is the man's primary responsibility to provide a home and its essentials for the family; and that however many exceptions and whatever necessary and proper variations therefrom may exist in differing circumstances, it is a salutary thing for him to get a good education and/or training before he undertakes those responsibilities…. Perhaps more important than this, there is another widely accepted idea: that girls tend generally to mature physically, emotionally and mentally before boys, and that they generally tend to marry earlier…. we do not regard it as our judicial function to pass upon the soundness or the unsoundness of the ideas just mentioned above. What we do note is our knowledge of their existence; and that they have played an essential role in the history of the development of the law as declared in the statute under attack" (Stanton v. Stanton, 1974).*

This suggests that the lower age-of-majority for females was based on the idea that by age 18 they matured faster and were less needing of parental resources than were males. The plaintiff mother appealed, and the United States Supreme court struck down the Utah Court's decision on the grounds that it denied individuals aged 18-20 equal protection under the law. The United States Supreme Court's decision does not explicitly address the right to consent to medical services in Utah, but cite other Utah statutes providing age thresholds to vote and hold office to illustrate that the age-of-majority statute's application to those rights not elsewhere specified was not rational (Stanton v. Stanton, 1975).

The decision rule applied by Bailey et al. is that age-of-majority statutes with equal age cut-offs governed access to the pill, while those with unequal age cut-offs did not. It is not clear why this might have been the case. The Stanton v. Stanton ruling appears to imply that the scope of differential age-of-majority statutes was not limited

to marriage, and the language of the statutes themselves does not suggest that such a narrow interpretation should be applied. For instance, the Arkansas legislature amended its age of majority statute in 1873 to read "Males of the age of twenty-one years, and females of the age of eighteen years, shall be considered of full age *for all purposes* [emphasis mine], and, until those ages are attained, they shall be considered minors."[20] Moreover, if, as Bailey et al. argue, an age-of-majority law did not govern the ability of 18 year-old women to consent to birth control prior to its amendment, it is not clear why it would have done so after its amendment, when no other language changed.

In trying to ascertain the scope of these laws, I reviewed judicial rulings that cite age of majority statutes in states where the age of majority was set at different levels for males and females. I observe that courts in different states applied the different ages of majority to a variety of rights and purposes including the need to appoint a guardian ad litem, the age at which child support payments could end, and the drinking age.[21] Consider the following examples:

- In a 1910 ruling related to the expiration of the statute of limitations, the Arkansas Supreme Court stated "It is urged that the purpose of the lawmakers in passing the act of 1873 was to encourage early marriages by enabling females to contract marriage at an earlier age than twenty-one years without the consent of parents or guardians. That may have been a reason that appealed to the lawmakers, but there is nothing to show that this was the sole purpose of the act. The statute is broad enough to completely emancipate females at the

[20] Arkansas §3756 as cited in *Brakes v. Sides* (1910).
[21] I also note that a 1975 guide to women's legal rights indicates that for the remaining two states that had not yet equalized the age of majority (Arkansas and Utah), the differential ages applied to the right of contracting, which would include the right to consent to medical care. See (Alexander 1975).

age of 18 years" (*Brakes v. Sides* 1910). In subsequent rulings, the Arkansas Supreme Court applied the lower age of majority to women's ability to redeem lands sold during their minority (*Gamble v. Phillips* 1913), the need to appoint a guardian ad litem to represent the interests of a female minor child (*Federal Bank of St. Louis v. Cottrell* 1939), and the age at which child support payments could cease for female children (*Jerry v. Jerry* 1962).

- In a 1973 opinion, the Illinois Attorney General indicated that where the term "minor" was used in any statute, it was defined as in The Probate Act setting the age of majority for that state (1973).
- The Illinois Attorney General observes that when the Illinois Liquor Control Act was passed in 1939 to prohibit serving alcohol to "minors," this meant women under age 18 and men under age 21. The Illinois legislature subsequently amended the Liquor Control Act in 1961 to replace "minor" with "person under 21" so that the legal drinking age would be equalized.[22]
- South Dakota courts applied the differential age of majority to the termination of child support (Comstock v. Comstock, 1981) and the enforcement of contracts (Gruba v. Chapman, 1915).

Contemporary authors summarizing state legal environments do not adopt Bailey et al.'s approach, but rather treat statutes with differential age cut-offs for men and women as governing the ability to consent to medical services, absent other statutory language explicitly addressing consent to medical care (Paul, Pilpel, and Wechsler 1974,

[22] Nevada and North Dakota similarly enacted separate laws to equalize the drinking age, presumably to prevent it being lower for women than for men.

1976).

In sum, the language of the statutes, their applications by courts, and contemporary secondary sources all support the view that when the age of majority was lower for women than for men, these were the ages that governed the rights of each sex to consent to contraceptive services. This is the approach that I adopt in my suggested coding.

## 4.2 Coding of confidential access to legal abortion, 1970-1975

Two researchers have coded the date that a legal change first granted confidential access to abortion in the 1970s: Guldi (2008) and Hock (2007).[23] Table 6 reproduces the year in which I have coded a legal change first granting women under age 18 confidential access to legal abortion and the years in which Guldi (2008) and Hock (2007) coded these events. I report dates only for the 1970-1975 period because of uncertainty about the legal environment between the Supreme Court decisions in *Planned Parenthood v. Danforth* (1976) and *Bellotti v. Baird* (1979).

My coding differences from that of Guldi for 14 states and of Hock for 13 states. Four of the discrepancies between my coding and that of Guldi arise for states where the legal environment was ambiguous (Florida, Hawaii, New Jersey, and North Carolina), and the remaining differences appear to be errors. Hock and I have the same coding for 8 of these 10 states. Where my coding differs from that of Hock, the most frequent explanation is that I (like Guldi) treat a court ruling that invalidated a parental involvement law as confirming minors' right to consent to abortion, whereas Hock, in general, does not. The snapshots of minors' ability to consent to abortion provided by

[23] Neither Guldi nor Hock reports the coding in their published papers, but both graciously supplied me with their coding. Hock's paper remains unpublished.

Paul, Pilpel, and Wechsler (1974, 1976) support my interpretation that in the pre-*Danforth* period, a court ruling enjoining enforcement of a parental involvement law *de facto* granted minors confidential access to abortion unless there was some other restrictive statute or judicial precedent that was not addressed by the ruling. The language of many of these court rulings also appears to strongly suggest that minors could consent. For instance, in the Florida court ruling striking down a parental consent requirement in 1973, the three-judge panel indicates that "parents cannot look to the state to prosecute and punish the physician (or other participants) who performs an abortion" (*Poe v. Gerstein* 1973). However, providers may still have been reluctant to provide abortions to minors without parental consent in the absence of statutory language explicitly permitting them to do so. As described in the state-by-state review, providers in Florida and Massachusetts appear to have begun changing their policies only after multiple court rulings were issued regarding those states' respective consent requirements.

## 4.3 Coding of enforcement of parental involvement laws for abortion, 1980-2019

By 1980 judicial precedent established that minors can consent to abortion services absent a valid restriction. In the ensuing years, states began to pass parental involvement laws to limit minors' confidential access to abortion. In Table 7, I reproduce the year in which I code enforced parental involvement laws in place and compare them to the codings in Levine (2003b) and New (2009), and the combined codings from Sabia and Rees (2013) and Sabia and Anderson (2016). As in Tables 5 and 6, I summarize the number of discrepancies.

The bottom row summarizes the number of discrepancies, counting only those

within the time periods that each set of authors intends to address. My coding and that in Levine (2003b) differs for 18 states. Some of these differences are minor and likely explained by the lag between the dates that new legislation is enacted and takes effect. For several other states (Connecticut, Maine, Maryland, Utah, and Wisconsin) the differences are in interpretation of the restrictiveness of laws. Researchers using a quasi-experimental approach that relies on the coding of laws in these states should explore the sensitivity of their results to each set of coding. For several other states (Arizona, Arkansas, Delaware, Missouri, Montana, Nebraska, Ohio, and Tennessee), the coding differs by more than a year and appears to be explained by error. For instance, Levine codes Ohio as enforcing a parental involvement law from 1985-present when in fact a court-issued injunction barred enforcement of the law until it was held to be constitutional by the U.S. Supreme Court in *Ohio v. Akron Center for Reproductive Health* (1990) .

Sabia and Rees (2013) and Sabia and Anderson (2016) together cover policy changes over 1987 to 2011. Comparing my policy coding for this period, we are generally in agreement save for one substantial difference: I code Florida as enforcing a parental involvement law from 2005 to present, while these sets of authors do not.

This substantial difference in policy coding in a large state bears some examination. In 2005, the Florida legislature enacted the Parental Notification of Abortion Act. In 2011, a new bill was introduced and passed that amended the provisions of this policy to require that notification provided via telephone be confirmed by mail, and that a written waiver of notice from a parent be notarized. Proponents of this amendment argued that it reduced fraud. In personal correspondence, Joseph Sabia

indicated to me that he had chosen to code the 2005 version of the law as not sufficiently binding. This is clearly a subjective choice, and one that empirical researchers should consider when coding parental involvement laws.

# 5 Conclusion

In this paper, I provide a broad overview of policies governing young women's legal and confidential access to prescription contraception and abortion over the past sixty years. An online state-by-state policy appendix provides detailed information on policy changes within each state supported by detailed citations. Based on this review, I provide a suggested coding of the legal environment facing young women seeking confidential access to contraceptive and abortion services. In many cases policy changes appear explicit and clear, though the translation of this to on-the-ground provision of reproductive services is less so. In other cases, the policy environment itself might be regarded as ambiguous. I provided a suggested coding of state legal changes based on the consistent applications of a clearly-defined set of criteria and attempt to reconcile the differences between this suggested policy coding and that of earlier authors. Where subjective choices must be made, I hope I have provided the interested reader with the tools, context and information to make her own judgments.

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**Table 1. Legal abortions in 24 states and the District of Columbia, 1971**

| | Abortions | Live Births | Abortions per 1,000 live births |
|---|---|---|---|
| **Repeal States** | | | |
| Alaska | 1,145 | 7,176 | 159.6 |
| California | 116,749 | 339,113 | 344.3 |
| District of Columbia[b] | 17,619 | 25,048 | 703.4 |
| Hawaii | 4,135 | 15,857 | 260.8 |
| New York | 257,055 | 285,218 | 901.3 |
| Upstate New York | 49,305 | 153,308 | 321.6 |
| New York City | 207,750 | 131,910 | 1,574.9 |
| Washington[a] | 5,519 | 26,009 | 212.2 |
| **Reform States** | | | |
| Arkansas | 637 | 35,120 | 18.1 |
| Colorado | 4,168 | 41,373 | 100.7 |
| Delaware | 1,129 | 9,904 | 114.0 |
| Georgia | 1,579 | 95,287 | 16.6 |
| Kansas | 9,472 | 34,184 | 277.1 |
| Maryland | 8,306 | 57,363 | 144.8 |
| New Mexico[b] | 4,883 | 22,293 | 219.0 |
| North Carolina | 4,322 | 95,972 | 45.0 |
| Oregon | 6,997 | 33,999 | 205.8 |
| South Carolina | 727 | 53,131 | 13.7 |
| Virginia[a] | 1,919 | 40,126 | 47.8 |
| **Other reporting states** | | | |
| Alabama[a,b] | 494 | 66386 | 7.4 |
| Arizona[a,b] | 380 | 19161 | 19.8 |
| Connecticut[b] | 724 | 44908 | 16.1 |
| Massachusetts[b] | 1570 | 90415 | 17.4 |
| Mississippi[a] | 48 | 22,705 | 2.1 |
| Pennsylvania[b] | 4,839 | 181,134 | 26.7 |
| Vermont | 9 | 7,817 | 1.2 |
| Wisconsin[b,c] | 4,661 | 71,697 | 65.0 |

Number of abortions as reported by state health departments to the Centers for Disease Control, 1972. Source: Jack Smith and Judith Bourne, "Abortion Surveillance Program of the Center for Disease Control," *Health Services Reports* 88(3): 259-258, 1973.

[a] January-June 1971.

[b] Number of abortions is based on reports from one or more hospitals or clinics.

[c] The status of Wisconsin's abortion prohibition statute was unclear in 1971, and an abortion clinic was operating in Madison for much of that year.

**Table 2. Year unmarried women gained legal and confidential access to prescription contraception, 1960-2017**

| | Year of legal change | | | Type of legal change | |
|---|---|---|---|---|---|
| **State** | **Ages 21+** | **Ages 18-20** | **Ages 15-17** | **Ages 18-20** | **Ages 15-17** |
| Alabama | 1960 | 1971 | 1971 | MCL | MCL |
| Alaska[a] | 1960 | 1960 | 1974 | AOM | MCL |
| Arizona | 1962 | 1972 | 1977 | AOM | AG |
| Arkansas | 1960 | 1960 | 1973 | AOM | MCL |
| California[b] | 1963 | 1972 | 1976 | AOM | MCL |
| Colorado | 1961 | 1971 | 1971 | MCL | MCL |
| Connecticut | 1965 | 1971 | | MCL | |
| Delaware | 1965 | 1971 | 1972 | MCL | MCL |
| District of Columbia | 1960 | 1971 | 1971 | MCL | MCL |
| Florida | 1960 | 1972 | 1972 | HH | HH |
| Georgia | 1960 | 1971 | 1972 | MCL | MCL |
| Hawaii[c] | 1960 | 1960 | | AOM | |
| Idaho | 1960 | 1960 | 1974 | AOM | LMM |
| Illinois | 1960 | 1960 | 1969 | AOM | HH |
| Indiana | 1963 | 1973 | | AOM | |
| Iowa[d] | 1960 | 1972 | 1999 | AOM | MCL |
| Kansas | 1963 | 1970 | 1970 | JMM | JMM |
| Kentucky | 1960 | 1965 | 1972 | AOM | MCL |
| Louisiana | 1960 | 1972 | | AOM | |
| Maine[e] | 1960 | 1969 | 1973 | AOM | HH |
| Maryland | 1960 | 1971 | 1971 | MCL | MCL |
| Massachusetts | 1972 | 1974 | 1977 | AOM | JMM |
| Michigan | 1960 | 1972 | | AOM | |
| Minnesota | 1960 | 1973 | 1976 | AOM | MCL+J |
| Mississippi[f] | 1965 | 1965 | 1965 | LMM | LMM |
| Missouri | 1965 | 1977 | | MCL | |
| Montana[g] | 1960 | 1960 | | AOM | |
| Nebraska[h] | 1965 | 1969 | | AOM | |
| Nevada | 1960 | 1960 | 1975 | AOM | LMM |

Continued…

**Table 2. Year unmarried women gained legal and confidential access to prescription contraception, 1960-2017**

| | Year of legal change | | | Type of legal change | |
|---|---|---|---|---|---|
| **State** | **Ages 21+** | **Ages 18-20** | **Ages 15-17** | **Ages 18-20** | **Ages 15-17** |
| New Hampshire | 1960 | 1971 | 1971 | LMM | LMM |
| New Jersey | 1963 | 1973 | | AOM | |
| New Mexico | 1960 | 1971 | 1973 | AOM | MCL |
| New York[i] | 1960 | 1971 | 1971 | MCL | J |
| North Carolina | 1960 | 1971 | 1977 | AOM | MCL |
| North Dakota | 1960 | 1960 | | AOM | |
| Ohio | 1965 | 1965 | 1965 | JMM | JMM |
| Oklahoma | 1960 | 1960 | | AOM | |
| Oregon | 1960 | 1971 | 1971 | MCL | MCL |
| Pennsylvania | 1960 | 1970 | | MCL | |
| Rhode Island | 1960 | 1972 | | AOM | |
| South Carolina[j] | 1960 | 1972 | 1972 | MCL | MCL |
| South Dakota | 1960 | 1960 | | AOM | |
| Tennessee | 1960 | 1971 | 1971 | AOM | MCL |
| Texas | 1960 | 1973 | | AOM | |
| Utah | 1960 | 1960 | | AOM | |
| Vermont | 1960 | 1971 | | AOM | |
| Virginia | 1960 | 1971 | 1971 | MCL | MCL |
| Washington | 1960 | 1970 | 1991 | MCL | MCL |
| West Virginia | 1960 | 1972 | | AOM | |
| Wisconsin[k] | 1974 | 1974 | | AOM | |
| Wyoming[l] | 1960 | 1973 | | AOM | |

Table 2 reports suggested coding for the earliest year young unmarried women gained "legal and confidential access" to the birth control pill. "Legal and confidential access" is defined as a policy environment in which all physicians and pharmacists could dispense the pill to women in the specified age range, and an affirmative policy environment permitted women in the specified age range to provide legal consent without involving a parent. "Legal" access is determined by FDA approval of the pill and 1960 and the enforcement of Comstock laws. For unmarried women under age 21, confidential access is determined by age-of-majority statutes (AOM), medical consent statutes (MCL), judicial or legislative recognition of a mature minor doctrine (JMM and LMM), medical consent law granting minors ability to consent if physician judges that failure to provide services would be hazardous to minor's health (HH), and Attorney General opinions (AG). Additional types of legal change affirming young women's access to abortion a are

parental involvement law stating a minimum age to consent for an abortion that is below the age of majority (PIL) and a judicial ruling enjoining enforcement of restrictive law (J). See the text and state-by-state policy appendix for additional details.

[a]In Alaska the age of majority was 19 in 1960. Women aged 18 gained access in 1974 with a medical consent law.

[b]California had a Comstock law in place that limited the distribution of prescription contraception. Based on accounts of the opening of family planning clinics, I have inferred that enforcement ceased in 1963.

[c]In Hawaii the age of majority was 20 when Enovid was introduced in 1960. Women aged 18-19 gained legal access in 1972 when the age of majority was lowered. A 1979 medical consent law permits minors aged 14 and older to consent to contraceptive services. Physicians may notify a minor's parent, but are not required to do so.

[d]The Iowa legislature lowered the age of majority from 21 to 19 in 1972 and from 19 to 18 in 1973.

[e]The Maine legislature lowered the age of majority from 21 to 20 in 1969 and from 20 to 18 in 1972.

[f]The Mississippi legislature codified a judicial precedent for a mature minor doctrine for minors seeking medical care in 1966. In 1972 the legislature passed a medical consent law permitting physicians to provide contraception to a minor who was married, a parent, had parental consent, or had been referred by certain persons. The medical consent law did not include a mature minor provision.

[g]The age of majority was 18 for females and 21 for males in Montana in 1960. In 1971 the legislature set the age of majority at 19 for both males and females; in 1973 the legislature lowered the age of majority to 18 for males and females. Montana enacted a medical consent law in 1969 that permits physicians to furnish contraception to minors, but the law permits physicians to notify the minor's parents.

[h]The Nebraska legislature lowered the age of majority from 21 to 20 in 1969 and from 20 to 19 in 1972.

[i]The New York legislature passed a law in 1971 prohibiting the sale of contraception to people under the age of 16. Enforcement was enjoined in 1975.

[j]South Carolina's medical consent law explicitly permitted minors aged 16 and older to consent to non-surgical medical services. A 1976 attorney general opinion stated that the law could be construed to permit physicians to provide contraceptive services to minors under age 16 as well.

[k]Wisconsin continued to enforce a Comstock law prohibiting the sale of contraceptives to unmarried people until it was enjoined by court order in 1974.

[l]The Wyoming legislature lowered the age of majority from 21 to 19 in 1973; it did not lower it to 18 until 1993.

**Table 3. Year women gained confidential and legal access to abortion, 1969-1979**

| | Year of legal change | | | Type of legal change granting initial access | |
|---|---|---|---|---|---|
| **State** | **Ages 21+** | **Ages 18-20** | **Ages 15-17** | **Ages 18-20** | **Ages 15-17** |
| Alabama | 1973 | 1973 | 1973 | MCL | MCL |
| Alaska | 1970 | 1970 | 1977 | PIL | AG+MCL |
| Arizona | 1973 | 1973 | | AOM | |
| Arkansas | 1973 | 1973 | 1976 | AOM | J |
| California | 1969 | 1971 | 1971 | J | J |
| Colorado | 1973 | 1973 | 1975 | MCL, PIL | J |
| Connecticut | 1973 | 1973 | | AOM | |
| Delaware | 1973 | 1973 | 1977 | AOM | MCL+AG |
| District of Columbia | 1971 | 1973 | 1973 | J | J |
| Florida | 1973 | 1973 | 1975 | PIL, AOM | J |
| Georgia | 1973 | 1973 | | AOM | |
| Hawaii | 1970 | 1970 | | MCL | |
| Idaho | 1973 | 1973 | | AOM | |
| Illinois | 1973 | 1973 | 1973 | AOM | MCL |
| Indiana | 1973 | 1973 | 1975 | AOM | J |
| Iowa | 1973 | 1973 | 1976 | AOM | AG |
| Kansas | 1973 | 1973 | 1973 | AOM | JMM+AG |
| Kentucky | 1973 | 1973 | 1974 | AOM | J |
| Louisiana[a] | 1973 | 1973 | 1976 | AOM | J |
| Maine | 1973 | 1973 | 1979 | AOM | J |
| Maryland[b] | 1973 | 1973 | 1973 | MCL | J+MCL |
| Massachusetts | 1973 | 1974 | 1976 | AOM | J |
| Michigan | 1973 | 1973 | 1977 | AOM | J |
| Minnesota | 1973 | 1973 | 1973 | MCL | MCL |
| Mississippi | 1973 | 1973 | 1973 | MCL | MCL |
| Missouri | 1973 | 1974 | 1975 | PIL | J |
| Montana[c] | 1973 | 1973 | 1973 | AOM | MCL |
| Nebraska[d] | 1973 | 1973 | 1975 | AOM | J |
| Nevada | 1973 | 1973 | 1976 | AOM | AG |

Continued….

**Table 3. Year women gained confidential and legal access to abortion, 1969-1979**

| | Year of legal change | | | Type of legal change granting initial access | |
|---|---|---|---|---|---|
| **State** | **Ages 21+** | **Ages 18-20** | **Ages 15-17** | **Ages 18-20** | **Ages 15-17** |
| New Hampshire | 1973 | 1973 | 1973 | AOM | LMM |
| New Jersey | 1973 | 1973 | 1973 | MCL | MCL |
| North Carolina[f] | 1973 | 1973 | 1975 | AOM | AG |
| North Dakota | 1974 | 1974 | 1979 | AOM | J |
| Ohio[g] | 1973 | 1973 | 1973 | JMM | JMM |
| Oklahoma | 1973 | 1973 | | AOM | |
| Oregon | 1973 | 1973 | 1973 | AOM | J |
| Pennsylvania | 1973 | 1973 | 1973 | MCL | MCL+J |
| Rhode Island | 1973 | 1973 | | AOM | |
| South Carolina[h] | 1973 | 1974 | 1974 | PIL | PIL |
| South Dakota | 1973 | 1973 | | AOM | |
| Tennessee | 1973 | 1973 | 1979 | AOM | AG+J |
| Texas | 1973 | 1973 | | AOM | |
| Utah | 1973 | 1973 | | AOM | |
| Vermont | 1973 | 1973 | | AOM | |
| Virginia | 1973 | 1973 | | AOM | |
| Washington | 1970 | 1970 | 1975 | MCL+PIL | J |
| West Virginia | 1973 | 1973 | | AOM | |
| Wisconsin | 1973 | 1973 | | AOM | |
| Wyoming | 1973 | 1973[i] | | AOM | |

Table 3 reports suggested coding for the earliest year young unmarried women gained "legal and confidential access" to abortion. Women aged 21+ are coded as gaining legal access to abortion upon the earlier of the repeal or invalidation of a state prohibition or the U.S. Supreme Court's 1973 decision in Roe v. Wade. Women under age 21 are coded as gaining "confidential access" when a policy change recognizes a right to consent to abortion services without involving a parent. The authors exercises caution in interpreting the policy environment between 1976 and 1979 due to a series of important opinions issued by the Supreme Court. Legal changes conferring "confidential access" include age-of-majority statutes (AOM), medical consent statute granting all minors capacity to consent (MCL), judicial or legislative recognition of a mature minor doctrine (JMM and LMM), Attorney General opinions (AG), parental involvement law stating a minimum age to consent for an abortion that is below the age of majority (PIL) and a judicial ruling enjoining enforcement of restrictive law (J).

[a]A parental involvement law was later enforced in Louisiana from 1978 to 1980.

[b]The Maryland legislature enacted a parental involvement law in 1977 that appears to have been enforced through 1985.

[c]Montana enforced a parental involvement law for abortion from 1974 to 1976.

[d]Nebraska enforced parental involvement laws from 1973 to 1975 and 1977 to 1978.

[e]New York City hospitals performed abortions on minors aged 17 and older without parental consent.

[f]North Carolina enacted a parental consent law in 1977 that lacked a judicial bypass option and was presumably unenforceable.

[g]Ohio enforced a parental consent statute for women under 18 from 1974 to 1976.

[h]South Carolina enacted a parental consent law for minors under age 16 in 1974. This law was struck down in 1977.

[i]The Wyoming legislature lowered the age of majority from 21 to 19 in 1973; it did not lower it to 18 until 1993.

**Table 4. Enforced state parental involvement laws, 1980-2019**

| State | Years | State | Years |
|---|---|---|---|
| Alabama | 1987-present | Montana[e] | |
| Alaska | 2010-present | Nebraska | 1981-1983; 1991-present |
| Arizona | 1982-1987; 2003-present | Nevada | |
| Arkansas | 1989-present | New Hampshire | 2012-present |
| California | | New Jersey | |
| Colorado | 2003-present | New Mexico | |
| Connecticut[a] | | New York | |
| Delaware[b] | | North Carolina | 1995-present |
| District of Columbia | | North Dakota | 1981-present |
| Florida | 2005-present | Ohio | 1990-present |
| Georgia | 1991-present | Oklahoma | 2001-2002; 2004-present |
| Hawaii | | Oregon | |
| Idaho | 2000-2004; 2007- present | Pennsylvania | 1994-present |
| Illinois | 2013-present | Rhode Island | 1982-present |
| Indiana | 1982-present | South Carolina[f] | 1990-present |
| Iowa | 1997-present | South Dakota | 1997-present |
| Kansas | 1992-present | Tennessee | 1992-1996; 2000-present |
| Kentucky | 1989; 1994-present | Texas | 2000-present |
| Louisiana | 1981-present | Utah | 1980-present |
| Maine[c] | | Vermont | |
| Maryland[d] | | Virginia | 1997-present |
| Massachusetts | 1981-present | Washington | |
| Michigan | 1991-present | West Virginia[g] | 1984-present |
| Minnesota | 1981-1986; 1990-present | Wisconsin[h] | 1992-present |
| Mississippi | 1993-present | Wyoming | 1989-present |
| Missouri | 1985-present | | |

[a] A Connecticut law enforced from 1990 to present requires that minors receive counseling prior to an abortion to encourage them to discuss the decision with a parent, but does not require parental involvement.

[b] A Delaware law enforced from 1995 to present requires parental notification for minors under age 16. Minors can also consult a licensed mental health care professional in lieu of a parent.

[c] A Maine law enforced from 1989 to present requires parental consent unless the providing physician judges that the recipient meets a mature minor standard.

[d] A Maryland law enforced from 1992 to present requires parental notification unless the providing physician judges that thee recipient meets a mature minor standard or that notification is not in the minor's best interest.

[e] Montana enforced a parental notification law for minors under age 16 from 1/2013 through 2/2014.

[f] South Carolina law applied to women under 17.

[g] West Virginia law has a physician bypass option whereby an independent physician can determine that a minor is mature enough to consent or that an abortion would be in her best interest.

[h] Wisconsin's 1985 law required providers to "strongly encourage" minor to consult a parent unless "the minor has a valid reason for not doing so." In 1992 the state passed a law requiring notification of a parent or other adult family member.

**Table 5. Comparison of coding of laws granting teenagers confidential access to the pill**

| | Year that a legal change first granted confidential access to the pill to nineteen year olds | | | | | | |
|---|---|---|---|---|---|---|---|
| State | This paper | Goldin and Katz (2002) | Bailey (2006) | Guldi (2008) | Hock (2008) | Bailey et al. (2011) | Notes on discrepancies |
| Alabama | 1971 | 1971 | 1971 | 1971 | 1971 | 1971 | |
| Alaska | 1960 | 1965 | 1960 | <1967 | 1960 | 1960 | The age of majority was 19 in 1960. I have not found evidence of a relevant change in the legal environment in 1965. |
| Arizona | 1972 | 1972 | 1972 | 1972 | 1972 | 1972 | |
| Arkansas | 1960 | 1961 | 1960 | <1967 | 1960 | 1973 | The Arkansas legislature established the age of majority as 18 for females and 21 for males in 1873. I interpret this statute as permitting women aged 18 and older to consent to the pill when it was introduced in 1960. Goldin and Katz, Bailey, Guldi, and Hock appear to do the same. Bailey et al. (2011) state that the lower age of majority for women likely applied to marriage only, and code access beginning in 1973 when the state adopted a new medical consent law. They do not cite supporting evidence for the assertion that when the age of majority was set at different ages for men and women, this was for purposes of marriage only. The statutory language and judicial record suggest that this is not correct. The 1873 statute states that the age of majority applies to "all purposes," and in a 1910 ruling the Arkansas Supreme Court concluded that the statute "is broad enough to completely emancipate females at the age of 18 years," and subsequent judicial rulings applied the differential age of majority of a variety of rights. |
| California | 1972 | 1968 | 1972 | 1972 | 1972 | 1972 | The age of majority was lowered from 21 to 18 in 1972. Goldin and Katz code access beginning in 1968. They appear to have coded access beginning with a 1968 law that permitted minors living apart from their parents to consent to medical care. Because this law related to emancipated minors only, it does not seem broadly applicable. In support of this conclusion, the California Supreme Court held in *Ballard v. Anderson* (1971) that the state legal code did not permit minors to consent to contraception. |

**Table 5. Comparison of coding of laws granting teenagers confidential access to the pill**

| | Year that a legal change first granted confidential access to the pill to nineteen year olds | | | | | | |
|---|---|---|---|---|---|---|---|
| State | This paper | Goldin and Katz (2002) | Bailey (2006) | Guldi (2008) | Hock (2008) | Bailey et al. (2011) | Notes on discrepancies |
| Colorado | 1971 | 1971 | 1971 | 1971 | 1971 | 1971 | |
| Connecticut | 1971 | 1971 | 1971* | 1972 | 1971 | 1971 | An October 1971 medical consent law permitted individuals age 18+ to consent to medical care. The age of majority was lowered in 1972. |
| Delaware | 1971 | 1972 | 1971* | 1972 | 1972 | 1971 | Delaware passed a medical consent law in 1971 permitting persons aged 18 and older to consent to medical care. The age of majority was lowered to 18 in 1972. |
| District of Columbia | 1971 | 1971 | 1971 | 1971 | 1974 | 1971 | A 1971 law required the city's public clinics to provide contraception to minors and permitted (but did not require) all other providers to do the same. A 1974 medical consent law permitted minors of any age to consent to contraceptive services, effectively requiring all providers to provide confidential services to minors rather than permitting it at the provider's discretion. |
| Florida | 1972 | 1972 | 1973* | 1973 | 1972 | 1973 | A 1972 medical consent law granted minors capacity to consent to contraception if, in the opinion of the physician, failure to furnish contraception would likely be hazardous to the minor's health. The age of majority was lowered in July 1973. It is unclear whether the medical consent law, which continues to govern legal access to contraception in Florida, should be interpreted as permitting young women confidential access. I code it as doing so because it appears to permit the physician sufficient latitude to choose to prescribe contraceptives to a minor. |
| Georgia | 1971 | 1968 | 1968 | 1968 | 1971 | 1968 | A 1968 law required state-funded clinics to provide contraceptive services to minors. A 1971 medical consent law permitted women age 18 and older to consent to any medical care and women under age 18 to consent to care in connection with pregnancy and childbirth. I interpret the 1971 as granting broad access because it permitted young women to receive confidential services from any provider whereas the earlier law applied only to minors receiving services from public clinics. |

**Table 5. Comparison of coding of laws granting teenagers confidential access to the pill**

| | Year that a legal change first granted confidential access to the pill to nineteen year olds | | | | | | |
|---|---|---|---|---|---|---|---|
| State | This paper | Goldin and Katz (2002) | Bailey (2006) | Guldi (2008) | Hock (2008) | Bailey et al. (2011) | Notes on discrepancies |
| Hawaii | 1972 | 1975 | 1970 | 1970 | 1975 | 1972 | I code access beginning in 1972 when the age of majority was lowered from 20 to 18. Hock also codes access beginning when the age of majority was lowered, but differs on the year. In a coding appendix, Hock indicates that the date was not clear in the legal statutes, but that a Hawaii state archivist indicated to him that it occurred in 1975. However, a court case and published overview of age-of-majority legislation, both from 1973, indicate that the age of majority was lowered in 1972. It seems unlikely that a 1973 court case could erroneously claim that the age was lowered in 1972 rather than 1975, so I use the 1972 date. Bailey codes access beginning in 1970 with a mature minor doctrine. I have not found evidence of a mature minor doctrine in primary or other secondary sources, and Bailey et al. revise the date to 1972. Goldin and Katz code access beginning in 1975 and being granted to 18 and 19 year-olds, but do not indicate the source of the legal change. |
| Idaho | 1960 | 1963 | 1963 | <1967 | 1960 | 1972 | The age of majority was 18 for females and 21 for males in 1960. Goldin and Katz and Bailey codes access beginning in 1963 with what they indicate was a change in the age of majority, but this appears to be erroneous as there was no change in the relevant statute in that year. Bailey et al. revise the year to 1972, when the age of majority was equalized for men and women. They state that the previously lower age of majority for women likely applied to marriage only, but do not cite supporting evidence. I note that the language of the statute is broad and appears to apply to all rights of adulthood, and that the differential ages of majority were applied by Idaho courts to circumstances beyond marriage and including child support payments, wrongful death suits, and contracting. |

**Table 5. Comparison of coding of laws granting teenagers confidential access to the pill**

| | Year that a legal change first granted confidential access to the pill to nineteen year olds | | | | | | |
|---|---|---|---|---|---|---|---|
| State | This paper | Goldin and Katz (2002) | Bailey (2006) | Guldi (2008) | Hock (2008) | Bailey et al. (2011) | Notes on discrepancies |
| Illinois | 1961 | 1971 | 1969** | 1969 | 1961 | 1969 | The age of majority was 18 for females and 21 for males in 1960. A Comstock law was repealed in 1961. A medical consent law passed in 1961 permitted pregnant minors to consent to medical care; this law was amended in 1969 to permit all persons age 18 and over to consent to medical care. Bailey, Guldi, and Bailey et al. interpret the 1969 law as granting 18 year-old women access. Myers and Hock do not because the age of majority statute had previously established the age of majority for women at 18 "for all purposes" and Illinois courts and the state attorney general accordingly had applied this statute to a variety of purposes. |
| Indiana | 1973 | 1973 | 1973 | 1973 | 1973 | 1973 | |
| Iowa | 1972 | 1974 | 1972* | 1972 | 1972 | 1972 | Iowa lowered the age of majority to 19 effective July 1, 1972. Goldin and Katz code confidential access to contraception for as beginning in 1974 for teens aged 14 to 20. This does not take into account the lowering of the age of majority in 1972, which granted access to 19 and 20 year-olds. Goldin and Katz likely are referring to an amendment of statute 234.21 to permit the State Department of Social Services to provide family planning and birth control services to "every person who is an eligible applicant." Because this law only applied to women receiving public assistance, I have not coded it as granting broad access. DHEW (1978) also notes that it was not clear whether the statute dispensed with the requirement of parental consent. |
| Kansas | 1970 | 1973 | 1970 | 1970 | 1970 | 1970 | Kansas recognized a mature minor doctrine in 1970 and lowered the age of majority in 1972. I have not found evidence of a relevant change in the legal environment in 1973. |

**Table 5. Comparison of coding of laws granting teenagers confidential access to the pill**

| | Year that a legal change first granted confidential access to the pill to nineteen year olds | | | | | | |
|---|---|---|---|---|---|---|---|
| State | This paper | Goldin and Katz (2002) | Bailey (2006) | Guldi (2008) | Hock (2008) | Bailey et al. (2011) | Notes on discrepancies |
| Kentucky | 1965 | 1968 | 1968 | 1968 | 1965 | 1965/ 1968 | Kentucky lowered the age of majority in 1965, but whether this applied to contraception was unclear until 1968 when the law was amended to clarify that the age of majority was 18 for all purposes except for the purchase of alcoholic beverages. |
| Louisiana | 1972 | 1974 | 1972 | 1972 | 1972 | 1972 | Louisiana lowered the age of majority in 1972 and enacted a medical consent law for all minors in 1975. I have not found evidence of a relevant change in the legal environment in 1974. |
| Maine | 1972 | 1972 | 1971 | 1972 | 1972 | 1972 | Maine lowered the age of majority from 20 to 19 in 1972. Bailey indicates that the age of majority was lowered in 1971. I have confirmed the 1972 date in the judicial record. |
| Maryland | 1971 | 1971 | 1967 | 1967 | 1971 | 1971 | Maryland passed a medical consent law in 1971 that permitted minors to consent to contraception. A 1967 law permitted pregnant minors to consent to pregnancy-related care. |
| Massachusetts | 1974 | 1974 | 1974 | 1974 | 1974 | 1974 | |
| Michigan | 1972 | 1971 | 1972 | 1972 | 1972 | 1972 | Michigan lowered the age of majority in 1971, but the law was not effective until January 1, 1972. |
| Minnesota | 1973 | 1971 | 1973 | 1973 | 1973 | 1972/ 1976 | Minnesota lowered the age of majority from 21 to 18 in 1973. I have not found evidence of a relevant change in the legal environment in 1971. Minnesota passed a medical consent law related to minor's ability to consent to pregnancy-related medical care in 1972, but its applicability to contraception remained in doubt until a 1976 court decision. |

**Table 5. Comparison of coding of laws granting teenagers confidential access to the pill**

| State | Year that a legal change first granted confidential access to the pill to nineteen year olds: This paper | Goldin and Katz (2002) | Bailey (2006) | Guldi (2008) | Hock (2008) | Bailey et al. (2011) | Notes on discrepancies |
|---|---|---|---|---|---|---|---|
| Mississippi | 1965 | 1969 | 1966 | <1967 | 1970 | 1966 | Mississippi's Comstock law was invalidated by the U.S. Supreme Court's 1965 ruling in *Griswold v. Connecticut*. Prior to that date, the state had recognized a judicial mature minor doctrine. The mature minor doctrine was codified by the legislature in 1966. The state legislature formally repealed the Comstock law in 1970. I code access beginning with the invalidation of the Comstock law under the then-existing judicial mature minor doctrine. Bailey and Bailey et al. code it as beginning with the legislative codification of the mature minor doctrine the following year. Goldin and Katz code it as beginning in 1969; though they do not indicate what legal change occurred in that year, they may base it on Pilpel and Wechsler (1969) which noted the existence of the mature minor doctrine in that year. Hock assumes that the Comstock law remained binding until its repeal in 1970, and that minors then gained access under the mature minor doctrine. |
| Missouri | 1977 | >1974 | 1976 | 1973 | 1977 | 1973/ 1977 | The state Attorney General issued an opinion in 1973 indicating that no law prohibited physicians from prescribing contraception to minors. The effect of the issuance of this opinion is unclear. Missouri enacted a medical consent law in 1977 that permitted women aged 18 and older to consent to medical care. |
| Montana | 1960 | 1971 | 1971 | 1971 | 1960 | 1971 | In Montana in 1960, the age of majority was 18 for females and 21 for males. In 1971 the state lowered the age of majority for men to 19, but this law actually had the effect of raising the age of majority by a year for women. Goldin and Katz, Bailey, Guldi, and Bailey et al. code access beginning in 1971. |
| Nebraska | 1972 | 1972 | 1972 | 1972 | 1972 | 1972 | |

**Table 5. Comparison of coding of laws granting teenagers confidential access to the pill**

| State | Year that a legal change first granted confidential access to the pill to nineteen year olds: This paper | Goldin and Katz (2002) | Bailey (2006) | Guldi (2008) | Hock (2008) | Bailey et al. (2011) | Notes on discrepancies |
|---|---|---|---|---|---|---|---|
| Nevada | 1963 | 1961 | 1969 | 1969 | 1960 | 1973 | In Nevada in 1960, the age of majority was 18 for females and 21 for males. In that year the state also had a Comstock law on the books that including an exemption permitting physicians to distribute contraception "in the legitimate practice of their profession." Hock codes access beginning in 1960, but I adopt a more conservative view of the Comstock law and code access beginning in 1963 when it was repealed. Goldin and Katz indicate that women aged 18-20 could first consent in 1961, but do not describe the relevant legal change. Bailey indicates that access was granted by a 1969 family planning law of which I have not found evidence. Bailey et al. do not treat the lower age of majority for women as governing access to contraception and instead code access beginning in 1973 when the age of majority was equalized for men and women. It seems unlikely to me that the earlier age of majority statute would not grant access to contraception. The original statute stated that that it applied to "all intents and purposes" and had been applied by Nevada courts to child support payments, the age at which women could administer oaths in court, and the tolling of disability. The Nevada legislature also set the drinking age at 21 in a separate statute, presumably because otherwise the drinking age for females would be 18. |
| New Hampshire | 1971 | 1971 | 1971 | 1971 | 1971 | 1971 | |
| New Jersey | 1973 | 1973 | 1973 | 1973 | 1973 | 1973 | |
| New Mexico | 1971 | 1971 | 1971 | 1971 | 1971 | 1971 | |
| New York | 1971 | 1971 | 1971 | 1971 | 1972 | 1971 | New York enacted a law in 1971 that made it illegal to distribute contraceptives to minors under age 16. This law appears to have implicitly permitted older minors to consent. Hock codes ELA as |

**Table 5. Comparison of coding of laws granting teenagers confidential access to the pill**

| State | Year that a legal change first granted confidential access to the pill to nineteen year olds: This paper | Goldin and Katz (2002) | Bailey (2006) | Guldi (2008) | Hock (2008) | Bailey et al. (2011) | Notes on discrepancies |
|---|---|---|---|---|---|---|---|
| | | | | | | | beginning in 1972 with the passage of a medical consent law that reduced the age of consent for all medical services to 18. |
| North Carolina | 1971 | 1971 | 1971 | 1971 | 1971 | 1971 | |
| North Dakota | 1960 | 1971 | 1971* | 1971 | 1960 | 1971 | In North Dakota in 1960, the age of majority was 18 for females and 21 for males. The age of majority was lowered for men in 1971. Goldin and Katz, Bailey, Guldi, and Bailey et al. code access beginning in 1971 when the age of majority was equalized for men and women. Bailey et al. state that the previously lower age of majority for women was of doubtful applicability to contraception, but do not cite supporting evidence. Counter to this assertion, the state's courts had applied the differential age of majority to purposes including custody agreements and the legal age of consumption for alcohol, suggesting that the statute applied to all purposes unless otherwise prohibited in the code. |
| Ohio | 1965 | 1974 | 1965 | <1967 | 1974 | 1960/ 1965 | Ohio's Comstock law was invalidated by *Griswold* in 1965. Prior to that date, the state had recognized a judicial mature minor doctrine. Myers and Bailey code access beginning in 1965 under this doctrine. Goldin and Katz code access beginning in 1974 for minors aged 14-19. Though they do not indicate the source of the legal change, this may be based on Paul, Pilpel, and Wechsler (1974), which notes the mature minor doctrine, while Pilpel and Wechsler (1971) (erroneously) did not. Hock codes access beginning in 1974 because the age of majority was lowered in that year. It is not fully clear whether the mature minor doctrine granted minors confidential access. I note that an article in the 1974 *Ohio State Medical Journal* recommended caution in applying it to minors under age 18. |

**Table 5. Comparison of coding of laws granting teenagers confidential access to the pill**

| | Year that a legal change first granted confidential access to the pill to nineteen year olds | | | | | | |
|---|---|---|---|---|---|---|---|
| State | This paper | Goldin and Katz (2002) | Bailey (2006) | Guldi (2008) | Hock (2008) | Bailey et al. (2011) | Notes on discrepancies |
| Oklahoma | 1960 | 1966 | 1966 | <1967 | 1960 | 1972 | In Oklahoma in 1960, the age of majority was 18 for females and 21 for males. The age of majority was equalized in 1972. Bailey et al. state that the previously lower age of majority for women was of doubtful applicability to contraception, but do not cite supporting evidence. |
| Oregon | 1971 | 1971 | 1971 | 1971 | 1971 | 1971 | |
| Pennsylvania | 1970 | 1970 | 1971 | 1971 | 1970 | 1970 | A 1970 medical consent law gave minors age 18 and over capacity to consent to medical care. Bailey codes it as beginning with a 1971 mature minor doctrine. I have not been able to find evidence of a mature minor doctrine from 1971, but in a 1972 court case described in DHEW (1978), the court stated that it would be "anomalous to ignore the child in this situation when the preference of an intelligent child of sufficient maturity in determining custody has been considered." |
| Rhode Island | 1972 | 1974 | 1972 | 1972 | 1972 | 1972 | Rhode Island lowered the age of majority in 1972. I have not found evidence of a relevant change in the legal environment in 1974. |
| South Carolina | 1972 | 1972 | 1972 | 1972 | 1972 | 1972 | |
| South Dakota | 1960 | 1972 | 1972 | 1972 | 1972 | 1972 | In South Dakota in 1960, the age of majority was 18 for females and 21 for males. South Dakota lowered the age of majority for males to 18 in 1972. Other authors code access beginning in 1972, when the age of majority was equalized. Note that Myers (2017) also erroneously used the 1972 date. |
| Tennessee | 1971 | 1971 | 1971 | 1971 | 1971 | 1971 | |
| Texas | 1973 | 1974 | 1973* | 1973 | 1973 | 1973 | Texas lowered the age of majority effective 1973. I have found no evidence of a relevant change in the legal environment in 1974. |

**Table 5. Comparison of coding of laws granting teenagers confidential access to the pill**

| | Year that a legal change first granted confidential access to the pill to nineteen year olds | | | | | | |
|---|---|---|---|---|---|---|---|
| State | This paper | Goldin and Katz (2002) | Bailey (2006) | Guldi (2008) | Hock (2008) | Bailey et al. (2011) | Notes on discrepancies |
| Utah | 1960 | 1961 | 1962 | <1967 | 1960 | 1975 | In Utah in 1960, the age of majority was 18 for females and 21 for males. Goldin and Katz code access beginning in 1961, but I have not found evidence of a legal change in that year. Bailey codes access beginning with a 1962 family planning law. Bailey et al. code access beginning in 1975 when the age of majority was equalized for men and women. They state that the previously lower age of majority for women was of doubtful applicability to contraception, but do not cite supporting evidence. |
| Vermont | 1971 | 1971 | 1972 | 1971 | 1971 | 1971 | Vermont lowered the age of majority in 1971. Bailey indicates that the age of majority was lowered in 1972 rather than 1971. I have confirmed the 1971 date in the notes of the statute and other secondary sources. A 1972 amendment clarified that in documents executed prior to the 1971 effective date "adult" should still be interpreted as 21. |
| Virginia | 1971 | 1972 | 1971 | 1971 | 1971 | 1971 | A medical consent law became effective in 1971. The age of majority was lowered in 1972. |
| Washington | 1970 | 1971 | 1971 | 1971 | 1971 | 1968/ 1970 | The legislature enacted in a law in 1970 stating that all persons were taken to be of full age and majority at age 18 for the purposes of consenting to medical care. The legislature lowered the age of majority for all purposes in 1971. The state health department adopted rules in 1968 permitting the provision of family planning services to minors, but it is unclear whether this applied to all categories of providers. |
| West Virginia | 1972 | 1972 | 1972 | 1972 | 1972 | 1972 | |
| Wisconsin | 1974 | 1971 | 1973 | 1972 | 1974 | 1972 | Wisconsin lowered the age of majority effective in 1972. However, the state continued to enforce a Comstock law prohibiting the sale of contraception to unmarried persons until the law was challenged and struck down in 1974. I have not found evidence of a relevant change in the legal environment in 1971 or 1973. |

**Table 5. Comparison of coding of laws granting teenagers confidential access to the pill**

| | Year that a legal change first granted confidential access to the pill to nineteen year olds | | | | | | |
|---|---|---|---|---|---|---|---|
| **State** | **This paper** | **Goldin and Katz (2002)** | **Bailey (2006)** | **Guldi (2008)** | **Hock (2008)** | **Bailey et al. (2011)** | **Notes on discrepancies** |
| Wyoming | 1973 | 1972 | 1969 | 1969 | 1973 | 1969 | A 1969 law authorized the state department of health to provide contraception to minors. Because this law did not permit all providers to do so, Hock and Myers adopt do not code it as granting broad confidential access. The age of majority was lowered in 1973. I have not found evidence of a relevant legal change in 1972. |
| **No. of Discrepancies** | **0** | **27** | **20** | **16** | **8** | **14** | |
| **Average Discrepancy** | **0** | **3.6** | **3.6** | **3.9** | **3.3** | **7.4** | |
| **Median Discrepancy** | **0** | **3** | **2.5** | **3** | **3** | **9** | |

*As described in Bailey et al. (2011), Bailey (2006) treated laws passed in the second half a calendar year as effective the following year. To facilitate comparison of Bailey (2006) with the other sources, all of which report the actual calendar year of the relevant legal change, I have subtracted a year from Bailey's original coding.

**Bailey et al. (2011) indicate that the 1971 coding for Illinois reported in Bailey (2006) was a typo and that the year used was 1969.

**Table 6. Comparison of coding of laws granting teenagers confidential access to abortion**

| State | Year that a legal change first granted confidential access to abortion to seventeen year olds, 1970-1975 | | | Notes on discrepancies |
|---|---|---|---|---|
| | This paper | Guldi (2008) | Hock (2007) | |
| Alabama | 1973 | 1973 | 1973 | |
| Alaska | | 1975 | | Alaska enacted a medical consent law in August 1974 permitting minors to consent to the "diagnosis, prevention or treatment of pregnancy." However, this statute contained a qualifying clause indicating that the state's 1970 abortion statutes controlled for abortion services. Those statutes included a parental consent requirement. |
| Arizona | | | | |
| Arkansas | | | | |
| California | 1971 | 1971 | 1970 | California enacted a law in 1953 that permitted minors to consent to medical care. When abortion became *de facto* legal in late 1969, the applicability of the medical consent law was ambiguous. In late 1970 the Court of Appeals ruled that minors could not consent under California law. The California Supreme Court reversed in 1971, explicitly affirming the right of minors to consent to abortion. |
| Colorado | 1975 | 1975 | | Colorado required parental consent for abortion until the law was challenged and enforcement was enjoined in 1975. Hock is more conservative in coding minors as still not having access because there was no law that specifically permitted them to consent to abortion. |
| Connecticut | | 1974 | | I have not found evidence of a relevant legal change in 1974. |
| Delaware | 1977 | 1973* | 1973 | Hock indicates that a medical consent law granted access to abortion from 1973-1974, but Delaware also had a parental consent requirement on the books and a 1973 Attorney General Opinion indicated that the requirement was still enforceable following *Roe*. A court ruled in 1974 that the medical consent law superseded the parental consent law, and the legislature responded by amending the medical consent law to exclude abortion from the listed services to which a minor could consent. |
| District of Columbia | 1973 | 1974 | 1973 | In 1973 a D.C. family court held that parental consent was not necessary for minors' abortions. A 1974 medical consent law explicitly included abortion as a service to which minors could consent. |

**Table 6. Comparison of coding of laws granting teenagers confidential access to abortion**

| State | Year that a legal change first granted confidential access to abortion to seventeen year olds, 1970-1975 | | | Notes on discrepancies |
|---|---|---|---|---|
| | This paper | Guldi (2008) | Hock (2007) | |
| Florida | 1975 | 1973 | | Florida required parental consent for abortion until the law was challenged and enforcement was enjoined in 1973. An appeals court upheld the ruling in 1975, and the state attorney general indicated in 1976 that the law appeared to be invalid under *Danforth*. Press accounts suggest that the legal environment was in doubt during much of this period, and that some providers required consent while others did not. I choose to code the date of legal change as 1975 based on press reports stating that some hospitals began providing abortions to minors without parental consent following the appeals court ruling that year. |
| Georgia | | | | |
| Hawaii | | 1970 | 1970 | Abortion was legalized in Hawaii in 1970. In that year, a medical consent law permitted pregnant minors aged 14 and older to consent to medical care, but physicians were required to notify the parents of any minor under age 18 of the pregnancy. Although this law appears to have permitted minors aged 14 and older to consent to abortion, I do not code it as "confidential access" because of the notification requirement. |
| Idaho | | 1974 | | In 1974 the Idaho legislature amended an existing law regarding the sale of contraception to add an endorsement of a mature minor doctrine for the provision of contraception. This amendment referred to contraceptive services only; I have found no evidence of any other legal change in that year related to abortion. |
| Illinois | 1973 | 1973 | 1973 | |
| Indiana | 1975 | 1975 | | Indiana required parental consent for abortion until the law was challenged and enforcement was enjoined in 1975. Hock is more conservative in coding minors as still not having access because there was no law that specifically permitted them to consent to abortion. |
| Iowa | | | | |
| Kansas | 1973 | 1973* | 1973 | |
| Kentucky | 1974 | 1975 | | Kentucky required parental consent for abortion until the law was challenged and enforcement was enjoined in November 1974. I have not found evidence of a relevant legal change occurring in 1975. Hock is more conservative than am I in coding minors as still not having access because there was no law that specifically permitted them to |

**Table 6. Comparison of coding of laws granting teenagers confidential access to abortion**

| State | Year that a legal change first granted confidential access to abortion to seventeen year olds, 1970-1975 | | | Notes on discrepancies |
|---|---|---|---|---|
| | This paper | Guldi (2008) | Hock (2007) | |
| | | | | consent to abortion. |
| Louisiana | | | | |
| Maine | | | | |
| Maryland | 1973 | 1973* | 1973 | |
| Massachusetts | | | | |
| Michigan | | 1974 | | Michigan enacted a parental consent law in 1974. This law was challenged, and in 1976 a court declined to issue a restraining order barring its enforcement, observing that the state had not yet enforced the law. The law was struck down in 1977. |
| Minnesota | 1973 | 1973 | 1973 | |
| Mississippi | 1973 | 1973 | 1973 | |
| Missouri | 1975 | 1975 | | Missouri required parental consent for abortions until the law was challenged and enforcement was enjoined in 1975. Hock is more conservative in coding minors as still not having access because there was no law that specifically permitted them to consent to abortion. |
| Montana | 1973 | | 1973 | At the time that abortion was legalized, Montana's medical consent law permitted minors to consent to medical care related to pregnancy. This law was amended the following year to exclude abortion from the list of services to which minors could consent. I code minors as unable to consent in 1974-1975. |
| Nebraska | 1975 | 1975 | | Nebraska required parental consent for abortions until the law was challenged and enforcement was enjoined in 1975. Hock is more conservative in coding minors as still not having access because there was no law that specifically permitted them to consent to abortion. |
| Nevada | | | | |
| New Hampshire | 1973 | 1973 | 1973 | |

**Table 6. Comparison of coding of laws granting teenagers confidential access to abortion**

| State | Year that a legal change first granted confidential access to abortion to seventeen year olds, 1970-1975 | | | Notes on discrepancies |
|---|---|---|---|---|
| | This paper | Guldi (2008) | Hock (2007) | |
| New Jersey | 1973 | 1972 | 1972 | Hock and Guldi code New Jersey as a repeal state in 1972 while I argue that it should not be treated as one because the state Attorney General announced that, pending appeal of a ruling striking down the state's abortion law, he would prosecute physicians who performed abortions. The New York Times reported that only one physician was publicly performing abortions that year, and he was arrested. |
| New Mexico | | | | |
| New York | 1970 | 1970 | | The New York City Health and Hospitals Corporation directed in 1970 that municipal hospitals perform abortions on minors aged 17 or older without parental consent. I have not found evidence on policies of providers outside of New York City. |
| North Carolina | 1975 | | 1975 | In 1975 the Attorney General issued an opinion stating that it was impossible to "engraft any age requirement" on pregnant women seeking abortions. Contemporary sources differ on whether this opinion was used in practice to affirm minors' rights to consent to abortion. |
| North Dakota | | | | |
| Ohio | 1973 | 1973 | | Hock does not regard Ohio's judicial mature minor precedent as clearly granting access to abortion. The state passed a binding parental consent law in 1974, so I code minors as able to consent in 1973 but not in 1974-1975. |
| Oklahoma | | | | |
| Oregon | 1973 | 1973 | 1973 | |
| Pennsylvania | 1973 | 1975 | 1973 | Pennsylvania's 1970 Minors' Consent Act permitted pregnant minors to consent to medical care. The legislature passed a parental consent law in 1974, but the law never went into effect and ultimately was held to be unconstitutional in 1975. Newspaper accounts indicate that Pennsylvania did not require parental consent between 1973 and 1975. |
| Rhode Island | | | | |

**Table 6. Comparison of coding of laws granting teenagers confidential access to abortion**

| State | Year that a legal change first granted confidential access to abortion to seventeen year olds, 1970-1975 | | | Notes on discrepancies |
|---|---|---|---|---|
| | This paper | Guldi (2008) | Hock (2007) | |
| South Carolina | 1974 | 1974 | 1973 | South Carolina's 1969 abortion reform law included a parental consent requirement. This statute was declared unconstitutional in July 1973 with no comment on the parental consent requirement. A 1972 medical consent law permitted minors aged 16 or older to consent to medical care "unless such involves an operation which shall be performed only if such is essential to the health or life of such child in the opinion of the performing physician." In a 1972 opinion the state Attorney General indicated that this did not permit minors to consent to any type of operation. South Carolina enacted an abortion control law in 1974 that included a parental consent requirement for minors under age 16. This was ruled unconstitutional in 1977. |
| South Dakota | | | | |
| Tennessee | | | | |
| Texas | | | | |
| Utah | | 1974 | | Utah instituted a parental consent requirement in March of 1973. The statute was struck down in September 1973. The legislature enacted a replacement in April 1974 that required parental notification "if possible." |
| Vermont | | | | |
| Virginia | | | | |
| Washington | 1975 | 1975 | 1975 | |
| West Virginia | | | | |
| Wisconsin | | | | |
| Wyoming | | | | |
| **No. of Discrepancies** | **0** | **8** | **14** | |

*This is a reform state. Guldi's coding indicated the year in which minors could consent to abortions under the MPC provisions. To make her coding directly comparable with the other two columns, I have replaced that year with 1973, the first year that minors could consent to legal abortion under a broad set of circumstances.

**Table 7. Comparison of coding of dates of enforcement of parental involvement laws, 1980-2017**

| | Years Law Enforced | | | | |
|---|---|---|---|---|---|
| Authors | **This paper** | **Levine (2003)** | **New (2009)** | **Sabia, Rees, & Anderson*** | |
| Years covered | 1980-2017 | 1980-2003 | 1981-2000 | 1987-2011 | **Notes on discrepancies** |
| Alabama | 1987- | 1987- | 1987- | 1987- | |
| Alaska | 2010- | | | | This law was enacted after the periods considered by Levine and New. Alaska enacted a parental involvement law in 1997 that was immediately enjoined and never allowed to take effect. The state then enacted a parental involvement law via ballot measure that went into effect in December 2010. Sabia and Anderson (2016) indicate that a law was enjoined from 1997-2011. |
| Arizona | 1982-1987; 2003- | 1989- | 1982-1985 | 2003- | A parental notice law was in place from 1982-1985, at which point enforcement was enjoined by court ruling. The state legislature amended and reinstated the law in 1986, and again amended it in 1987 to replace the notification requirement with a consent requirement. The law was challenged and struck down in 1987. In 1989 the legislature again amended the statute, but enforcement was enjoined before it could go into effect. The changes in this law in the 1980s took place before the period considered by Sabia, Rees, and Anderson. |
| Arkansas | 1989- | | 1989- | 1989- | The state adopted a parental notification law in 1989. The statute was amended to require parental consent in 2005. |
| California | | | | | |
| Colorado | 2003- | | | 2003- | The law was enacted after the period considered by Levine and New. |
| Connecticut | | 1990- | 1990-1998 | | Connecticut's 1990 law suggests, but does not require, parental notification. I do not interpret this as sufficiently restrictive to code as a law requiring parental (or judicial) involvement. |
| Delaware | 1995- | 1981- | 1996- | 1997- | Levine states that Delaware had a law in place from 1981-present, but I have not found evidence of this law. An earlier parental consent law was unenforceable after *Danforth*. Naral state profiles from 1991-1994 confirm that the law was not being enforced. Delaware passed a new parental involvement law effective October 15, 1995. The state's profile in the 1996 Naral report indicates it was being enforced. |
| District of Columbia | | | | | |

**Table 7. Comparison of coding of dates of enforcement of parental involvement laws, 1980-2017**

| | Years Law Enforced | | | | |
|---|---|---|---|---|---|
| Authors | **This paper** | **Levine (2003)** | **New (2009)** | **Sabia, Rees, & Anderson*** | |
| Years covered | 1980-2017 | 1980-2003 | 1981-2000 | 1987-2011 | **Notes on discrepancies** |
| Florida | 2005- | | | | The Parental Notification of Abortion Act was effective July 1, 2005. This law permitted providers to notify a parent by telephone or minors to submit an un-notarized letter, requirements that some Florida legislators suggested were insufficient. In 2011 the legislature amended the law to strengthen the notification provisions and require notification via mail. In personal correspondence with the author, Joseph Sabia indicates that Sabia and Anderson (2016) had chosen not to code the 2005 policy because it did not seem sufficiently binding. (The 2011 policy change fell outside the window of legal changes considered in their paper.) Myers and Ladd (2017) discuss this issue in some detail. |
| Georgia | 1991- | 1991- | 1991- | 1991- | |
| Hawaii | | | | | |
| Idaho | 2000-2004; 2007- | 2001- | 1996- | 1997-2004 | It is not clear whether Idaho was enforcing a parental involvement law from 1996-1999. (See Appendix for a discussion.) In 2000 the legislature passed a new abortion control law that included a parental consent provision. Portions of the law were enjoined, but the parental consent provision remained intact. The law was amended in 2001 and struck down in its entirety in 2004, which is after the periods considered by Levine and New. The legislative record and Naral reports form this period indicate that a new law went into effect on March 27, 2007 and continues to be enforced. |
| Illinois | 2013- | | | | The law was enacted after the periods considered by all three sets of prior authors. |
| Indiana | 1982- | 1984- | 1984- | | A parental notification law was in effect from September 1, 1982 through August 26, 1983. A second law was enacted in 1984. The enactment of this law was outside the periods considered by Sabia, Rees and Anderson in their descriptions of legal changes. |
| Iowa | 1997- | 1996- | 1997- | 1997- | The law was passed in 1996, but it didn't actually go into effect until Jan 1 1997. |
| Kansas | 1992- | 1992- | 1992- | 1992- | |

**Table 7. Comparison of coding of dates of enforcement of parental involvement laws, 1980-2017**

| | Years Law Enforced | | | | |
|---|---|---|---|---|---|
| Authors | **This paper** | **Levine (2003)** | **New (2009)** | **Sabia, Rees, & Anderson*** | |
| Years covered | 1980-2017 | 1980-2003 | 1981-2000 | 1987-2011 | **Notes on discrepancies** |
| Kentucky | 1989; 1994-present | 1994- | 1994- | 1994- | As described in detail in the state-by-state policy review appendix, the policy environment was quite complex in Kentucky between 1982 and 1994 as the Kentucky legislature repeatedly attempted to enact a parental involvement law that would pass judicial muster. The judicial record, contemporary Naral reports, and newspaper accounts indicate that a parental consent law took effect in March 1989 and remained in effect for the remainder of that year until the Sixth Circuit Court of Appeals ordered Kentucky to cease enforcement. |
| Louisiana | 1981- | 1981- | 1981- | | The enactment of this law was outside the periods considered by Sabia, Rees and Anderson in their descriptions of legal changes. |
| Maine | | 1989- | 1989- | | Maine's 1989 law allows the providing physician to judge that the minor is mature enough to consent without parental involvement. I do not interpret this as sufficiently restrictive to code as a law requiring parental (or judicial) involvement. |
| Maryland | | 1992- | 1992- | | Maryland's 1992 law allows the providing physician to judge that the minor is mature enough to consent without parental involvement or that parental notification is not in the minor's best interests. I do not interpret this as sufficiently restrictive to code as a law requiring parental (or judicial) involvement. |
| Massachusetts | 1981- | 1979- | 1981- | | Massachusetts' enacted a parental consent law in 1974 that was held to be unconstitutional in a landmark U.S. Supreme Court decision in 1979. The legislature amended the law in 1980 and it went into effect in 1981. The enactment of this law was outside the periods considered by Sabia, Rees and Anderson in their descriptions of legal changes. |
| Michigan | 1991- | 1991- | 1991- | 1991- | |
| Minnesota | 1981-1986; 1990- | 1981-1986; 1990- | 1981-1986; 1990- | 1990- | The 1981-1986 law was outside the periods considered by Sabia, Rees and Anderson in their descriptions of legal changes. |
| Mississippi | 1993- | 1993- | 1993-2000 | 1993- | |

**Table 7. Comparison of coding of dates of enforcement of parental involvement laws, 1980-2017**

| | Years Law Enforced | | | | |
|---|---|---|---|---|---|
| Authors | **This paper** | **Levine (2003)** | **New (2009)** | **Sabia, Rees, & Anderson*** | |
| Years covered | 1980-2017 | 1980-2003 | 1981-2000 | 1987-2011 | **Notes on discrepancies** |
| Missouri | 1985- | 1979- | 1983; 1985- | | Missouri enacted a parental consent law in 1979 , but enforcement was immediately enjoined. The law was allowed to take effect from June through November of 1983, again enjoined, and then allowed to take effect again in 1985. The enactment of this law was outside the periods considered by Sabia, Rees and Anderson in their descriptions of legal changes. |
| Montana | | 1991- | | | Montana passed a parental notification law in 1974 that was presumably invalid under Danforth. Several secondary sources confirm that the law remained unenforced through 1993 when an enforcement effort resulted in a court challenge and the issue of a permanent injunction barring enforcement. I think that Levine may have shifted the Nebraska coding up one row to Montana. (See below.) |
| Nebraska | 1981-1983; 1991- | | 1991- | 1991- | Levine indicates that no law was in place for Nebraska. Given his coding for Montana, I suspect that he may have mistakenly shifted the Nebraska coding up to Montana in the table. |
| Nevada | | | | | |
| New Hampshire | 2012- | | | | The law was enacted after the periods considered by all three sets of prior authors. |
| New Jersey | | | | | |
| New Mexico | | | | | |
| New York | | | | | |
| North Carolina | 1995- | 1995- | 1996- | 1995- | A parental involvement law was effective October 1, 1995. |
| North Dakota | 1981- | 1981- | 1981- | | The enactment of this law was outside the periods considered by Sabia, Rees and Anderson in their descriptions of legal changes. |
| Ohio | 1990- | 1985- | 1990- | 1990- | Ohio's legislature enacted a parental notification law in 1985, but enforcement was enjoined until the U.S. Supreme Court's 1990 decision in Ohio v. Akron upheld it. |

**Table 7. Comparison of coding of dates of enforcement of parental involvement laws, 1980-2017**

| | Years Law Enforced | | | | |
|---|---|---|---|---|---|
| Authors | **This paper** | **Levine (2003)** | **New (2009)** | **Sabia, Rees, & Anderson*** | |
| Years covered | 1980-2017 | 1980-2003 | 1981-2000 | 1987-2011 | **Notes on discrepancies** |
| Oklahoma | 2001-2002; 2004-present | | | 2001; 2006- | In 2001 Oklahoma began enforcing a parental involvement law that is, to my knowledge, unique in that it made abortion providers financially liable for any complications stemming from an abortion performed on a minor without parental knowledge. The law did not include a judicial bypass provision. The judicial record shows that at least one of a handful of abortion providers in Oklahoma began requiring parental consent as a result of this law. The law was permanently enjoined in 2002, and the Oklahoma legislature passed a standard parental consent law with a judicial bypass option in 2005. |
| Oregon | | | | | |
| Pennsylvania | 1994- | 1994- | 1994- | 1994- | |
| Rhode Island | 1982- | 1982- | 1982- | | The enactment of this law was outside the periods considered by Sabia, Rees and Anderson in their descriptions of legal changes. |
| South Carolina | 1990- | 1990- | 1990- | 1990- | |
| South Dakota | 1997- | 1997- | 1998- | 1998- | |
| Tennessee | 1992-1996; 2000- | 1999- | 1992-1996; 1999- | 1992-1996; 1999- | The Tennessee legislature enacted a parental notification law in 1989, but the state Attorney General indicated that the law could not be enforced because it was similar to a 1979 law that had been held unconstitutional. In 1991 the Tennessee Supreme Court stated that the Attorney General's argument was invalid and that the issue was nonjusticiable in the absence of a formal challenge. The law was then challenged, upheld, and allowed to go into effect in November 1992. The law was replaced with a parental consent law in 1995, and this was struck down in 1996. The injunction was reversed in 1999, and the law again became effective in 2000. Naral profiles of Tennessee for 1992-1996 confirm that the state was enforcing a parental involvement law until 1996. |
| Texas | 2000- | 1999- | 2000- | 2000- | A parental notification bill was passed in 1999, but it went into effect on Jan 1, 2000. |

**Table 7. Comparison of coding of dates of enforcement of parental involvement laws, 1980-2017**

| | Years Law Enforced | | | | |
|---|---|---|---|---|---|
| Authors | **This paper** | **Levine (2003)** | **New (2009)** | **Sabia, Rees, & Anderson*** | |
| Years covered | 1980-2017 | 1980-2003 | 1981-2000 | 1987-2011 | **Notes on discrepancies** |
| Utah | 1974- | 1974- | 1981- | | Utah's 1974 parental involvement law was challenged and upheld by the state supreme court in 1981 with respect to unemancipated and immature minors only. I consider the coding of this policy ambiguous. Utah enacted a new parental involvement requirement in 2006 that is broadly applicable. The enactment of this law was outside the periods considered by Sabia, Rees and Anderson in their descriptions of legal changes. |
| Vermont | | | | | |
| Virginia | 1997- | 1997- | 1998- | 1997- | |
| Washington | | | | | |
| West Virginia | 1984- | 1984- | 1984- | | The enactment of this law was outside the periods considered by Sabia, Rees and Anderson in their descriptions of legal changes. |
| Wisconsin | 1992- | 1984- | 1992- | 1992- | A 1985 law "encouraged" but did not require parental notification, so I do not interest it as sufficiently restrictive to code as a law requiring parental (or judicial) involvement. A more restrictive law went into effect in 1992. |
| Wyoming | 1989- | 1989- | 1989- | 1989- | |
| **No. of Discrepancies** | **0** | **18** | **16** | **8** | |

*The "Sabia, Rees, and Anderson" column combines information from Sabia and Rees (2012) on changes in parental involvement laws between 1987 and 2003 and Sabia and Anderson (2016) on changes in parental involvement laws between 1993 and 2011. These authors do not report pre-existing laws that did not change during these periods.

# Appendix: State-by-State Policy Review

## Alabama

Age of majority: Alabama lowered the age of majority from 21 to 19 effective January 22, 1975. The age of majority is still 19.[24]

Contraception: Alabama enacted a law effective October 1, 1971 granting minors age 14 or older, minors who have graduated from high school and pregnant minors the capacity to consent to "any legally authorized medical, dental, health, or mental health services."[25]

Abortion: Abortion became legal in Alabama with the *Roe v. Wade* decision on January 22, 1973. At this time, Alabama's law granting pregnant minors the ability to consent to health care presumably allowed minors of any age to consent to abortion.[26] Effective September 23, 1987, Alabama enacted a parental consent law for abortions for women under 18.[27]

## Alaska

Age of Majority: Alaska set the age of majority at 19 when it entered the union in 1959. It lowered the age of majority to 18 in 1977.[28]

Contraception: A medical consent law enacted August 7, 1974 granted minors the right to consent to the "diagnosis, prevention or treatment of pregnancy." It also included a qualifying clauses stating that its provisions controlled except as prohibited by the 1970 abortion legislation described below.[29]

Alaska made emergency contraception available over the counter in 2003, ahead of a federal policy change in 2006.[30]

Abortion: Alaska was a repeal state; abortion became legal in most circumstances on July 29, 1970. Under the governing statute, women under the age of 18 were required to obtain parental consent for an abortion.[31] Because this statute did not include a parental bypass provision, it presumably was invalidated by the July 1, 1976 ruling in *Danforth*, although the attorney general issued a series of conflicting opinions on this. In the first, from a memorandum issues by the attorney general's office on October 21, 1976, the attorney general advises that the parental consent provision of Alaska's abortion statute was unconstitutional in light of *Danforth*.[32] However, an April 13, 1977 opinion advises that "the physician should still attempt to contact the minor's parents or guardian, but the

[24] Code of Ala. § 26-1-1 (2010).
[25] Code of Ala. § 22-8-4 (2010). Merz, Jackson and Klerman (1995) provide effective date.
[26] DHEW (1978) and Merz, Jackson, and Klerman (1995) interpret the statute similarly.
[27] Code of Ala. § 26-21-1 to 26-21-8 (2010). Merz, Jackson and Klerman (1995) provide effective date.
[28] Alaska Stat. § 25.05.010 (2010).
[29] Alaska Stat. § 25.20.025 (2010); DHEW (1978); Merz, Jackson, and Klerman (1995).
[30] 12 AAC § 52.240 (2003). Zuppann (2012) provides effective date of 2003.
[31] Alaska Stat. § 18.16.010 (2010); DHEW (1978); Merz, Jackson, and Klerman (1995).
[32] Op. Att'y Gen. (October 7, 1981); DHEW (1978); Merz, Jackson, and Klerman (1995).

ultimate decision…must be left to the minor."[33] On February 10, 1977, the Attorney General issued a second opinion advising that under *Danforth* "the existing law should be read as not requiring parental consent for minors." The Attorney General also interprets a law establishing 16 as the age of consent for sexual intercourse as also determining the age at which a minor may consent to an abortion absent a parental involvement law.[34] In the absence of an enforceable parental involvement provision, the right of minors to consent to abortion is presumably affirmed by the 1974 medical consent law that granted minors the right to consent to the treatment of pregnancy.[35]

In 1997 Alaska passed a parental consent law for women under 17. Enforcement was immediately enjoined and eventually ruled unconstitutional.[36] A ballot measure passed in August 2010 amended this measure to require parental notification for women under 18. The law went into effect on December 14, 2010.[37] The Alaska Supreme Court reversed a lower court's ruling and permanently enjoined enforcement on July 22, 2016.[38]

## Arizona

Age of majority: Arizona lowered the age of majority to 18 effective May 5, 1972.[39]

Contraception: Arizona had a Comstock law that restricted the sale of contraception until October 31, 1962, when a ruling by the State Supreme Court clarified and narrowed the scope of the law.[40] A February 11, 1977 opinion from the attorney general stated that contraception can be provided to unemancipated minors without parental consent by agencies funded through Title X. Moreover, the attorney general states that he is unaware of a state law that prohibits the provision of contraception to unemancipated minors by non-Title X-funded providers.[41] An affirmative law has not been passed.[42]

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[33] Op. Att'y Gen. (April 13, 1977).
[34] Op. Att'y Gen. (February 10, 1977).
[35] Merz, Jackson, and Klerman (1995).
[36] Alaska Stat. §§ 18.16.010 and 18.16.020 (2010); *State of Alaska v. Planned Parenthood of Alaska* 171 P.3d 577 (November 2, 2007).
[37] "Court upholds Alaska's parental-notice law on abortions for minors." Chicago Tribune, October 9, 2012. "Judge upholds law on teens, abortion." The Spokane-Review, December 14, 2010.
[38] Planned Parenthood of the Great Northwest v. State, 375 P.3d 1122 (2016).
[39] A.R.S. § 1-215 (2010); DHEW (1978).
[40] Bailey and Davido (2009).
[41] Op. Att'y Gen. (February 11, 1977).
[42] Guttmacher (2017a) indicates that Arizona currently has a law in place that explicitly grants minors access to contraceptive services. However, I have been unable to find evidence of such a law in the Arizona Revised Statutes or from other secondary sources. I do find limited supporting evidence that there is not, in fact, a governing affirmative statute. In 2006, Arizona House Majority Leader Steve Tully introduced House Bill 2707 that would have required parental consent for birth control. He later withdrew the bill. In a news article in the *Arizona Daily Star* about the bill, Charlotte Harrison, the executive director of the Arizona Family Planning Council, states that there is no law against providing birth control to minors and that "the only thing we have is an opinion from the attorney general in 1979 that says that a provider…cannot be liable…for providing family planning services to a minor without parental consent" (Howard Fischer, "Bill to limit minors' Rx is dead," *Arizona Daily Star* (March 23, 2006)). Searches for "minor" and "family planning" in 1979 opinions from the state attorney general failed to turn up such an opinion. I assume that the speaker is referring to the February 11, 1977 opinion described above.

Abortion: Abortion became legal in Arizona with the *Roe v. Wade* decision on January 22, 1973. Arizona enacted legislation effective October 15, 1974 requiring parental consent for the performance of surgery on an unemancipated minor.[43] Because the statute did not include a judicial bypass provision, it was presumably unenforceable with regard to abortion after the *Danforth* ruling on July 1, 1976.[44]

Effective July 23, 1982, the legislature enacted a parental notification law.[45] Enforcement of this law was enjoined by a U.S. District judge on October 28, 1985.[46] The legislature amended and reinstated the parental notification law effective May 2, 1986. In 1987, the legislature again amended the law to replace the parental notification requirement with a parental consent requirement. The amended law was challenged and struck down on August 18, 1987, the day it was scheduled to go into effect, leaving no enforceable parental involvement law on the books.[47] In 1989, the legislature again amended and re-enacted the statute. This version of a parental consent law also was challenged, and a preliminary injunction was issued before the law went into effect. The law was ruled unconstitutional and enforcement was permanently enjoined on September 14, 1992. [48] The legislature amended and re-enacted the parental consent law in 1996, but enforcement again was enjoined prior to the effective date.[49] After a series of appeals, the law was permanently enjoined in October, 1999.[50]

Another parental consent law was enacted in 2000 and was scheduled to go into effect on July 14, 2000. Enforcement of this law also was enjoined before it could go into effect. It was eventually upheld and went into effect on March 3, 2003.[51] In 2009 this statute was amended to require that notarized proof of parental consent be provided. Planned Parenthood challenged the law, and an injunction against the requirement of a "notarized statement" was issued. The law was upheld in its entirety in 2011. [52]

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[43] A.R.S. § 36-2271 (2010). Merz, Jackson, and Klerman (1995) provide effective date.
[44] DHEW (1978) confirms this interpretation.
[45] A.R.S. § 36-2152 (2010); Bush (1983); Neinstein (1987); Merz, Jackson, and Klerman (1995).
[46] UPI, "Judge suspends abortion law," *The Courier* (October 29, 1985); Merz, Jackson, and Klerman (1995).
[47] UPI. "Abortion law rule receives mixed reviews," *The Courier* (August 18, 1987); Merz, Jackson, and Klerman (1995).
[48] *Planned Parenthood v. Neely*, 804 F. Supp. 1210 (September 14, 1992).
[49] *Planned Parenthood v. Neely* 942 F. Supp. 1578 (October 4, 1996); Merz, Jackson, and Klerman (1995).
[50] *Planned Parenthood v. Lawall* 193 F.3d 1042 (October 22, 1999).
[51] *Planned Parenthood v. Lawall* 307 F.3d 783 (2002); Robbie Sherwood, "Parental Consent for minors to get abortion takes effect," *Arizona Republic* (March 5, 2003).; Associated Press, "Parental consent abortion law takes effect," *Daily Courier* (March 5, 2003).
[52] A.R.S. § 36-2152 (2014); *Planned Parenthood v. American Association of Pro-Life Obstetricians & Gynecologists* 227 Arizona 262 (August 11, 2011).

## Arkansas

Age of majority: The age of majority for females was set at 18 in 1873. The age of majority for males was lowered from 21 to 18 in 1975.[53]

Contraception: Arkansas had a Comstock law restricting the sale of contraception, but it contained a blanket physician exemption.[54] On March 14, 1973 the state adopted the Arkansas Family Planning Act, which made contraception available to anyone regardless of age.[55]

Abortion: Arkansas was a reform state; it adopted the MPC provisions effective February 17, 1969. This statute included a parental consent requirement for minors for the limited circumstances under which abortion was legal. The statute was challenged and enforcement enjoined on February 17, 1976 before being held unconstitutional in 1980 in *Smith v. Bentley*.[56] Arkansas's pre-Roe abortion statute was fairly clearly invalidated by *Roe*, and the parental consent provision was not obviously separable from the statute as a whole. However, based on the judicial opinion in *Smith v. Bentley*, which concludes that a "significant threat of prosecution existed" prior to the injunction and on other contemporary sources from the period between Roe and the trial, it appears that the parental consent requirement was enforced until its enjoinment on February 17, 1976.[57]

The state adopted a parental notification law effective March 1, 1989. This statute was amended March 4, 2005 to replace the parental notification provision with a parental consent provision.[58]

## California

Age of majority: The age of majority was lowered from 21 to 18 effective March 4, 1972.[59]

Contraception: A law originally passed in 1873 read "Every person who willfully writes, composes, or publishes any notice or advertisement of any medicine or means for producing or facilitating a miscarriage or abortion, or for the prevention of conception, or who offers his services by any notice, advertisement, or otherwise, to assist in the accomplishment of any such purpose is guilty of a felony and shall be punished as provided in the Penal Code."[60] Section 4322 of the Code further read "No person shall

[53] Ark. Ann. Code § 9-25-101 (2009).
[54] Bailey and Davido (2009).
[55] Ark. Ann. Code § 20-16-304 (2009); DHEW (1978); Merz, Jackson, and Klerman (1995).
[56] *Smith v. Bentley* 493 F. Supp. 916 (1980). Merz, Jackson, and Klerman (1995).
[57] Merz, Jackson, and Klerman (1995); Paul, Pilpel, and Wechsler (1974, 1976).
[58] Ark. Ann. Code § 20-16-801 to -810 (2009); Merz, Jackson, and Klerman (1995).
[59] Cal. Fam. Code § 6500 (2009); Council of State Governments (1973).
[60] California Business and Professions Code §600 as reproduced in California Assembly Bill No. 219 in the Regular General Session of 1965.

display or expose for sale any prophylactic, or any containers or packages containing or advertising prophylactics."[61] Both of these provisions were repealed in 1965.[62]

Bailey (2010) treats the pre-1965 version of these laws as an advertising and sales ban rendered invalid by *Griswold*. As support for this interpretation, they cite an account published in Planned Parenthood Beginnings:

> *Rev. Arthur G. Elcombe recounted a conversation with a female patient in a county hospital in San Diego in 1960. She said "all employees, including residents in Obstetrics were forbidden by law to provide her with services for birth control" (p.21). He "immediately inquired regarding this, found it to be true, looked for P.P. [Planned Parenthood] in the phone book, couldn't find it." His efforts resulted in the opening of the first clinic in San Diego several years later, but he does not note when the legal environment changed. Other affiliate histories from California do not mention the legal environment, so whether they operating (deliberately) in violation of the law is unclear. Another possibility is that local ordinances mattered more than state law, but no such ordinances have been found thus far." (Quote from Bailey and Davido, 2010)*

I note that a variety of historical sources and circumstances suggest that Planned Parenthood clinics were providing contraceptive services prior to 1965, and that some private physicians were as well. Moreover, the California Medical Association and Board of Health also took action that appear to have been prohibited by the law.

I note the following evidence from contemporary accounts:

- *California Medicine*—the official journal of the California Medical Association, the state's constituent organization of the American Medical Association—regularly published advertisements for contraception prior to 1965 (Figure A1) and additionally had booths at its annual meetings with representatives of pharmaceutical companies providing information on contraceptives for conference attendees (Figure A2).[63]
- In April 1961 *The Los Angeles Times* published an account of large increases in caseloads of patients at the Los Angeles and Pasadena Planned Parenthood

[61] California Business and Professions Code §4322 as reproduced in California Assembly Bill No. 219 in the Regular General Session of 1965.
[62] California Assembly Bill No. 219 in the Regular General Session of 1965. California Legislature at Sacramento 1965 Regular Session. *Assembly Final History*.
[63] E.g., See advertisements for contraceptives in *California Medicine*. 1960. 92(2): 51. *California Medicine*. 1961. 95(4): 24. See listings for booths with pharmaceutical representatives of contraceptive products in *California Medicine*. 1950. 72(4): 302 and *California Medicine*. 1964. 100(2): 41.

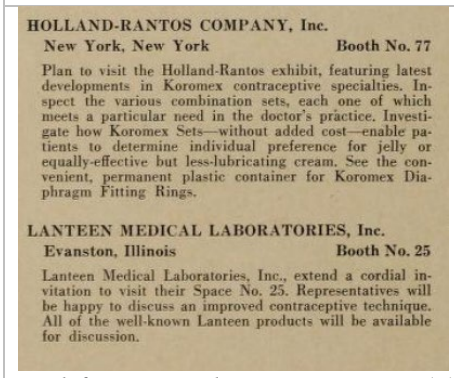
locations, "40% of [whom] have been using the pill, the rest other forms of contraception."[64] The article goes on to describe coordination of services

**Figure A1: Examples of advertisements for contraception in the offical journal of the California Medical Association, published prior to the repeal of the state's advertising and sales ban**

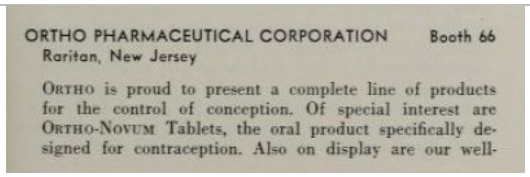

*California Medicine*. 1960. 92(2): 51.


*California Medicine*. 1961. 95(4): 24.

**Figure A2: Examples of booths with representatives of contraceptive products at the annual meetings of the California State Medical Association, prior to the repeal of the state's advertising and sales ban**




*California Medicine*. 1950. 72(4): 304.




*California Medicine*. 1964. 100(4): 41.

[64] Harry Nelson. "Inquiries on Parenthood Planning Showing Rise." The Los Angeles Times. April 7, 1961.

between the Pasadena Planned Parenthood and the Pasadena Health Department as "close" and says that the health department and local hospital referred women seeking contraceptives to Planned Parenthood.

- In May 1961, *California Medicine* published the results of a study of contraceptive efficacy conducted at the Los Angeles Planned Parenthood clinic between 1957 and 1959. The article describes the provision of contraceptives to 659 patients, as well as "the custom of the Los Angeles Planned Parenthood Center to provide patients with a choice of several contraceptive methods."[65]
- *California Medicine* published a notice of the California legislature's vote to repeal the advertising and sales ban in 1965, as a short notice without comment.[66]
- An article published in 1966 in the American Journal of Public Health describes the development of family planning services in Alameda County, California in the early 1960s. The authors of the article state that the Alameda County Health Department began providing comprehensive family planning services in 1962, and that prior to that it had referred interested clients to local Planned Parenthood clinics, the oldest of which had been in operation in Oakland since 1929. In May of 1962, county officials received grant funding that allowed them to provide nursing staff with a "kit" with contraceptive samples, which they offered to patients. If patients desired a prescription method, the nurses referred them to private physicians or Planned Parenthood. This article further describes a series of important policy changes that encouraged the establishment and expansion of the program: a 1961 policy statement by the California Conference of Local Health Officers, a 1963 legislative bill related to family planning services, a 1964 official unanimously-adopted recommendation from the State Board of Health promoting the availability of family planning services; and a 1964 recommendation from the County Board of Supervisors. Nowhere in this article do the authors mention the ban on the advertisement and sale of contraceptives that was on the books through 1965.
- In January of 1964, the California State Board of Health recommended that local health departments provide specified family planning services. One contemporary source states that "thereafter, family planning assumed an important position in a rapidly increasing number of local, maternal health programs."[67]
- A 1967 article in *California Medicine* describes the opening of a family planning clinic in Sacramento in July 1964 with assistance from the local

[65] Henry Olson, Lucille Wolf, Dorothea Behne, Jerry Ungerleider, and Edward Tyler. "Contraception: Effectiveness of Diaphragm and Jelly in a well-motivated group of clinic patients." California Medicine 94(5): 292-294.
[66] *California Medicine*. 1965. 102(4): 326.
[67] Earl Siegel and Ronald Dillehay. 1966. "Some approaches to family planning counseling in local health departments: a survey of public health nurses and physicians." The American Journal of Public Health 56(11): 1840-1846.

chapter of Planned Parenthood; this article makes no mention of any legal barriers to the opening of the clinic at that time.[68]

The California state legislature enacted a bill in late 1972 that would have permitted minors (at this point defined as under age 18) to consent to contraceptive care, but Governor Ronald Reagan vetoed it.[69] Minors were explicitly granted capacity to consent to contraceptive services effective January 1, 1976.[70]

A 1961 A 1969 paper in *Family Planning Perspectives* describes a Planned Parenthood clinic established in San Francisco in 1967.[71] The author reports that between 1967 and 1969 the clinic saw 476 patients seeking contraceptive services, and that 38 percent of these were legally emancipated or had parental consent. The authors states that in California at that time it was common medical practice to provide confidential contraceptive services to minors aged 18 and over because 18 was the legal age of consent to intercourse. (The age of majority was 21.) The author writes "the legal situation with regard to unmarried girls under 18 years of age is marked by absence of precedent." The author argues that the clinic feels it is "covered" by California law with respect to providing services to emancipated minors and in providing gonorrhea testing. The author does not state a conclusion with respect to providing contraceptive services without parental consent, but it is clear that the clinic is doing so. A 1966 article in the Daily Independent Journal quotes representatives of the Planned Parenthood Association of Marin County as saying that they provided contraception to any woman aged 18 or older, regardless of marital status.[72]

In 2002 California made Emergency Contraception available over-the-counter. The legislation makes no mention of age.[73]

In summary, a strict interpretation of California statutes and judicial rulings indicates that the state's Comstock law prohibited the distribution of oral contraceptives until 1965, and that women aged 18-20 could not provide legal consent to contraceptive services until the age of majority was lowered in 1972. However, a variety of secondary sources suggest that neither law may have governed the provision of contraceptives in practice, and that oral contraceptives were provided at Planned Parenthood facilities to unmarried women aged 18 and older since the early 1960s.

Abortion: California adopted MPC provisions with the Therapeutic Abortion Act of November 8, 1967. In 1969 the California Supreme Court struck down the pre-1967 anti-abortion law, which had prohibited abortions except to save the life of the mother.[74] The court did not comment on the legality of the MPC provisions in the 1967 Therapeutic Abortion Act, and this ruling therefore did not explicitly legalize abortion in California.

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[68] Miller (1967).
[69] UPI "Regan vetoes contraceptives for `sexually active' teens." Lodi News-Sentinel (December 28, 1972).
[70] Cal. Fam. Code § 6925 (2009). Paul, Pilpel, and Wechsler (1976); DHEW (1978).
[71] Goldsmith (1969)
[72] "Planned Parenthood lecture draws standing room crowd." *Daily Independent Journal*. November 16, 1966.
[73] Cal. Business and Professions Code §4052 (2017) effective January 1, 2002.
[74] *People v. Belous* 71 Cal. 2d 954 (September 5, 1969).

The court's ruling, however, stated that the pre-1967 law violated a woman's fundamental rights to privacy and liberty in matters related to marriage, family, and sex. This strongly suggested that the Therapeutic Abortion Act would be unconstitutional on similar grounds.[75] In practice, abortion appears to have become de-facto legal and widely available at about this time.[76] Legal abortions skyrocketed from 1967 through the early seventies to a rate of 270 per 1,000 live births in 1971, similar to that in other repeal states.[77] Contemporary sources suggest that providers broadly interpreted mental health reasons for abortions, and that as a result abortions were available to virtually all women in the state by the late sixties.[78] On November 22, 1972 a ruling of the California Supreme Court clearly struck down the provisions of the Therapeutic Abortion Act, making abortion freely available two months prior to *Roe v. Wade*.[79]

California enacted in a law in 1953 that gave pregnant minors the right to consent to medical care related to pregnancy. Whether this law granted pregnant minors the capacity to consent to abortion was unclear immediately following the Therapeutic Abortion Act. A *California Medicine* article from 1969 advises "the non-emancipated, unmarried pregnant minor probably can consent to a therapeutic abortion, but this has not yet been tested in the courts."[80] On October 21, 1970 the California Court of Appeals ruled in *Ballard v. Anderson* that a minor could not consent to abortion. This was reversed by the California Supreme Court on May 19, 1971, which declared "There is no rational basis for discriminatorily singling out therapeutic abortion as the only type of pregnancy-related surgical care which requires parental consent." The state Supreme Court ruling explicitly recognized minors' rights to consent to abortion, but stated that this right did not extent to contraception.[81]

The California legislature passed Assembly Bill No. 2274 in 1987 to require parental consent for an abortion, but a preliminary injunction was issued before it could be implemented.[82] In June 1992, a trial court declared that the law violated the state constitution and issued a permanent injunction. The California Supreme Court affirmed on August 5, 1997.[83]

[75] Roemer (1971).
[76] Hassard and Willett (1969); Goldsmith et al. (1970).
[77] Ballard (1972).
[78] Miller (1975).
[79] *People v. Barksdale* 8 Cal. 3d 320 (November 22, 1972).
[80] Hassard and Jefson (1970).
[81] *Ballard v. Anderson* 4 Cal. 3d 873 (1971).
[82] *American Academy of Pediatrics v. Van de Kamp* 214 Cal. App. 3d (1989); Merz, Jackson, and Klerman (1995).
[83] *American Academy of Pediatrics v. Lungren. 16 Cal. 4th 307* (1997).

## Colorado

Age of majority: Colorado lowered the age of majority from 21 to 18 for a person for the purpose of making "decisions in regard to his own body and the body of his issue" effective July 1, 1973.[84]

Contraception: Colorado's Comstock law banning the sale of contraceptives contained a legitimate practice exemption; it was amended to remove the prohibition against the sale of contraceptives in 1961.[85] In 1971 Colorado adopted a law granting minors aged 18 or older capacity to consent to "hospital, medical, dental, and surgical care for himself or herself."[86] The same year, as part of the Family Planning Act of 1971 Colorado granted access to birth control to a minor who is "pregnant, or a parent, or married, or who has the consent of his parent of legal guardian, or has been referred for such services by another physician, a clergyman, a family planning clinic, a school or institution of higher education, or any agency of instrumentality of this state or any subdivision thereof, or who requests and is in need of birth control procedures, supplies, or information."[87]

Abortion: Colorado was a reform state; it adopted the MPC standards on April 25, 1967. This law, Colo. Rev. Stat. § 18-6-101(1), included a parental consent requirement for women under the age of 18. The parental consent provision was challenged and enforcement was enjoined on February 5, 1975.[88] The court ruling enjoining enforcement of the law states that the right to privacy in abortion extends to minors and that the state had not demonstrated any compelling interest to overcome that fundamental right.

Colorado passed a parental notification law scheduled to be effective on December 30, 1998.[89] The law was challenged and enforcement was enjoined before the law could go into effect.[90] The legislature amended the parental notification act and it went into effect June 3, 2003.[91]

## Connecticut

Age of majority: Connecticut lowered the age of majority from 21 to 18 effective October 1, 1972.[92]

Contraception: Connecticut was unique in banning the *use* of contraceptives by all women. This law was invalidated in the Supreme Court's landmark ruling in *Griswold v. Connecticut* on June 7, 1965.[93] Public Act No. 304, effective October 1, 1971, granted

[84] Colo. Rev. Stat. § 13-22-101 (2009).
[85] Bailey and Davido (2009).
[86] Colo. Rev. Stat. § 13-22-103 (2009); DHEW (1978).
[87] Colo. Rev. Stat. § 13-22-105, (2009); DHEW (1978).
[88] *Foe v. Vanderhoof* 389 F. Supp. 947 (1975).
[89] Colo. Rev. Stat. § 12-37.5-101 (2009).
[90] *Planned Parenthood v. Owens* 107 F. Supp. 2d 1271 (2000).
[91] Colorado General Assembly, *Digest of Bills* (2003).
[92] Conn. Gen. Stat. § 1-1d (2010).
[93] *Griswold v. Connecticut*, 381 U.S. 479 (June 7, 1965).

minors aged 18 and older capacity to consent to medical and health services, which presumably included contraception and abortion.[94] A physician and social worker at Yale published an article in *Family Planning Perspectives* in 1971 describing reproductive services offered on campus at that time. They describe comprehensive sexual health services including the provision of contraception, the "morning after pill" (50 mg of diethylstilbestrol), and referrals for abortion services in New York.[95]

Abortion: Connecticut required parental consent for minors seeking abortion coverage under Medicaid, or, for minors who were wards of the state, the consent of the State Welfare Commissioner. In *Lady Jane v. Maher*, this requirement was held to be unconstitutional.[96] This ruling directly applied to minors who were wards of the state and who were seeking Medicaid coverage for abortions. How it might apply to minors' ability to consent to abortions in general was not clear, so I do not treat the ruling as explicitly affirming the right of all minors to consent to abortion.[97]

Connecticut enacted a law in 1990 requiring that prior to performing an abortion on a minor under the age of 16, a provider or counselor must "discuss the possibility of involving the minor's parents, guardian or other adult family members in the minor's decision-making."[98] In a 1998 opinion, the Attorney General notes that under this law "minors have the right to obtain an abortion" and may "choose not to involve their parents in the decision."[99] Some secondary sources have treated this parental involvement law as restrictive, but because minors may choose not to involve their parents, I do not.[100]

**Delaware**

Age of majority: Delaware lowered the age of majority from 21 to 18 effective June 16, 1972.[101]

Contraception: At the time of the introduction of the birth control pill, Delaware had a Comstock law limiting the sale of contraception that contained a legitimate practice exemption.[102] In 1971, the legislature passed a law permitting minors aged 18 and older to consent to medical care.[103] Effective April 16, 1970, Delaware passed a consent law permitting pregnant minors aged 12 and over to consent to medical care. Effective June 26, 1972, the law was expanded to allow a minor age 12 or older "who professes to be exposed to the chance of becoming pregnant" capacity to consent to preventive care, which gave all minors the right to consent to birth control.[104]

[94] DHEW (1974).
[95] Sarrel and Sarrel (1971)
[96] *Lady Jane v. Maher*, 420 F. Supp. 318 (September 21, 1976).
[97] See DHEW (1978) for a discussion of whether the ruling might be applied to all minors.
[98] Conn. Gen. Stat. § 19a-601.
[99] Op. Att'y Gen. (November 16, 1998).
[100] E.g., this is coded as a restrictive parental involvement law by Levine (2003), but not by the Guttmacher Institute (2017b).
[101] Del. Code Ann. tit. 1, ch. 7, § 701 (2010).
[102] Bailey and Davido (2009).
[103] Delaware House Bill No. 377, approved July 13, 1971 and codified as Del. Code Ann. Tit. 13, ch 7, §707.
[104] Del. Code Ann. tit. 13, ch 7, § 710 (2010). *In re Diane*, 318 A.2d 629 (1974). DHEW (1978).

Abortion: Delaware was a reform state; it adopted a variant of the MPC standards on June 17, 1969. This statute also required parental consent for women under 19. The law was amended effective July 12, 1972 to lower the age of consent to 18 in keeping with the new age of majority. An Attorney General opinion dated April 12, 1973 states that the parental consent provision section of the statute was still enforceable in the wake of *Roe v. Wade*.[105] On March 13, 1974 a court ruled that the 1970 law granting pregnant minors' capacity to consent to medical care superseded the parental consent provision and that women aged 12 and over could therefore consent to abortion.[106] In response to this ruling, the state legislature amended the law on July 11, 1974 to exclude abortion from the services to which pregnant minors could consent.[107] The constitutionality of the 1974 amendment was questionable post-*Danforth*. The Delaware Attorney General issued a statement of policy on March 24, 1977 stating that the state will not prosecute for failure of a young woman to obtain consent.[108]

Delaware passed a parental notification law effective October 15, 1995. The law applies to minors under the age of 16 and requires notification of at least one parent. In lieu of a parent, the provider can notify "a licensed mental health professional (who shall not be an employee or under contract to an abortion provider)" who must "explain to the minor the options available to her…and must agree that it is in the best interest of the minor that a waiver of the parental notice requirement be granted."[109]

## The District of Columbia

Age of majority: The District of Columbia lowered the age of majority from 21 to 18 effective July 22, 1976.[110]

Contraception: Effective August 13, 1971, the District of Columbia enacted Reg. No. 71-27, which stated that "birth control….shall be provided by the health facilities operated by the District of Columbia, and *may* [emphasis added] be provided by any qualified person or institution, without regard to the age of marital status of the patient or the consent of the patient's parent or guardian."[111] This regulation required public clinics to provide confidential access to contraception to minors, and permitted—but did not require—all other providers to do the same. The city council passed a medical consent law effective August 30, 1974 that permitted minors of any age to consent to health services for the prevention of pregnancy, effectively requiring all providers to provide confidential services.[112]

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[105] Op. Atty. Gen. No. 73-030 ( April 12, 1973).
[106] *In re Diane*, 318 A.2d 629 (1974).
[107] Del. Code Ann. tit. 13, ch 7, § 710 (2010); DHEW (1978). Merz, Jackson, and Klerman (1995) indicate that the parental consent requirement was not enforced from 1973 until July 1974. However, the 1973 Attorney General opinion is explicit in stating that the parental consent requirement remained following *Roe* and *Doe*, and the 1974 court case regarding parental consent indicates that parental authorization was regarded as "necessary" at the time for a minor to obtain an abortion.
[108] See *Delaware Women's Health v. Wier*, 441 F. Supp. 497 (1977).
[109] Del. Code Ann. tit. 24, ch. 17, §1780 - §1789B (2010).
[110] D.C. Code § 46-101 (2010).
[111] CDCR § 22-B603 (2011), formerly Reg. No. 71-27.
[112] CDCR § 22-B600 (2011), formerly Reg. No. 74-22.

Abortion: Under the District of Columbia Code of 1901 abortions were legal if performed to preserve the life or health of the woman.[113] Milan Vuitch, a D.C. physician who had been indicted for violating the law by providing illegal abortions, challenged the law as being unconstitutionally vague with respect to "health." A Federal District Court dismissed the indictment against Vuitch in November 1969, but the case was that appealed to the U.S. Supreme Court. On April 21, 1971 the U.S. Supreme Court found that "health" was not an unconstitutionally vague term, but could be interpreted in this statute to include both physical and emotional health and, moreover, that the burden would on the prosecution to prove that an abortion was not necessary to preserve the mother's health. [114] Though this ruling did not overturn D.C.'s abortion law in full, it seemed to have that effect *de facto*; outpatient abortion clinics opened in D.C. shortly after the decision. One of these, the Preterm Abortion Clinic, performed approximately 300 first term abortions per week following its opening in March 1971.[115] Previous authors have argued that D.C. should be considered a repeal state given the presence of outpatient abortion clinics there prior to *Roe v. Wade* and evidence that at least one had a substantial caseload.[116]

The August 30, 1974 law regarding minors' capacity to consent to health services explicitly included abortion as a service for which minors could consent. Prior to the enactment of this law, a D.C. family court held in 1973 that parental consent was not necessary for a minor's abortion because of the "great and immediate harm to her physical and mental health" if the pregnancy were allowed to continue and because she had a fundamental right to obtain an abortion under *Roe* and *Doe*. [117]

## Florida

Age of majority: Florida lowered the age of majority from 21 to 18 effective July 1, 1973.[118]

Contraception: Florida's Comprehensive Family Planning Act, enacted in 1972, permits providers to furnish contraception to a minor who is married, a parent, pregnant, has the consent of a parent, or if the minor may, in the opinion of the physician, suffer probable health hazards if such services are not provided.[119]

Abortion: Florida was a reform state; it adopted MPC standard effective April 12, 1972 with the Florida Therapeutic Abortion Act. Section § 458.22(3)b contained a parental consent requirement for women under the age of 18. This provision was challenged and

[113] Merz, Jackson, and Klerman (1995).
[114] *United States v. Vuitch*, 402 U.S. 62 (April 1, 1971).
[115] Jane Hodgson, the director of the clinic, recalled that the clinic performed about 60 abortions per day (Joffe 1996). Margolis et al. (1974) report that between January 8 and January 31 of 1972 the clinic performed 664 first term abortions.
[116] Joyce, Tan, and Zhang (2013).
[117] In re P.J., Super. Ct. Of D.C.-Fam. Div. (February 3, 1973) reported in DHEW (1978) and E.M. Mc. "The minor's right to abortion and the requirement of parental consent." 60 *Virginia Law Review* (1974).
[118] Fla. Ann. Stat. § 743.07 (2009).
[119] Fla. Ann. Stat. § 381.0051 (2009).

declared unconstitutional by a three-judge federal court on August 14, 1973.[120] The court did not grant injunctive relief against enforcement of the law, stating that it anticipated that the state would respect the declaratory judgment. In the ruling, the panel indicates that "parents cannot look to the state to prosecute and punish the physician (or other participants) who performs an abortion." The state appealed the ruling to the U.S. Court of Appeals, which upheld the ruling on August 18, 1975.[121] The state attorney general appealed this ruling, but after the U.S. Supreme Court's ruling in Danforth, he stated in a public interview that "it appears from everything we know now that it strikes that portion of the law regarding consent."[122] On January 10, 1978 the Attorney General issued a formal opinion affirming that in accordance with these rulings minors were permitted to consent to abortion in the first trimester.[123]

Florida's regulatory environment regarding abortion appears to have been in doubt between 1973, when the initial injunction barring enforcement of the parental consent law was issued, and 1978, when the Attorney General confirmed that minors could consent. An account in the press from July of 1976 states that "Florida hospitals have adopted varying policies on abortion consent since the New Orleans [1975 Appeals Court] ruling. Miami's Jackson Memorial Hospital dropped all requirements for parental or spousal agreement, but others have not, even in the wake of the new decision [Danforth]." [124] Another story stated that "some abortion clinics have continued to ask minors to have the consent or their parents or guardians because the law was still under appeal by Shevin." [125]

The Florida legislature repealed the unenforceable parental consent provision effective July 1, 1979. Effective the same day, the legislature enacted the Medical Practice Act, codified as § 458.505. Section (4)a contained a new parental consent requirement for women under the age of 18. Enforcement of the parental consent provision was preliminarily enjoined on July 13, 1979 and it was held to be unconstitutional in December of the same year.[126]

Effective October 1, 1988, the legislature amended the unenforceable parental consent provision in § 458.22(3)b. Enforcement of the revised statute was temporarily enjoined on October 6, 1988 and it was subsequently held to be unconstitutional by the Florida Supreme Court.[127] The legislature passed a new involvement law, the Parental Notice Act, effective July 1, 1999. Enforcement was permanently enjoined on July 27, 1999; the Supreme Court upheld the trial court's decision in 2003.[128] In 2004 Florida voters approved an amendment to the state constitution that paved the way for a new parental notification law. Effective July 1, 2005 the Florida legislature enacted the Parental

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[120] *Coe v. Gerstein*, 376 F. Supp. 695 (August 14, 1973).
[121] *Poe v. Gerstein*, 517 F.2d 787 (August 18, 1975).
[122] Florida Attorney General Robert Shevin as quote in Associated Press, "Court overturns abortion consent," *The evening independent*" (July 1, 1976).
[123] Op. Atty. Gen. 078-8 (January 10, 1978).
[124] Associated Press, "Parents have voice in abortions," *Lakeland Ledger* (July 2, 1976).
[125] Associated Press, "Court overturns abortion consent," *The evening independent*" (July 1, 1976).
[126] *Scheinberg v. Smith*, 482 F. Supp. 529 (December 13, 1979). Aff'd *Scheinberg v. Smith*, 550 F. Supp. 1112, (November 4, 1982).
[127] Fla. Ann. Stat. § 390.001 (2010) ; *Jacksonville Clergy Consultation Service v. Martinez* 696 F. Supp. 1445 (1988) ; *In re. T.W.*, 551 So. 2d 1186 (1989).
[128] *North Florida Women's Health and Counseling Services v. State of Florida*, 866 So. 2d 612 (2003).

Notification of Abortion Act.[129] This law permitted providers to notify parents by telephone. Asserting that the 2005 law was too easy for minors to circumvent,[130] in 2011 the Florida legislature amended this law to clarify the notification provisions, requiring that notice given by telephone be confirmed in writing, signed by the physician, and mailed to the parent or legal guardian. The amendment also required a waiver of notice from a parent or guardian to be notarized, to reduce fraud, limited "court-shopping" by minors seeking judicial bypass, and clearly spelled out the grounds on which judicial waiver could be granted.[131]

## Georgia

Age of majority: Georgia lowered the age of majority from 21 to 18 effective July 1, 1972.[132]

Contraception: A 1968 amendment to the Family Planning Services Act permitted state family clinics to offer services to "any person requesting" them. A 1971 Attorney General Opinion states that this may include minors.[133] A Medical Consent Law passed April 5, 1971 granted minors age 18 and over capacity to consent to medical care. It also granted "any female regardless of age or marital status" capacity to consent to care "in connection with pregnancy or childbirth, excluding sterilization and abortion."[134] A 1971 Attorney General Opinion stated that it was "impossible" to give a concrete answer as to whether minors under the age of 18 could consent to family planning services under the medical consent statute."[135] The law was amended effective July 1, 1972 to clarify that minors could consent to services for the prevention of pregnancy.[136]

Abortion: Georgia was a reform state; it adopted the MPC provisions effective July 1, 1969. This law was struck down in *Doe v. Bolton* on January 22, 1973.[137] The law did not have a parental consent provision. However, an August 31, 1972 Attorney General Opinion states that parental consent is required for an abortion for a woman under the age of majority.[138] It is unclear what the effect of this opinion on parental consent for minors might have been post *Danforth*.

The state legislature passed the Georgia Parental Notification of Abortion Act in on April 14, 1987. Suit was filed prior to the act's effective date of July 1, 1987, and a preliminary injunction was entered.[139] While an appeal was pending, the legislature amended the act,

[129] Fla. Stat. § 390.01114 (2009).
[130] Kathleen Haughney. "Abortion bill tightens parental notification requirements." *Orlando Sentinel*, March 21, 2011.
[131] Florida HB 1247 (2011)
[132] O.C.G.A. § 39-1-1 (2009).
[133] Op. Atty. Gen. 71-177 (November 3, 1971).
[134] O.C.G.A. §§ 31-9-2; 31-9-5 (2009).
[135] Op. Atty. Gen. 71-177 (November 3, 1971).
[136]O.C.G.A. § 31-9-2 (2009); DHEW (1978).
[137] *Doe v. Bolton* 410 U.S. 179 (January 22, 1973); Merz, Jackson, and Klerman (1995).
[138] Op. Atty. Gen. 72-118 (August 31, 1972).
[139] O.C.G.A. § 15-11-112 (2009). *Planned Parenthood Association of the Atlanta Area v. Harris*, 670 F. Supp. 971 (1987).

Planned Parenthood again filed suit, and enforcement of the amended act also was enjoined before it could go into effect. The law was upheld in 1991 and went it into effect in 9/16/1991.[140]

## Hawaii

Age of majority: Hawaii lowered the age of majority from 20 to 18 effective March 28, 1972.[141]

Contraception: Hawaii enacted a law governing the capacity of minors to consent to medical care, codified as § 577A-1 through § 577A-4, effective May 9, 1968. Under the law, pregnant minors age 14 and up could consent to pregnancy related care excluding surgery or abortion except as permitted by the state's abortion law. Under this medical consent statute, physicians were required to notify parents of any patient younger than age 18 who was found to be pregnant. This law was amended again effective June 26, 1979 to add family planning services to the list of services to which a minor could consent and to give physicians discretion in notifying a minor's parents.[142]

Hawaii is one of 8 states that made emergency contraception available over the counter prior to a national policy change in 2006. The statute, effective in 2003, makes no mention of age with respect to EC distribution.[143]

Abortion: Hawaii was a repeal state; it substantially liberalized its abortion law effective March 11, 1970, making abortion legal under most circumstance.[144] Hawaii Rev. Stat. § 577A-1 through 4 stated that pregnant minors could consent to treatment, but that this "shall not include surgery or any treatment to induce abortion except as permitted under section 768-7.[145] Section 768-7, which had permitted abortions only to save the life of the pregnant woman, was repealed and replaced with Hawaii Rev. Stat. §453-16 in 1970. Neither of these statutes contained an age requirement, and secondary sources from the period interpret this as permitting minors aged 14 and older to consent to abortion in Hawaii.[146] However, section 577A-1 through 577A-4 also required physicians to notify the parents of any minor under age 18 found to be pregnant. This indicates that while minors could consent to abortion, parental notification was required.[147] Effective May 24, 1978, Hawaii revised its consent statute to exclude abortion from the list of services to

[140] *Planned Parenthood Association of the Atlanta Area v. Miller*, 934 F.2d 1462 (1991). "Long in Coming, abortion-notification law short on effect." *The Atlanta Journal and Constitution* (September 15, 1991). Merz, Jackson, and Klerman (1995).
[141] Haw. Rev. Stat. § 577-1 (2009). Bailey (2006) reports that the age of majority was lowered in 1975 rather than 1972. This may be based on Paul, Pilpel, and Wechsler (1974) which indicated that the age of majority was still 20 as of June 1974. The date of legal change reported here is confirmed in *Hasse v. Board of Regents*, 363 F. Supp. 677 (1973) and by the Council of State Governments (1973).
[142] Haw. Rev. Stat. § 577A-1—577A-5 (2009).
[143] Haw. Rev. Stat. § 461-1 (2003).
[144] Haw. Rev. Stat. § 453-16 (2010) ; Merz, Jackson, and Klerman (1995).
[145] Haw. Rev. Stat. § 577A-1—577A-5 (2009); DHEW (1974).
[146] DHEW (1978); Paul, Pilpel, and Wechsler (1974).
[147] Paul, Pilpel, and Wechsler (1976) interpret the law similarly.

which minors were granted capacity to consent. Effective June 26, 1979, the legislature again amended the law to grant physicians discretion in notifying the parents of a minor's pregnancy. Hawaii has not enacted any other laws related to parental involvement in abortion. [148]

## Idaho

Age of majority: In 1960 the age of majority in Idaho was 18 for females and 21 for males. The age of majority for males was lowered from 21 to 18 in 1972.[149]

Contraception: In early 1974 Idaho amended an existing law regarding the advertisement of contraception to add an endorsement of the mature minor doctrine for the provision of contraceptive services.[150]

Abortion: Idaho enacted a parental notification statute, codified as § 18-609(6), effective July 1, 1982.[151] It is unclear whether the 1982 parental notification law, which would appear to be unconstitutional under *Danforth* because it did not include a bypass provision, was ever enforced. Primary and secondary sources provide contradictory evidence. In a 1983 letter, the Attorney General states that the recent U.S. Supreme Court decision in *Akron v. Ohio* did not render the parental notification provision unenforceable because that decision regarded a parental consent law rather than a parental notification law.[152] Several newspaper articles from the mid-eighties indicate that the notification law was being enforced at that time.[153] However, other newspaper articles from the late eighties and early nineties indicate that the law was not being enforced during that period, and some indicate that it had never been enforced.[154] In January 1991 the Attorney General stated that recent U.S. Supreme Court decisions had rendered the law "valid and enforceable."[155] A 1993 opinion from the Attorney General states that although the law does not contain a judicial

[148] Haw. Rev. Stat. § 577A-1 – 577A-5 (2009); DHEW (1974); DHEW (1978); Merz, Jackson, and Klerman (1995).
[149] Idaho Code § 32-101 (2009).
[150] Idaho Code § 18-603 (2009).
[151] Merz, Jackson, and Klerman (1995) report that Idaho enacted a parental notification statute on March 17, 1973 as part of a broader set of legislation regulating abortion, and that this act was codified as Idaho Code 18-609(6). However, DHEW (1978) and Paul, Pilpel, and Wechsler (1974, 1976) do not mention such a law. Other sources describing the 1982 law do not mention an earlier law. See Bush (1983); Frances Huessy. "Abortion debate still fuzzy." The Spokesman-Review, (January 23, 1983); Ken Sands. "Will Idaho's new abortion law work?" *The Spokesman-Review* (April 11, 1982).
[152] Atty. Gen. Idaho, Letter to Rose Bowman dated August 2, 1983.
[153] E.g., Associated Press. "State-by-state laws on abortion," *Spokane Chronicle* (July 3, 1988) and Associated Press. "State-by-state review of abortion laws" (July 2, 1989).
[154] See, e.g., David Savage, "Ruling on Teens' abortion rights seen as major test," *Los Angeles Times* (November 26, 1989); Associated Press, "State laws on parental notification and consent for abortions by minor," *The Free Lance-Star* (June 28, 1990); Associated Press, "State abortion laws called 'enforceable,'" *The Spokesman-Review* (January 3, 1991); Associated Press. "Idaho abortion law enforced: 24-hour parental notification required before procedure," Moscow-Pullman Daily News (July 2, 1992). Merz, Jackson, and Klerman (1995) also conclude that the law was not enforced.
[155] The Attorney General's letter is referred to by Merz, Jackson, and Klerman (1995) and in Associated Press, "State abortion laws called 'enforceable,'" *The Spokesman-Review* (January 3, 1991). However, Merz, Jackson, and Klerman (1995) report that they are unable to find the original letter from the Attorney General, as am I.

bypass provision, it does require notification only "if possible," which seemingly provides a safety valve in the requirement. However, the Attorney General concludes that the law is vulnerable to a constitutional challenge.[156] Newspaper articles from later in the nineties indicate that the law was being enforced at that time.[157] In 2000, when the Senate was again considering a bill to replace the notification law with a consent law, a spokesman for Planned Parenthood noted that there had been a parental notification law "on the books" since the mid-1980s.[158] Annual reports published by the NARAL Foundation from 1989 to 2000 indicate that the parental notification law was unenforced from 1989-1995, but enforced from 1996-2000. The state profile for Idaho in all of the reports, however, described the 1982 notification law as "unenforceable" and does not explain why summary tables at the end of the later reports indicate that the law began being enforced in 1996.[159] In a personal email to the author dated March 23, 2010, an employee of the Idaho Legislative Services Office reported to the author that he could find no written record with the Idaho State Police's Bureau of Criminal Investigation or the Supreme Court data repository showing that the law was ever enforced. In addition, he spoke with one of the authors of the 1993 Attorney General Opinion, and she could not find or remember a case pursuant to the law.[160]

Idaho passed a parental consent statute in 2000 that replaced the parental notification provisions in § 18-609(6) with Idaho Code § 18-609A. The new law required parental consent which could be waived in cases of medical emergency. Suit was filed in June 2000, prior to the law taking effect on July 1, and a preliminary injunction was issued barring enforcement of three provisions of the law related to an identification requirement, felony prosecutions arising from abortions in response to medical emergency, and a venue provision in the judicial bypass option. The parental consent provision was not enjoined with the exception of the judicial venue provision.[161] In response to the preliminary injunction, the legislature passed a second bill in 2001 that addressed the portions of the bill that had been enjoined. The entire parental consent provision was struck down on July 16, 2004 by a three judge panel of the 9th U.S. Circuit Court of Appeals.[162] The ruling was finalized September 7, and the enforcement of the law was enjoined as of that date. In response, the legislature amended the parental consent provisions in § 18-609A. The new law was scheduled to go into effect July 1, 2005, but enforcement was enjoined before this date.[163] The legislature again amended the statute, and a parental consent provision went into effect on July 1, 2007.[164]

## Illinois

[156] Op. Atty. Gen., No. 93-1 (February 10, 1993).
[157] Betsey Russell. "Politics muddy Idaho abortion debate." *The Spokesman-Review* (January 16, 1996); Betsy Russell. "Idaho Group seeks tighter limits on abortions." *The Spokesman-Review* (January 11, 1998); Susan Drumheller. "Keaough faces young challenger for senate." *The Spokesman-Review* (May 3, 2000).
[158] Beth Bow. "Views differ on abortion bill's effect." *The Spokesman Review (*February 13, 2000).
[159] NARAL (1989, 1991, 1992, 1993, 1995, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010).
[160] Email from Mark Robertson to Caitlin Myers dated March 23, 2009.
[161] *Planned Parenthood of Idaho v. Wasden*, 376 F.3d 908 (July 16, 2004).
[162] *Planned Parenthood of Idaho v. Wasden*, 376 F.3d 908 (July 16, 2004).
[163] *Planned Parenthood of Idaho v. Wasden*, 676 F. Supp. 2d 1012 (July 1, 2005).
[164] Idaho Code § 18-609A (2009).

Age of majority: In 1960 the age of majority in Illinois was 18 for females and 21 for males. The age of majority for males was lowered to 18 on August 24, 1971.[165]

Contraception: At the time of the introduction of the birth control pill, Illinois had a Comstock Law in place (Ill. Rev. Stat. ch. 38, § 468) prohibiting the distribution or sale of items of "immoral use." This had been interpreted by courts as including contraceptives.[166] The law was repealed in 1961, effective January 1, 1962.[167] Bailey and Davido code this law as a Comstock law preventing the distribution of contraceptives. However, the court ruling that they cite explicitly focuses on the distribution of non-prescription contraceptives, noting

> *"There is present, therefore, a case where the subject matter of the contract was the invention, if possible, of a contraceptive that would do away with the necessity of women consulting physicians or clinics in respect to the use of contraceptives — of an article that could be sold through drug stores to any woman, married or single, who called for it. Neither the woman nor the druggist would be required to make any inquiries or statements in reference to the article or its proposed use. No direction or prescription from a physician showing that the article was to be used for the cure or prevention of disease would be required. Plaintiff's brief frankly states that the nature of the contraceptive and the manner in which it was to be sold would enable a woman to buy the article as she would `medical and personal supplies, over the counter.'...In view of the subject matter of the contract in the instant case and the manner in which the article was to be sold, it seems clear that if one were to use the mails to deliver the contraceptive in question to drug stores, to be sold in the manner planned by plaintiff, he would be guilty, under section 334; and, in our judgment, section 223 of the Criminal Code of Illinois is certainly broad enough to cover indiscriminate sales of contraceptives through drug stores."*[168]

While this ruling seems to clearly apply to contraceptives sold without physician involvement, its applicability to prescription contraceptives seems less certain. Planned Parenthood of Illinois' self-published timeline indicates that Planned Parenthood of Illinois began a "The Big Push" to introduce birth control services into Cook County Hospital and Chicago Board of Health Clinics in 1958. The history additionally states that the board of the Champaign health center approved the use of the birth control pill for patients with a prescription in 1960, but that "Chicago experience[d] a battle over birth control. PPCA continue[d] The Big Push in order to get state supported birth control."[169] A 1966 article

[165] 755 ILCS 5/11-1 (2010).
[166] *Lanteen Laboratories v. Clark*. 1938. 294 Ill. App. 81.
[167] DHEW (1978); Bailey and Davido (2009).
[168] *Lanteen Laboratories v. Clark*. 1938. 294 Ill. App. 81.
[169] Planned Parenthood of Illinois. History of the Pill. Online document accessed 8/7/2019 at

in the Saturday Evening Post make several references to the battle over the distribution of birth control in Chicago. It cites the medical director of the Planned Parenthood Affiliate in Chicago, who says that many of their patients in 1961 do not "stay with" the diaphragm, seemingly implying that they do distribute birth control. It also quotes Richard Moy, the head of Student Health Services at the University of Chicago, who claimed "We have about five percent whom I would call sexually active. But that's the same five percent we've always had. As for the pills, many girls have them when they come to school. Their family doctors at home have prescribed them. Or they borrow from each other or use the prescription of a married sister. Or they put on an engagement ring and get them as part of preparation for marriage. It's not a very formidable task to obtain the pills." And the article references a "long and bitter battle" over birth control in Chicago ending in June 1965 when the state legislature passed a resolution authorizing state agencies to provide birth control. Overall, the article gives the impression that it was legal for physicians to prescribe birth control, but that many—including Cook County Hospital—were not doing so.[170]

The legislature passed the Birth Control Services to Minors Act on September 22, 1969. Under the law, a physician can provide birth control services to any minor who is (1) married; or (2) a parent; or (3) pregnant; or (4) has the consent of a parent or legal guardian; or (5) if the failure to provide contraception would present "a serious health hazard;" or (6) is referred by a physician, clergyman, or planned parenthood agency.[171]

Abortion: The state legislature passed the Consent by Minors to Medical Procedures Act on August 17, 1961 explicitly granting pregnant minors capacity to consent to medical and surgical care.[172] In the absence of a parental involvement law, this law permits minors to consent to abortion.[173]

Illinois passed parental involvement laws in 1975, 1977, 1979, and 1983. Enforcement of each law was immediately enjoined and none was enforced for more than two weeks.[174] In 1995 the legislature passed the Parental Notice of Abortion Act, which repealed and replaced the unenforceable 1983 law. The law was challenged and enforcement temporarily enjoined on June 7, 1995, six days after its effective date. Because the Illinois Supreme Court refused to promulgate rules to implement the act's judicial bypass procedure, the district court permanently enjoined enforcement of the law in 1996. Ten years later, in 2006, the state Supreme Court adopted Rule 303A providing the necessary appeals procedure and on July 15, 2009, the court of appeals lifted the injunction barring enforcement of the law. The State Medical Disciplinary Board, the agency responsible for enforcement, was granted a 90-day moratorium to prepare to enforce the law. However, on November 4, 2009, when the moratorium was about to expire, a state court issued a restraining order against enforcing the law until arguments are heard.[175] In July 2013, the

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https://www.plannedparenthood.org/planned-parenthood-illinois/who-we-are/our-history.

[170] Steven Spencer. 1966. "The Birth Control Revolution." The Saturday Evening Post. January 15, 1966.

[171] 325 ILCS 10/1 (2010). The date of passage is in the annotated statutes, and that the 1969 statute included the health clause is confirmed by Pilpel and Wechsler (1971).

[172] 410 ILCS 210/1 (2010).

[173] Paul, Pilpel, and Wechsler (1974); DHEW (1978); Merz, Jackson, and Klerman (1995).

[174] Merz, Jackson, and Klerman (1995).

[175] *Zbaraz v. Hartigan*, 776 F. Supp. 375 (1991); Naral (2010).

Illinois Supreme Court ruled that the law was valid, and the state began enforcing it on August 15, 2013.[176]

## Indiana

Age of majority: Indiana lowered the age of majority from 21 to 18 in 1973 by changing the age requirements for various statutory items.[177]

Contraception: Indiana had a Comstock law that prohibited the sale of contraception. The law included a legitimate business exemption excepting "the practice of regular practitioners of medicine or druggists in their legitimate business." The law was repealed in 1963.[178] Indiana state law permits minors to consent to medical care only if they are emancipated.[179] Minors have not been granted capacity to consent to contraception.

Abortion: Indiana passed comprehensive abortion legislation including a parental consent provision on April 24, 1973; enforcement of the parental consent provision was enjoined on January 31, 1975 and it was repealed in 1978.[180] A new notification law went into place effective September 1, 1982; enforcement of this law was enjoined on August 26, 1983.[181] A new law requiring parental consent was enacted effective September 1984, and it has been enforced since.[182]

## Iowa

Age of majority: Iowa lowered the age of majority to 19 effective July 1, 1972. It then lowered the age of majority to 18 effective July 1, 1973.[183]

Contraception: At the time of the introduction of the birth control pill, Iowa Code §725.5 limited the sale of contraception.[184] This statute contained an exemption clause for physicians and druggists practicing their "legitimate business," and in 1934 the Attorney General issued an opinion that the sale of contraceptives by pharmacists was therefore permissible.[185] The law was repealed in 1974.[186] I code the law as not restricting the distribution of prescription contraceptives, though it does appear to have continued to be enforced throughout the sixties with regards to the sale of prophylactics.[187]

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[176] *Hope Clinic for Women, Ltd. V. Flores, 112673 Illinois (2013).*
[177] Op. Atty. Gen. No. 23 (September 28, 1973).
[178] Bailey and Davido (2009).
[179] Burns Ind. Code. Ann. § 16-36-1-3 (2009).
[180] *Gary-Northwest Indiana Women's Services, Inc. v. Bowen*, Civ. No. H-74-289 (January 31, 1975); DHEW (1978); Merz, Jackson, and Klerman (1995).
[181] *Indiana Planned Parenthood v. Pearson*, 716 F.2d 1127 (August 26, 1983).
[182] Burns Ind. Code. Ann. § 16-34-4 (2009); Merz, Jackson, and Klerman (1995).
[183] Iowa Code § 599.1 (2008); Council of State Governments (1973); Merz, Jackson, and Klerman (1995).
[184] DHEW (1974).
[185] Bailey and Davido (2009).
[186] Bailey and Davido (2009).
[187] Bailey and Davido (2009).

In 1965, the Iowa state legislature enacted a law authorizing the Social Welfare Department to provide family planning services to "every parent or married person who is a public assistance recipient."[188] In a letter from the Iowa State Health Department to DHEW dated November 20, 1970, the Iowa State Health Department indicated that "requirements regarding minors is [sic] a policy decision of the board of directors of the agency operating the family planning clinic. In those few instances where contraceptive medicines or devices are purchased directly by the Iowa state department of Health and provided for use in family planning clinics, they are not dispensed to unmarried minors without written parental or guardian consent."[189] The legislature amended the family planning statute in 1973 to permit the Department of Social Services to provide contraceptives to any eligible applicant, which would presumably include unmarried teens who were eligible for the program.[190] In 1975 the Iowa Department of Health issued new standards and regulations for state family planning programs stating that family planning services should be made available to all persons in Iowa, and that sexually active teens aged 15-19 should be actively recruited.

Effective July 1, 1999, Iowa enacted legislation related to HIV testing that also explicitly permitted minors to consent to contraceptive services.[191]

Abortion: Iowa did not pass a parental involvement law in the wake of *Roe v. Wade*. A 1976 opinion of the state Attorney General indicated that it was legal to perform a first trimester abortion on a minor without parental consent.[192] Iowa passed a parental notification law effective July 1, 1997.[193]

## Kansas

Age of majority: Kansas lowered the age of majority from 21 to 18 effective July 1, 1972.

Contraception: Kansas had a Comstock law banning the sale of contraception until 1963. The law did not contain a physician exception.[194] Effective July 1, 1969, Kansas adopted a statute that permits a physician to provide prophylactic treatment for exposure to venereal disease to a minor whenever that minor is suspected of having a venereal disease or contact with anyone having a venereal disease.[195] Another statute, effective the same day, allows minors aged 16 and over to consent to medical treatment and surgical care when a parent is not "immediately available."[196] A mature minor doctrine was recognized in Kansas with a judicial ruling on May 1, 1970 with regards to a hospital that treated a minor's injured

[188] Iowa Code§234.21 et seq. (1966) as quoted in Pilpel and Wechsler (1969) and verified by DHEW (1974).
[189] DHEW (1974), page 190.
[190] Iowa Code§234.21 (2009) ; Paul, Pilpel, and Wechsler (1974); DHEW (1978).
[191] Iowa Code § 141A.7 (2017). A 2015 memorandum from the Iowa Attorney General's office confirms this interpretation: Heather Adams. "Re: Minor Consent Laws." Memorandum to the Iowa Department of Public Health, Division Directors dated April 3, 2015.
[192] Op. Atty. Gen. 76-1-14 (July 15, 1976).
[193] Iowa Code § 135L.1, L.8 (2010).
[194] Bailey and Davido (2009).
[195] K.S.A. § 65-2892 (2009).
[196] K.S.A. § 38-123b (2009).

finger without parental permission.[197] That this ruling recognizes the right of mature minors' to consent to contraception was reaffirmed in a June 1, 1992 opinion the Attorney General.[198]

Abortion: Kansas was a reform state; it adopted MPC provisions (without a parental consent requirement) effective July 1, 1970.[199] Statute § 38-123, effective July 1, 1967, allows pregnant minors to consent to medical care or surgical treatment related to her pregnancy when a parent is not available.[200] The Attorney General issued an opinion in December 1970 that Statute § 38-123b, allowing minors over age 16 to consent to surgical procedures if a parent is not available, could be interpreted to include therapeutic abortion.[201] In addition, sources from the early seventies suggest that mature minors appeared to be able to consent to abortion under the mature minor doctrine from 1970.[202]

Kansas enacted a one-parent notification law effective July 1, 1992.[203] Another provision of Kansas' abortion regulation statutes, effective the same day, requires that counseling be provided to a minor before she obtains an abortion, and that a parent or "a person 21 or more years of age who is not associated with the abortion provider and who has a personal interest in the minor's well-being" shall accompany the minor and be involved in the decision-making process.[204] The Kansas legislature amended § 65-6705 to replace the parental notification requirement with a parental consent requirement effective July 1, 2011.[205]

## Kentucky

Age of majority: Kentucky enacted a statute effective January 1, 1965 that lowered the age of majority from 21 to 18.[206] Later that year, the Kentucky Court of Appeals ruled in *Commonwealth of Kentucky v. James Hallahan* that the statute only applied to specific rights explicitly mentioned in its subsections, which did not include the right to consent to medical treatment.[207] Effective 1968 the Kentucky legislature acted to clarify the situation by amending the law to state that the age of majority is 18 for "all purposes in this Commonwealth except for the purchase of alcoholic beverages and for purposes of care and treatment of children with disabilities."[208]

Contraception: The right of women aged 18 to 20 to consent to contraception was first affirmed in Kentucky with the lowering of the age of majority. It is unclear, however, whether one should demarcate that year with the initial 1965 law or with the 1968

[197] *Younts v. St. Francis Hospital*, 205 Kan. 292 (1970).
[198] Op. Atty. Gen. 92-71 (1992).
[199] Merz, Jackson, and Klerman (1995).
[200] K.S.A. § 38-123 (2009).
[201] Op. Atty. Gen. 70-38-7 (1970) cited in DHEW (1974).
[202] Paul, Pilpel, and Wechsler (1974, 1976).
[203] K.S.A. § 65-6705 (2009).
[204] K.S.A. § 65-6704 (2009).
[205] § 65-6705 (2011)
[206] K.R.S. § 2.015 (2010).
[207] *Commonwealth of Kentucky v. James Hallahan*, 391 S.W. 2d 378 (1965).
[208] K.R.S. § 2.015 (2010).

amendment that clarified that the age of majority was lowered for most purposes.[209] In 1972 the Kentucky legislature enacted a law stating that physicians may treat a minor regarding "contraception, pregnancy, or childbirth, all without the consent of or notification to the parent, parents, or guardian" but that "treatment under this section does not include inducing of an abortion."[210] In a 1975 opinion piece in *The Advocate-Messenger*, a local newspaper in Danville, Kentucky, the clinical director of a medical center and counselor at a high school writes about the provision of reproductive care to Kentucky teenagers. She asserts "I am often asked if agencies such as the Family Planning Clinic can dispense birth control devices or deal with pregnancy issues for teenagers without parental consent. The answer is clearly `yes' by state law. And, as in all professional relationships, what transpires is strictly confidential."[211]

Abortion: As described above, Kentucky's 1972 medical consent statute explicitly excludes abortion from the list of services to which minors could consent. The Kentucky legislature enacted an abortion-regulation bill, codified as § 311.720, effective June 21, 1974 regulating abortions. The statute included a spousal consent requirement for married women and a parental consent requirement for women under 18. The law was challenged and these provisions were ruled unconstitutional on November 19, 1974, with the district court stating that injunctive relief was not necessary because the defendants presumably would "give full credence to this decision."[212] The defendants appealed, seeking a formal injunction, and the Sixth Circuit Court of Appeals declared the consent provisions unconstitutional on August 18, 1976 following *Danforth*.[213] In January 1978 a Kentucky state senator introduced a new bill to require parental consent, but an assistant attorney general issued an advisory opinion that it would be unconstitutional under *Danforth*.[214] This bill appears not to have come to a vote.

In 1980, two bills related to minors' access to abortion were introduced. One, which would have required a court order prior to a minor having abortion, was defeated.[215] A second, House Bill 90 requiring parental consent for minors seeking abortions, passed the Kentucky house late in the 1980 legislative session, reaching the Kentucky senate too late for legislative action. A similar bill was reintroduced in the 1982 legislative session, and passed.[216] This law was scheduled to take effect July 15, 1982, but a temporary restraining order was issued in advance of this date. On September 11, 1984 A U.S. District Court ruled that the parental consent requirement was unconstitutional because it did not specify a time period in which a decision must be made in the case of judicial bypass.[217] The Kentucky legislature amended the parental consent provision in 1986 to require a hearing

[209] Secondary sources differ in their interpretations; Goldin and Katz (2002), Bailey (2006), and Guldi (2008) use 1968, while Hock (2007) uses 1965.
[210] K.R.S. § 214.185 (2009).
[211] R.J. Epstein. "Mental Health Answers." *The Advocate-Messenger*, December 14, 1975.
[212] *Wolfe v. Schroering* 388 F. Supp 631 (November 19, 1974).
[213] *Wolfe v. Schroering* 541 F. 2d 523 (August 18, 1976).
[214] Associated Press. "Constitutionality of abortion bill is questioned by attorney general." *The Courier-Journal* (Louisville), February 10, 1978.
[215] The Courier-Journal Bureau. "Requiring consent 24 hours before abortion is rejected." *The Courier-Journal* (Louisville), March 20, 1980.
[216] Anne Pardue. "Abortion bill wins approval of committee." *The Courier-Journal* (Louisville), January 10, 1982.
[217] *Eubanks v. Brown*, 604 F. Supp. 141 (September 11, 1984).

within 48 hours, and it was scheduled to go into effect on July 15, 1986. A temporary restraining order was again issued before the law could go into effect, and on August 23, 1988 a district court judge struck the provision requiring the consent of "both parents if available" and applied new limiting language requiring the consent of both parents only if a minor lived at home with both parents. This ruling was appealed to the Sixth Circuit Court of Appeals, but the law was allowed to take effect April 7, 1989 pending a hearing and decision. A series of articles in the Louisville Courier-Journal from this period indicate that the law was enforced for the remainder of 1989 until January 3, 1991 when the Sixth Circuit Court of Appeals issues a three-paragraph order telling the state to temporarily cease enforcement of the law pending a U.S. Supreme Court ruling on parental involvement laws in Minnesota and Ohio.[218] On July 3, 1991 the Sixth Circuit Court of Appeals held that the District Court had erred in drafting a new limiting condition rather than severing the unconstitutional parental consent provision, and remanded the case to the district court.[219] Secondary sources suggest that the law was not enforced after this ruling.[220] A one parent consent law was again enacted effective July 15, 1994 and is still enforced.[221]

## Louisiana

Age of majority: Louisiana lowered the age of majority to 18 effective July 26, 1972.[222]

Contraception: Louisiana enacted a law governing minors' consent to medical treatment in 1972 that states that any minor "who is or believes himself to be afflicted with an illness or disease" can consent to medical or surgical services and that providers may, but are not obligated to, inform the minor's parent.[223] Effective July 29, 1975 Louisiana passed a more general medical consent law with a provision that also pertains to minors' reproductive control. The law grants permission to "any female, regardless of age or marital status" to consent to medical care for herself "when given in connection with pregnancy or childbirth" excluding abortion. This law was amended in 1990 to revoke the

[218] Robin Epstein. "Parental-consent abortion measure likely sending teens to other states." Louisville Courier-Journal, June 4, 1989. Gil Lawson. "Appeals court hears arguments on parental consent law." Louisville *Courier-Journal*, October 31, 1990. Larry Bleiberg. "Appeals court tells state not to enforce minors' abortion-consent law for now." Louisville *Courier-Journal*, January 5, 1990. Beth Campbell "Abortion consent law set to take effect Friday" Messenger-Inquirer April 3, 1989. Leslie Scanlon "Doubts voiced that consent law will cut number of teen abortions" The Courier-Journal April 7, 1989. Fran Ellers. "Court Invalidates Abortion-Consent Law." Louisville *Courier-Journal*, July 4, 1991.
[219] *Eubanks v. Wilkinson*, 937 F.2d 1118 (July 3, 1991).
[220] See NARAL (1991, 1992, 1993) and Merz, Jackson, and Klerman (1995).
[221] K.R.S. § 311.732 (2010). For supporting evidence regarding when Kentucky's series of parental consent laws were enforced see Associated Press. "Abortion law struck down by judge," *Kentucky New Era* (September 13, 1984); Associated Press. "Judge halts state's law on abortion." *Kentucky New Era* (July 11, 1986). Associated Press. "Teen's abortion without consent blocked." *Bangor Daily News*, May 17, 1989. "Abortion Law Talley." Louisville *Courier-Journal*, July 27, 1989. Robin Epstein. "Parental-consent abortion measure likely sending teens to other states." Louisville Courier-Journal, June 4, 1989. Fran Ellers. "Court Invalidates Abortion-Consent Law." Louisville *Courier-Journal*, July 4, 1991.
[222] La. C.C. Art. 29, 2010, formerly codified as La. Civil Code Art. 37. *State of Louisiana v. Clarence M. Jordan*, 283 So. 2d 223 (September 24, 1973).
[223] La. R.S. 40:1095 (2010).

permission for pregnant minors to consent to medical care.[224] Neither law has not been interpreted as granting minor's permission to consent to contraception.[225]

Abortion: Louisiana enacted a parental consent statute effective June 18, 1973.[226] Enforcement of the statute was enjoined on January 26, 1976, and it subsequently was held to be unconstitutional by a three-judge Federal District Court in a group of cases decided in 1976.[227] A second law, requiring parental notification for all minors and consent for minors under 15 was passed on July 10, 1978, but enjoined on September 7 of that year. A third law requiring notarized evidence of parental notification was passed a week after the second law and went into effect on September 8, 1978.[228] It was declared unconstitutional on March 3, 1980 due to inadequate judicial bypass provisions.[229] In response, the legislature repealed the law on July 18, 1980 and replaced it with an amended version of the second law that required parental consent for all minors and provided for a judicial bypass procedure. Effective July 23, 1981 the law was again amended to require notarized consent. This law was upheld and has been enforced since November 18, 1981.[230]

## Maine

Age of majority: Maine lowered the age of majority from 21 to 20 effective October 1, 1969 and again from 20 to 18 effective June 9, 1972.[231]

Contraception: Maine's 1973 Family Planning statute states "Family planning services may be furnished to any minor who is a parent or married or has the consent of his or her legal guardian or who may suffer in the professional judgment of a physician probable health hazards if such services are not provided."[232]

Maine is one of 8 states that made emergency contraception available over the counter prior to a national policy change in 2006. The statute makes no mention of age with respect to EC distribution.[233]

Abortion: Maine passed a parental notification law effective September 14, 1979 codified as 22 M.R.S. § 1597 that required parental notification of abortions for minors under age 17. A district court issued a preliminary injunction before the law went into effect.[234] No appeal was taken from this decision, but in a 1982 unpublished order the district court

[224] La. R.S. 40:1299.50-58 (2010) ; DHEW (1978); Merz, Jackson, and Klerman (1995).
[225] See, e.g., several secondary sources that indicate that Louisiana has not and does not have a law permitting minors to consent: Paul, Pilpel, and Wechsler (1974, 1976); DHEW (1978); Reimer (1986); English and Kenney (2003); Guttmacher (2017a).
[226] Former La. R.S. 40:1299.33.
[227] DHEW (1978); Merz, Jackson, and Klerman (1995).
[228] La. R.S. 40:1299.35.5 (2010).
[229] *Margaret v. Edwards* 488 F. Supp. 181 (1980).
[230] *Margaret v. Treen*, 597 F. Supp. 636 (June 29, 1984); Merz, Jackson, and Klerman (1995).
[231] 1 M.R.S. §§ 72 and 73 (2009). Effective dates obtained from Council of State Governments (1972) and *Baril v. Baril*, 354 A.2d 392 (March 19, 1976).
[232] 22 M.R.S. § 1908 (2009).
[233] 32 M.R.S. § 13822 (2017), effective July 30, 2004.
[234] *Women's Community Health Center, Inc. v. Cohen*, 477 F. Supp. 542 (September 13, 1979).

declared that the statute was unconstitutional. The legislature did not formally repeal the act until 1993, but in 1990 the Attorney General issued an opinion stating that the 1989 enactment of a parental consent law repealed the earlier law by implication.[235]

Maine passed a statute regulation the provision of abortions to minors effective September 30, 1989. The statute prohibits performing an abortion on a minor unless consent is provided under one of four alternatives: (a) a parent, guardian, or other adult family member provides written consent, (b) the physician judges that the minor meets a mature minor standard, (c) the minor obtain counseling, (d) a court approves the abortion.[236]

## Maryland

Age of majority: Maryland lowered the age of majority from 21 to 18 effective July 1, 1973.[237]

Contraception: Pregnant minors were granted the right to consent to medical care related to their pregnancy effective June 1, 1967. The law was amended effective July 1, 1971 to provide that "a minor shall have the same capacity to consent to medical treatment as an adult" if (1) the minor has attained the age of eighteen years; or (2) the minor is married or a parent; or (3) the minor seeks treatment or advice concerning venereal disease, pregnancy, or contraception; or (4) In the judgment of a physician treating a minor, the obtaining of consent of any other person would result in such delay of treatment as would adversely affect the life or health of the minor.[238] The physician may, but does not have to, inform the minor's parents.

Abortion: Maryland was a reform state; it adopted MPC provisions effective July 1, 1968.[239] In March 1970 the legislature voted to repeal its anti-abortion laws, but the bill was vetoed by the governor. Although the Maryland legislature was not successful, there is substantial evidence that the 1968 reform law led to substantial liberalization in access to abortion prior to 1973. Based on state abortion surveillance data, the predominant indicator for abortions in Maryland was mental health; it accounted for 96.1 percent of abortions provided in 1971.[240] The ratio of abortions to live births in Maryland in 1971 was 145, approaching the rates in Alaska (160) and Washington (212), both repeal states.[241]

In 1972 *In re Smith*, a Maryland Court ruled on whether a parent could compel a 16 year old minor to obtain an abortion. Reversing a Juvenile Court order, the Court of Appeals interpreted the state's medical consent law (Md. Code Art 43 § 135) as granting a minor

[235] Op. Att'y Gen. 90-2 (January 19, 1990).
[236] 22 M.R.S. § 1597-A (2009). Secondary sources differ in whether they treat this as a parental consent law. Guttmacher (2017b) does not, but Levine (2003) does.
[237] Md. Ann. Code Art. 1, § 24 (2009).
[238] Md. Health-General Code Ann. § 20-102 (2010), formerly codified as Art 43 § 135. Descriptions of the original law and amendments found in DHEW (1974, 1978) and *In re Smith*, 16 Md. App. 209 (1972).
[239] Merz, Jackson, and Klerman (1995).
[240] Melton, Seegar, and Pitts (1972).
[241] Smith and Bourne(1973).

capacity to make a decision regarding obtaining an abortion.[242] Maryland enacted a parental notification law on May 26, 1977.[243] The law required the notification of at least one parent. The only exception was if in the physician's judgment, notice may lead to the physical or emotional abuse of the minor. Attorney General opinions from December 1985 and 1990 stated that the law is unconstitutional and unenforceable because of the lack of a judicial bypass procedure.[244] The law was amended effective December 3, 1992. However, the new law allows bypass of parental notification if in the judgment of the physician (1) The minor is mature and capable of giving informed consent to an abortion, or (2) notification would not be in the best interest of the minor. Again no judicial bypass option is present.[245]

## Massachusetts

Age of majority: Massachusetts lowered the age of majority to 18 effective January 1, 1974.[246]

Contraception: At the time that Enovid was introduced, Massachusetts had a law in place banning the sale of contraceptives. Following the U.S. Supreme Court ruling in *Griswold v. Connecticut*, Massachusetts revised its law to allow the sale of prescription contraceptives to married individuals only, which effectively prohibited their distribution to unmarried people.[247] On March 22, 1972 the U.S. Supreme Court ruled in *Eisenstadt v. Baird* that the Massachusetts statute was unconstitutional and that unmarried people could not be prohibited from obtaining contraceptives.

In 1975 the Massachusetts legislature amended its medical consent law to address the ability of minors to consent to medical care. The law permits a minor to consent to medical care excluding abortion if she has been married, is a parent, is pregnant or believes herself to be pregnant, or is emancipated.[248] In 1977 the Massachusetts Supreme Court addressed the mature minor issue in a ruling regarding a recent parental consent law for abortions. The court stated "apart from statutory limitations which are constitutional,

[242] *In re Smith*, 16 Md. App. 209 (1972). Regarding the legality of abortion, the ruling states "We do not construe the order of the Juvenile Court as directing that an abortion be performed. Clearly here such mandate would be beyond the power of the Court; termination of a human pregnancy can be authorized only by the abortion review authority appointed by an accredited hospital…As we interpret the order, the court, satisfied that Cindy's mother desired her daughter to be aborted, commanded the daughter to obey her mother by submitting to such procedures as would ascertain the existence of a condition permitting a legal abortion so that the required authorization of a proper hospital abortion review authority could be obtained and the pregnancy terminated."

[243] Md. Ann. Code § 20-103.

[244] Op. Att'y Gen. 70-3 (December 31, 1985); Op. Att'y Gen. 75-14 (August 30, 1990); Merz, Jackson, and Klerman (1995). The 1985 Attorney General opinion states that the law is unenforceable under the 1983 U.S. Supreme Court ruling in *City of Akron v. Akron Center for Reproductive Health*. It seems that the statute also would have been unenforceable under *Bellotti*, which the 1990 Attorney General opinion notes, and possibly under *Danforth*.

[245] Md. Ann. Code § 20-103 (2010).

[246] Mass. Gen. Laws ch. 231 § 85P (2010).

[247] Codified as Mass. Gen. Laws ch. 272, §§ 20,21, 21A. See DHEW (1974, 1978) for history relative to *Griswold* case.

[248] Mass. Gen. Laws ch. 112, § 12F (2010).

where the best interests of a minor will be served by not notifying his or her parents of intended medical treatment, and where the minor is capable of giving informed consent to that treatment, the mature minor rule applies in this Commonwealth."[249] Thus, unless limited by statute, mature minors can consent to contraception.[250] Massachusetts has not passed a law explicitly recognizing the right of minors to consent to contraceptive care. However, in 1990 the Massachusetts legislature enacted a law requiring the Department of Public Health to provide confidential comprehensive family services without regard to age.[251]

Massachusetts is one of 8 states that made emergency contraception available over the counter prior to a national policy change in 2006. The statute makes no mention of age with respect to EC distribution.[252]

Abortion: In 1944 the Massachusetts Supreme Court interpreted the state's anti-abortion statute to exclude abortions performed to preserve the life or physical or mental health of the mother.[253] Following *Roe*, the state passed a parental consent law on August 2, 1974.[254] The law was challenged and a restraining order barring enforcement was issued prior to the law's effective date. Subsequent stays of enforcement were issued during a complex course of litigation so that the law as originally enacted never went into effect. The case eventually reached the U.S. Supreme Court in *Bellotti v. Baird*, and the court ruled that the parental consent requirement was unconstitutional.[255] The Massachusetts legislature then amended the parental consent law on June 5, 1980, and it went into effect April 23, 1981.[256] The legal environment governing minor's confidential access to abortion in the seventies is quite ambiguous, but press accounts indicate that clinics began providing confidential abortion services to minors on July 1, 1976 when the U.S. Supreme Court enjoined enforcement of the parental consent law. [257]

## Michigan

Age of majority: Michigan lowered the age of majority from 21 to 18 effective January 1, 1972.[258]

Contraception: Michigan courts appeared to have adopted a mature minor doctrine prior to 1960, but the rulings did not clearly grant mature minors the right to consent to contraception. The Michigan Supreme Court ruled in 1906 in *Bakker v. Welsh* that physicians were not negligent in failing to obtain a parent's permission prior to the surgical

[249] *Baird v. Attorney General* 371 Mass. 741 (January 25, 1977).
[250] DHEW (1978).
[251] Mass. Gen. Laws ch. 11, § 24E (2010).
[252] Mass. Gen. Laws ch. 94C §19A (2017), effective December 14, 2005.
[253] *Commonwealth v. Wheeler* 315 Mass. 394 (January 31, 1944).
[254] Codified as Mass. Gen. Laws ch. 112 § 12P, re-lettered § 12S in 1977.
[255] *Bellotti v. Baird 443 U.S. 622* (July 22, 1979) provides a brief history of the enactment of the law and the stays of enforcement.
[256] *Planned Parenthood League of Mass., Inc. v. Bellotti*, 868 F.2d 459 (1989).
[257] *Sue Bass, "*Mass. Girls get abortions without parents Knowing*," Nashua Telegraph (July 31, 1976); "*Court sparks teen rush for abortions*," Chicago Tribune (August 1, 1976).*
[258] Mich. Comp. Laws Ann. § 722.52 (2010).

removal of a tumor from a 17-year-old's ear because the patient was accompanied by other adult relatives, talked to his father about the procedure, and the father gave no indication that he would protest.[259] In 1926 in *Zoski v. Gaines*, the court ruled that doctors erred in performing a tonsillectomy on a nine year-old without parental consent. The court noted that whereas in *Bakker* the minor was older, accompanied by adult relatives, and there was no indication that his parents would have objected to the surgery, in *Zoski* the child was much younger and his parents had repeatedly indicated that they did not want the surgery to be performed. [260] Contemporary sources indicate that minors could consent to contraception and abortion in Michigan under the mature minor doctrine, [261] but other authors have not treated the legal rulings as clearly governing minors' access. [262] I conclude that there was not a clear judicial precedent for permitting mature minors to consent to reproductive care and code early legal access beginning in 1972 when the age of majority was lowered.

In 1977, in *Doe v. Irwin* a Michigan Court ruled that a family planning center could not supply contraceptives to minors without parental consent.[263] However, this order was stayed pending further appeals; it was struck down by the U.S. Court of Appeals on February 26, 1980.[264] Michigan has not passed a law explicitly granting minors the right to access contraception.

Abortion: Prior to *Roe v. Wade*, abortion was legal in Michigan only to save the life of the mother.[265] In 1974 Michigan enacted a licensing requirement for free-standing surgical facilities that included a parental consent requirement for minors.[266] This requirement was challenged and in 1977 it was held to be invalid under *Danforth,* although the ruling notes that minors still could obtain abortions without parental consent in a physician's private office.[267] This law does not appear to have been enforced prior to being struck down.[268]

Effective March 28, 1991 Michigan enacted "The Parental Rights Restoration Act," a parental consent law.[269] The law was struck down on August 5, 1992 on the grounds that it did not clearly identify the emergency conditions under which a physician could perform an abortion without parental consent.[270] The legislature amended the law to correct this and it has been enforced since March 31, 1993.[271]

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[259] *Bakker v. Welsh*, 108 N.W. 94 (1906).
[260] *Zoski v. Gaines*, 260 N.W. 99 (1935).
[261] DHEW (1974, 1978); Paul, Pilpel, and Wechsler (1974, 1976).
[262] Goldin and Katz (2002); Bailey (2006); Guldi (2008); Hock (2007); Bailey et al. (2011).
[263] *Doe v. Irwin*, 428 F. Supp. 1198 (1977).
[264] *Doe v. Irwin*, 615 F. 2d 1162 (1980).
[265] Merz, Jackson, and Klerman (1995).
[266] Public Act 274 of 1974 codified as Mich. Comp. Laws § 331.471 et seq.
[267] *Abortion Coalition of Michigan, Inc. v. Michigan Department of Public Health*, 426 F. Supp. 471 (February 3, 1977).
[268] The opinion in *Abortion Coalition of Michigan, Inc. v. Michigan Department of Public Health* notes that at a prior hearing in April 1976 the Court denied plaintiffs' request for a restraining order because the state had not begun enforcing the law that there was no evidence that harm was likely to ensue from denying relief.
[269] Mich. Comp. Laws Ann. §§ 722.901-722.909 (2010).
[270] *Planned Parenthood of Mid-Michigan v. Attorney General of Michigan*, No. D 91-0571 (August 5, 1992). See also "Judge Strikes down Michigan parental consent law," *Chicago Tribune*, August 6, 1992 and Merz, Jackson, and Klerman (1995).
[271] Mich. Comp. Laws Ann. § 722.905 (2010).

**Minnesota**

Age of majority: Minnesota lowered the age of majority from 21 to 18 effective June 1, 1973.[272]

Contraception: Prior to 1965 Minnesota had a Comstock law prohibiting the sale of contraception with a physician exemption.[273] Effective May 27, 1971 Minnesota enacted a comprehensive medical consent law codified as Minn. Stat. §§ 144.341-144.347.[274] Sections 1 and 2 of the law permit minors who are emancipated, married, or who have given birth to consent to any medical care. Section 3 states that all minors also may consent to the diagnosis and treatment of "pregnancy and conditions associated therewith." Section 4 state that medical services may be rendered without parental consent if "the risk to the minor's life or health is of such a nature that treatment should be given without delay and the requirement of consent would result in delay or denial of treatment." Section 6 states permits physicians to notify parents of the treatment if "failures to inform the parent or guardian would seriously jeopardize the health of the minor patient."

The Minnesota Attorney General issued an opinion on August 25, 1972 addressing the legality of providing contraceptive services to minors without parental consent. The Attorney General states that the primary purpose of §§144.341-144.347 is to "relieve physicians from civil liability for furnishing medical services to minors without parental consent in the situations enumerated…Nothing in this law, however, makes any conduct a crime."[275] The Attorney General concludes "It might be argued that providing contraceptives to minors without parental consent constitutes civil assault and battery unless authorized by sections 144.341-144.347" but "the described practice does not constitute criminal conduct." In *Maley v. Planned Parenthood of Minnesota Inc.*, a Minnesota court ruled on January 5, 1976 that under 144.343 and 144.344, contraceptives could be provided to minors without parental consent unless a minor's parents previously notified the provider of their objection.[276]

Abortion: Prior to Roe v. Wade, abortions were legal only to preserve the life of the mother.[277] Minn. Stat. §144.343 (effective May 27, 1971) granting pregnant minors the right to consent to diagnosis and treatment of pregnancy does not specifically exclude abortion, and secondary sources interpret the law as granting pregnant minors capacity to consent to abortion.[278] The law was amended in 1981. As amended, subdivision (2) of § 144.343 required two-parent notification prior to a minor's abortion with no judicial bypass option. Subdivision 6 provided that if subdivision 2 was ever enjoined by judicial order,

[272] Minn. Stat. § 645.451 (2009); "Minnesota Majority Age Law in Effect," *The Milwaukee Sentinel* (June 5, 1973).
[273] Bailey and Davido (2009).
[274] Minn. Stat. §§ 144.341-144.347 (2009).
[275] Op. Atty. Gen. 494-b-39 (August 25, 1972).
[276] *Maley v. Planned Parenthood of Minnesota Inc.*, Cir. Case No. 37769 (January 5, 1976); DHEW (1978); English and Kenney (2003).
[277] Merz, Jackson, and Klerman (1995).
[278] Paul, Pilpel, and Wechsler (1974, 1976); DHEW (1978); Merz, Jackson, and Klerman (1995).

the same notice requirement would be in effect with a judicial bypass option. Prior to the statute's August 1, 1981 effective date, a judicial order restrained enforcement of Subdivision 2, but Subdivision 6 was allowed to go into effect. After a lengthy trial, the entire statute was enjoined November 6, 1986.[279] A panel of the Eighth Circuit Court of Appeals affirmed the District Court's judgment on appeal, but the panel opinion was later vacated and the Court of Appeals reheard the entire case. In an opinion released August 8, 1988 the Court of Appeals held that Subdivision 2 was unconstitutional, but that Subdivision 6 was valid.[280] The case was appealed the U.S. Supreme Court, which affirmed the Court of Appeal's ruling that Subdivision 6 was valid.[281] The law went back into effect on August 27, 1990.[282]

## Mississippi

Age of majority: Mississippi has not lowered the age of majority; it remains 21.[283] The state has lowered the age of majority for certain specific purposes such as for the ability to enter into contracts, but it does not specify an age of majority for medical treatment.

Contraception: Mississippi had an advertising and sales ban in place for contraception that was not repealed until 1970. It is unclear whether enforcement of the ban ceased in 1965 with the *Griswold* decision or in 1970 with the repeal of the law. [284]

Mississippi courts recognized a mature minor doctrine for minors seeking medical treatment in 1928. The court ruled that a 17 year old boy could consent to a smallpox vaccine because he "was of sufficient intelligence to understand and appreciate the consequences of the vaccination, usually a very simple operation, resulting in no harm other than a temporary inconvenience."[285] The Mississippi legislature codified this mature minor doctrine in 1966 when it enacted a comprehensive medical consent statute governing the provision of medical services to minors.[286] The law permits "any unemancipated minor of sufficient intelligence to understand and appreciate the consequences of the proposed surgical or medical treatment or procedures" to consent for himself. The law further permits any female, regardless of age, to consent to care related to pregnancy or childbirth. [287] The Attorney General of Mississippi stated in a private letter to legal scholars 1971 that there were no laws at that time prohibiting the provision of family planning services to minors.[288]

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[279] *Hodgson v. Minnesota*, 648 F. Supp. 756 (November 6, 1986).
[280] *Hodgson v. Minnesota*, 853 F.2d 1452 (August 8, 1988).
[281] *Hodgson v. Minnesota*, 497 U.S. 417 (June 25, 1990); Merz, Jackson, and Klerman (1995). indicate that the law was enforced again beginning in October of that year.
[282] Kurt Chandler "Parental notification requirement reinstated" Star Tribune (Minneapolis, Minnesota) August 28, 1990.
[283] Miss. Code Ann. § 1-3-27 (2009).
[284] DHEW (1974, 1978); Bailey and Davido (2009).
[285] *Gulf Ship and Island R.R. v. Sullivan*, 155 Miss. 1 (1928) as cited and described in DHEW (1974).
[286] Miss. Code § 7129-81 et seq., The law has since been amended and renumbered; the relevant statute is now Miss. Code § 41-41-3.
[287] Miss. Code Ann. § 41-41-3 (2009).
[288] DHEW (1974).

In 1972, the state enacted a second law related to minors' consent to contraceptive care, The Family Planning Act of 1972. This law, which was effective July 1, 1972, permits contraception to be provided to a minor who is married, a parent, has parental consent, or has been referred by another physician, clergyman, family planning clinic, school, or agency of the state.[289] When the medical consent statute of 1966 and the family planning law of 1972 are in conflict, it is not clear which governed.[290]

Abortion: Mississippi's 1966 medical consent statute permitted any female, regardless of age, to consent to medical care related to pregnancy. Contemporary sources from the 1970s interpret this as granting minors the right to consent to abortion at that time.[291] The state enacted a parental consent law effective July 1, 1986 governing consent for minors, defined in the law as persons under age 18.[292] Enforcement of the statute was preliminarily enjoined before this date, and the District Court extended the stay for four years pending U.S. Supreme Court rulings on abortion. In March 1992 the District Court denied the state's motion to lift the injunction. On appeal, the Fifth Circuit Court of Appeals upheld the law in May 1993. [293] The state instructed doctors to begin enforcing the law in July 1993.[294]

## Missouri

Age of majority: Missouri passed Act 70, Senate Bill 438 amending § 475.010 to lower the age of majority from 21 to 18 effective August 13, 1974. The amended law stated that "whenever the term `twenty-one years of age' is used as a limiting or qualifying factor it shall be deemed to mean `eighteen years of age.'" However, the state Supreme Court ruled on November 12, 1974 that this act was unconstitutional because the state constitution prohibits amendment of an act by striking or inserting words; rather the amended portions have to be identified as such in order to avoid confusion.[295] The state subsequently passed acts lowering the age of majority for specific purposes in the state code.

Contraception: At the time of the introduction of the birth control pill, Missouri had a Comstock law limiting the sale of contraception that contained a legitimate practice exemption.[296] The statute was revised in 1967 to remove the prohibition on the sale of contraceptives.[297]

Under § 431.065, enacted in 1961, married minors or minors who are parents may consent to medical care.[298] Statute § 431.061, enacted in 1971, guaranteed the right of "any adult

[289] Miss. Code Ann. § 41-42-7 (2009).
[290] Paul, Pilpel, and Wechsler (1974, 1976) indicate that mature minors could consent to contraception in Mississippi in 1974 and 1976, suggesting that the mature minor doctrine from § 41-41-3 applies. DHEW (1978) indicates that the Family Planning Act governs because it was enacted at a later time. English and Kenney (2003) cite only the Family Planning Act as governing minors' access to contraception.
[291] Paul, Pilpel, and Wechsler (1974, 1976); DHEW (1978).
[292] Miss. Code Ann. §41-41-51 et seq. (2009); Merz, Jackson, and Klerman (1995).
[293] *Barnes v. Mississippi*, 992 F.2d 1335 (May 26, 1993).
[294] Associated Press. "Mississippi abortion law goes into effect." *Sun Journal* (July 8, 1993).
[295] *State of Missouri v. Stussie*, 518 S.W. 2d (November 12, 1974).
[296] Bailey and Davido (2009).
[297] DHEW (1974); Bailey and Davido (2009).
[298] Mo. Rev. Stat. § 431.065 (2009).

twenty-one years of age or older" to consent to medical care and also stipulated that pregnant minors may to consent to medical care excluding abortions. [299] The statute was amended on July 27, 1977 to reduce the age of consent for medical care to eighteen. An opinion of the Attorney General on March 9, 1973 stated that no law prohibited physicians from prescribing contraceptives to minors without parental consent.[300] Secondary sources, however, indicate that minors were not permitted to consent to contraception in Missouri in 1974 and 1976.[301]

Two bills have been introduced in the past decade to amend Mo. Rev. Stat. §431.061 to explicitly require parental notification or consent for minors to obtain contraceptives, but neither passed.[302]

Abortion: Missouri's pre-*Roe* abortion statute prohibited abortion except to save the life of the mother or that of the unborn child.[303] After *Roe v. Wade*, the U.S. Supreme Court remanded a pending Missouri federal case challenging Missouri's pre-*Roe* abortion law.

A three judge panel for the Western District of Missouri declared the statute unconstitutional and it was enjoined in 1973.[304] Effective June 14, 1974, Missouri enacted a new statute regulating the conditions under which an abortion could be performed, including a requirement for spousal consent for married women and parental consent for women under 18. Enforcement was enjoined on February 18, 1975, and the law was held to be unconstitutional by the U.S. Supreme Court in *Planned Parenthood of Central Missouri v. Danforth* on July 1, 1976.[305] Effective June 29, 1979 Missouri enacted a second parental consent law, § 188.028, containing a judicial bypass option. Enforcement was immediately enjoined, but the law ultimately was upheld by the Supreme Court on June 15, 1983 although the court did emphasize the necessity of an expedited appeal process for initial judicial decisions.[306] The law went into effect for a brief period of time in 1983 before a federal court granted a temporary restraining order in November of that year barring enforcement until the Missouri Supreme Court promulgated rules for expediting appeals. The law was upheld on August 7, 1985 and allowed to go into effect on that date.[307]

## Montana

Age of majority: In 1960 the age of majority in Montana was 18 for women and 21 for males. In 1971 the legislature amended the statute to equalize the age of majority as 19 for

[299] Mo. Rev. Stat. § 431.061 (2009); Merz, Jackson, and Klerman (1995).
[300] Op. Atty. Gen. (March 9, 1973).
[301] Paul, Pilpel, and Wechsler (1974, 1976).
[302] Missouri House Bill No. 1383 (2002); Missouri House Bill No. 2112 (2006).
[303] Merz, Jackson, and Klerman (1995).
[304] *Danforth v. Rodgers*, 414 U.S. 1035 (November 19, 1973).
[305] *Planned Parenthood of Central Missouri v. Danforth* 428 U.S. 52 (July 1, 1976).
[306] *Planned Parenthood of Kansas City v. Ashcroft*, 462 U.S. 476 (June 15, 1983).
[307] *C.L.G. v. Webster*, 616 F. Supp. 1182 (August 7, 1985).

everyone, which increased it by a year for women and decreased it by a year for men.[308] The age of majority was lowered to 18 for men and women effective July 1, 1973.[309]

Contraception: Montana's Comstock law prohibiting the display and sale of contraceptives contained a physician exemption.[310] Montana enacted a medical consent law effective March 3, 1969 stating that a minor may consent to medical treatment under certain conditions including if s/he is emancipated, married, pregnant, has a child, or has graduated from high school. The treating physician may, but is not required to, release information to the minor's parent.[311]

Abortion: Prior to Roe v. Wade, Montana had a law in place prohibiting abortion except to save the life of the woman. This law was ruled unconstitutional on May 29, 1973 and subsequently repealed.[312] Montana's 1969 medical consent law permits a pregnant minor to consent to medical care related to her pregnancy, though physicians had discretion to notify a minor's parents.[313] On March 25, 1974 The Abortion Control Act, which included a parental notification requirement, was passed and the medical consent statute was amended a day later to exclude abortion from the services to which a pregnant minor could consent.[314] This law was presumably invalidated by Danforth. Several secondary sources indicate that the law was not enforced between November 5, 1976 and December 21, 1993 when an enforcement effort resulted in an immediate lawsuit and the issuance of a permanent injunction barring enforcement. [315] In response, in 1995 the Montana legislature repealed the previous Abortion Control Act and replaced it with The Parental Notice of Abortion Act.[316] The new law required 48 hours advance notice to a minors' parents and included a judicial bypass provision. This law was challenged, a District Court enjoined its enforcement prior to its effective date, and the Court of Appeals affirmed.[317] The U.S. Supreme court reversed and upheld the law under the federal Constitution on March 31, 1997.[318] The plaintiffs then filed suit again on October 14, 1997 challenging the law under the state constitution. The law was enforced from October 12, 1997 through November 5, 1997 when a judge in that case issued a temporary restraining order barring

[308] Mont. Rev. Codes § 64-101 (1971); *In Re Hall's Estate*, 124 M 355 (1950); Council of State Governments (1972); DHEW (1974).
[309] Mont. Code Anno. § 41-1-101 (2009).
[310] DHEW (1974); Bailey and Davido (2009).
[311] Mont. Code Anno. §§ 41-1-402 through 41-1-403 (2009); DHEW (1974).
[312] *Doe v. Woodahl*, 360 F. Supp. 20 (May 29, 1973).
[313] Mont. Code Anno. § 41-1-402 (2009).
[314] Mont. Code Anno. § 50-20-107 (2009); Merz, Jackson, and Klerman (1995).
[315] Merz, Jackson, and Klerman (1995); "State-by-state laws on abortion," *The Spokane Chronicle* (July 3, 1989); "Abortion notification law illegal, lawyer says," *The Spokesman-Review* (April 5, 1990); "Abortion: States face likelihood of flurry of parental consent bills," *The Free Lance-Star* (June 26, 1990); "Montana abortion law unconstitutional, "*The Spokesman Review* (August 17, 1996).
[316] Mont. Code Anno. §§ 50-20-201 through 50-20-215 (2009).
[317] *Wickland v. Salvagni* ,93 F.3d (August 16, 1996).
[318] *Lambert v. Wicklund*, 520 U.S. 292 (March 31, 1997).

enforcement.[319] Enforcement was enjoined February 13, 1998.[320] Enforcement was permanently enjoined February 25, 1999.[321]12

In 2011 the Montana legislature enacted a legislative referendum which was adopted in a ballot initiative on November 6, 2012. The Parental Notice of Abortion Act of 2011 went into effect January 1, 2013 and required parental notification for minors under age 16. The state legislature then passed a bill that repealed the parental notification law and replaced it with the Parental Consent for Abortion Act of 2013, which required parental consent for all minors under age 18. The Parental Consent for Abortion law was scheduled to take effect July 1, 2013. Planned Parenthood of Montana filed a lawsuit in May 2013 challenging both laws. The State enjoined enforcement of the consent law while the notification law remained in effect. In February 2014, the First Judicial District Court ruled that the state could not defend either law on the grounds of preclusion, and that neither law could be enforced. [322] It appears that the Parental Notice of Abortion law was enforced until this time, but the Parental Consent for Abortion law was not.

The state appealed the District Court ruling to the Montana Supreme Court, which reversed the District Court ruling on February 5, 2015, ruling that the state could defend the laws.[323] I have been unable to find evidence of subsequent judicial challenges. Guttmacher indicates that the policies are not in effect as of September 2017 (2017b).

## Nebraska

Age of majority: Nebraska lowered the age of majority from 21 to 20 effective March 13, 1969, and from 20 to 19 effective July 6, 1972.[324] The age of majority is currently 19. Additionally, if a person marries before the age of 19, his or her minority ends.[325]

Contraception: Nebraska original Comstock law, passed in 1885, prohibited the sale of any "secret" drug or nostrum to prevent contraception and did not contain a physician exemption.[326] In 1965 the State Supreme Court ruled that the law did not apply to drugs that are not "secret."[327] Nebraska does not have any statutes governing access to contraception for minors and I find no evidence of a mature minor doctrine.

[319] AP "Federal judge upholds state abortion law" The Billings Gazette October 11, 1997; AP "Opponents continue attack on parental-notice abortion law" Great Falls Tribune October 23, 1997; AP "Judge suspends parental notification law pending hearing" Great Falls Tribune November 5, 1997.
[320] *Wicklund v. State*, Cause No. ADV 97-671 (February 13, 1998).
[321] *Wicklund v. State*, Cause No. ADV 97-671 (February 11, 1999).
[322] NARAL (2014).
[323] *Planned Parenthood of Montana v. State of Montana* DA 14-0110 (February 3, 2015).
[324] Council of State Governments (1972, 1973); DHEW (1974, 1978).
[325] R.R.S. Neb. § 43-2101 (2010).
[326] DHEW (1974); Bailey and Davido (2009).
[327] *State v. Lauritsen*, 178 Neb. 230 (January 22, 1965).

Abortion: Prior to *Roe v. Wade*, Nebraska had a law prohibiting abortion except to save the life of the woman.[328] In the wake of *Roe v. Wade* this law was declared unconstitutional on February 21, 1973.[329]

Nebraska passed a parental consent law shortly after *Roe*. The law was enforced from May 24, 1973 to November 3, 1975 when a preliminary injunction was issued; the law was ruled unconstitutional following *Danforth*.[330] The legislature then enacted a second statute requiring parental consent for minors under age 17 and certification by the minor that she consulted her parents that was in effect from July 1, 1977 until December 28, 1978 when it was preliminarily enjoined.[331] A third law requiring parental notification for minors (defined as under age 19) was passed effective May 28, 1981.[332] This law was challenged and enforcement permanently enjoined September 19, 1983.[333] In a 1989 opinion, the state Attorney General indicated that the constitutionality of the law remained in limbo pending the U.S. Supreme Court's decision in *Hodgson v. Minnesota.*[334] After that decision in 1990, the legislature drafted and passed a fourth statute requiring parental notification for minors less than 18 years of age, effective September 6, 1991.[335] The legislature subsequently amended this law to replace the notification requirement with a consent requirement, effective August 27, 2011.[336]

## Nevada

Age of majority: Nevada lowered the age of majority for males from 21 to 18 effective July 1, 1973. The age of majority for females had been 18 since at least 1950.[337]

Contraception: Nevada had a Comstock law limiting the advertisement of contraceptives with a legitimate business exemption that was in place until 1963.[338] Bailey (2010) appears to treat this as a sale ban, but Bailey and Davido (2009) and Bailey et al. (2011) do not describe a sales ban. Nevada's Health Service Act relates to the ability of minors to consent to medical care. As enacted May 26, 1975 the law permits mature minors to consent to medical care excluding abortions.[339]

Abortion: The attorney general issued an opinion on February 2, 1973 declaring the state's abortion statute, which prohibited abortion except to save the life of the mother, to be

[328] Merz, Jackson, and Klerman (1995).
[329] *Doe v. Exon*, 71-L-199 (February 21, 1973).
[330] *Doe v. Exon*, 416 F. Supp. 716 (November 3, 1975); Merz, Jackson, and Klerman (1995).
[331] Merz, Jackson, and Klerman (1995).
[332] Orr v. Knowles, 337 N.W. 2d 699 (1983); Merz, Jackson, and Klerman (1995).
[333] Neb. Atty. Gen. Op. 89059 (August 30, 1989); Neb. Atty. Gen. Op. 90024 (March 26, 1990); Merz, Jackson, and Klerman (1995).
[334] Neb. Atty. Gen. Op. 89059 (August 30, 1989).
[335] Merz, Jackson, and Klerman (1995); Neb. Rev. Stat. §§71-6901-71-6902 (2009).
[336] Neb. Rev. Stat. §§71-6901-71-6902 (2019).
[337] Nev. Rev. Stat. §129.010 (2009); Nev. Atty. Gen. Op. 852 (January 19, 1950); *Smith v. United States* 321 F.2d 427 (1963); *Norris v. Norris* 93 Nev. 65 (1977).
[338] Bailey and Davido (2009).
[339] Nev. Rev. Stat. §129.030 (2009); DHEW (1978); Merz, Jackson, and Klerman (1995).

unconstitutional under *Roe*.[340] Effective May 3, 1973 Nevada enacted a comprehensive abortion control statute codified as § 442.240 et seq. The law included a parental consent provision. The attorney general stated letter dated October 15, 1976 (not a formal opinion) that the law was unconstitutional after Danforth.[341]

The legislature amended the statute in 1981 to require parental notification. The law was challenged, and enforcement was enjoined July 1, 1981.[342] The legislature amended the law on June 14, 1985. The amended law was again challenged, a temporary restraining order was issued on June 28, 1985 before it could go into effect, and it was temporarily enjoined on July 17, 1985.[343] The law was ruled unconstitutional and enforcement was permanently enjoined on June 21, 1991.[344]

## New Hampshire

Age of majority: New Hampshire reduced the age of majority from 21 to 18 effective June 3, 1973.[345]

Contraception: In 1971 the New Hampshire legislature effectively recognized a mature minor doctrine in a statute related to the treatment of minors for drug abuse. The statute states "nothing contained herein shall be construed to mean that any minor of sound mind is legally incapable of consenting to medical treatment provided that such minor is of sufficient maturity to understand the nature of such treatment and the consequences thereof."[346]

New Hampshire is one of 8 states that made emergency contraception available over the counter prior to a national policy change in 2006. The statute makes no mention of age with respect to EC distribution.[347]

Abortion: In June 2003 the New Hampshire legislature passed a parental notification act scheduled to go into effect December 31 of that year. The law was challenged and eventually struck down on the grounds that it did not contain an exception to protect the health of the minor. [348] This law was never enforced, and was repealed in 2007. New Hampshire enacted a parental notification law requiring 48 hours advanced notice to a parent. The law was effective January 1, 2012. [349]

[340] Op. Att'y Gen. 1973-13 (February 2, 1973).
[341] DHEW (1978).
[342] *Glick v. List*, CVR 81-150 (July 7, 1981); *Glick v. Bryan*, CVR 81-150 (August 29, 1984).
[343] *Glick v. McKay* 616 F. Supp. 322 (July 17, 1985).
[344] *Glick v. McKay* 937 F.2d 434 (June 21, 1991).
[345] N.H. Rev. Stat. § 21:44 (2010).
[346] N.H. Rev. Stat. §318-B: 12-a (2010); DHEW (1974, 1978).
[347] N.H. Rev. Stat. § 318:47-e (2017), effective August 15, 2005.
[348] *Planned Parenthood of Northern New England, et al. vs. Peter Heed, Attorney General of New Hampshire* 390 F.3d 53 (November 24, 2004).
[349] N.H. Rev. Stat. § 132:33 (2014).

**New Jersey**

Age of majority: New Jersey lowered the age of majority from 21 to 18 effective January 1, 1973.[350]

Contraception: New Jersey's Comstock law prohibited the sale of contraceptives.[351] In 1963 the state Supreme Court interpreted this law as allowing dispensation of contraception by physicians or pharmacists.[352] New Jersey passed a medical consent law in 1965 granting capacity to consent to medical and surgical treatment to married or pregnant minors.[353] The legislature has not enacted a law explicitly granting unmarried minors the right to consent to contraception. A May 15, 1972 opinion of the Attorney General stated that parental consent is required to provide family planning services to minors.[354]

Abortion: New Jersey's pre-Roe abortion statute made it illegal to perform an abortion except to preserve the life of the mother. A three-judge District Court panel heard arguments in December 1970 in a suit filed by nine New Jersey physicians, two of whom had had their licenses revoked for performing abortions. Following a lengthy delay, the panel ruled on February 29, 1972 that New Jersey's abortion law was unconstitutional on the grounds that it was both vague and that it violated physicians' and patients' rights to privacy. The Court denied injunctive relief, however, indicating that the state should postpone any pending prosecution.[355] On March 7 New Jersey Attorney General George Kugler announced in a statement to the New York Times that he would appeal the decision, and that he recommended that the state's 21 county prosecutors continue to arrest physicians caught performing abortions but then hold "in abeyance" any pending prosecutions. The Attorney General is quoted as stating that it "would appear that the court desires that the status quo prevail pending a final decision by the Appellate Courts."[356] Stephen Nagler, executive director of the A.C.L.U. called Kugler's order "absurd," and on March 30 Robert Livingston, an Englewood Cliffs physician, announced to the press that he had performed two abortions in defiance of the Attorney General's directive and planned to continue to do so. [357] In response, county prosecutors began a grand jury investigation.[358] On June 14, the Third Circuit Court of Appeals ruled on appeal by the state that the judgment in the February ruling was binding only between the physician plaintiffs and the state and that "between the State of New Jersey and any other persons the opinion of the three judge district court has only *stare decisis* effect to be weighed against conflicting opinions in the New Jersey Courts." The opinion goes on to say that "The State remains free to take whatever steps against others than the individual plaintiffs it deems appropriate to enforce the statute by criminal sanctions" and that if the plaintiffs violate the

[350] N.J. Stat. §9:17B-1 (2009).
[351] Bailey and Davido (2009).
[352] *Sanitary Vendors, Inc. v. Byrne*, 40 N.J. 157 (May 6, 1963).
[353] N.J. Stat. § 9:17A-1 (2009).
[354] DHEW (1978).
[355] *YWCA v. Kugler*, 342 F. Supp. 1048 (February 29, 1972).
[356] *"Jersey to appeal abortion decision." The* New York Times (March 8, 1972).
[357] Garrow, 1994: p 540; Sullivan, Ronald. "Jersey doctor defies state by performing abortions." *The New York Times*. (March 31, 1972).
[358] Richard Phalon, "Jersey test seen on abortion law," *The New York Times* (August 11, 1972); Garrow, 1994: p 540 and 562.

statute during the pendency of the appeal "they will be acting at their peril" should the judgment be reversed. [359] Physician Robert Livingston continued to perform at least some abortions, and on August 4 five employees at his office were arrested. [360] In a 1972 article describing the operations of an abortion referral service in New Jersey, the New York Times states that Livingston was the only physician in New Jersey who had begun publicly performing abortions following the February 1972 ruling. Beryl Cameron, who organized an abortion referral service in New Jersey and attempted to seek out cooperating New Jersey physicians following the February 1972 ruling, is quoted as stating that most physicians adopted a "wait and see attitude" and had "all the social conscience of jet setters." [361] Because the status of New Jersey's abortion laws remained unclear until the January 1973 decision in *Roe v. Wade*, I do not consider it a repeal state in the coding in this paper.

Under New Jersey's statute § 9:17A-1, enacted in 1965 and described above, minors may consent to abortion in New Jersey.[362] New Jersey passed a parental notification that went into effect September 26, 1999.[363] However, the Supreme Court stayed enforcement on the following day. The law was declared constitutional on December 10, 1999, but was not enforceable pending appeal to the New Jersey Supreme Court. On appeal, the Court ruled that the act was unconstitutional on August 15, 2000.[364]

**New Mexico**

Age of majority: New Mexico lowered the age of majority from 21 to 18 effective June 18, 1971.[365]

Contraception: New Mexico's Family Planning Act, enacted in 1973, permits contraceptive services to be provided to minors without parental consent.[366]

New Mexico is one of 8 states that made emergency contraception available over the counter prior to a national policy change in 2006. The statute makes no mention of age with respect to EC distribution.[367]

[359] *YWCA v. Kugler*, 463 F. 2d 203 (June 14, 1972).
[360] Saul, Louise. "Abortion unit acts amid legality dispute." *The New York Times* (August 13, 1972).
[361] Saul, Louise. "Abortion unit acts amid legality dispute." *The New York Times* (August 13, 1972).
[362] DHEW (1974, 1978) supports this interpretation.
[363] N.J. Stat. § 9:17A-1.2 (2009).
[364] *Casenote: Planned Parenthood of Central New Jersey v. Farmer*, 762 A.2d 620 (2000).
[365] N.M. Stat. Ann. § 28-6-1, 2009. Effective date reported in *Mason v. Mason* 84 N.M. 720 507 P.2d 781 (1973).
[366] N.M. Stat. Ann. § 24-8-5 (2009). That minors may consent to contraceptives services is implied. The act prohibits any health facility furnishing family planning services from subjecting any person to a standard or prerequisite to the receipt of requested services with a few exceptions not related to age. Secondary sources confirm that this law permits minors to consent in practice; see Paul, Pilpel, and Wechsler (1974, 1976); Guttmacher (2017a).
[367] N.M. Stat. Ann. § 16-19-26-10 (2017) effective 2003.

Abortion: New Mexico was a reform state; it adopted MPC provisions effective June 20, 1969.[368] This statute included a parental consent provision that was held to be severable on February 9, 1973.[369] The provision was presumably invalidated by *Danforth*, although it was not challenged. In an opinion dated Oct. 3, 1990, the New Mexico Attorney General confirms that the parental consent provision is unenforceable because it lacks a judicial bypass provision.[370]

## New York

Age of majority: New York lowered the age of majority from 21 to 18 effective September 1, 1974.[371]

Contraception: New York's had a Comstock law prohibiting the sale of contraceptives with a physician exemption; the law was repealed in 1965.[372]

Effective September 1, 1971, the state legislature amended New York Education Law § 6811(8) to make is a crime for "any person to sell or distribute any instrument or article, or any recipe, drug or medicine for the prevention of conception to a minor under the age of sixteen years; the sale or distribution of such to a person other than a minor under the age of sixteen years is authorized only by a licensed pharmacist."[373] Population Services International, a manufacturer of non-prescription contraceptives, filed suit seeking enjoinment of all provisions of the law. A District Court enjoined enforcement of the law on July 2, 1975.[374] The Supreme Court upheld on June 9, 1977.[375]

New York enacted a medical consent law effective June 2, 1972 reducing the age of consent for medical care from 21 (then the age of majority) to 18.[376] Under the law, a physician also may provide services to a minor without parental consent if the minor is the parent of a child or if "an attempt to secure consent would result in delay of treatment which would increase the risk to the person's life or health."

Even before the enactment of a medical consent law in 1972, New York courts had issued rulings suggesting that minors could consent to medical treatment under certain

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[368] Merz, Jackson, and Klerman (1995).
[369] *State v. Strance*, 84 N.M. 670 (February 9, 1973).
[370] Op. Att'y Gen. 17-1990 (October 3, 1990). Newspaper accounts suggest that the law was not enforced as of the late 1980's. See, e.g., "The abortion landscape across the USA," *USA Today* (April 25, 1989); "Ruling on teens' abortion rights seen as major test," *L.A. Times* (November 26, 1989).
[371] New York Domestic Relations Law, Article 1 § 2 (2010).
[372] Bailey and Davido (2009).
[373] The preamble of the law exempted physicians, which created confusion as to whether a physician could distribute contraceptives to a minor under the age of 16 even when a pharmacist could not. The District Court ruling in *Population Services International v. Wilson* (see Footnote 318) suggests that a physician could provide contraceptives to minors under age 16.
[374] *Population Services International v. Wilson*, 398 F Supp 321 (July 2, 1975). In the ruling, the court noted that in 1973 the legislature had amended the law governing implementation of AFDC to provided that family planning services should be offered and furnished to eligible persons of childbearing age, including sexually active children, which presumably is in conflict with § 6811(8).
[375] *Carey v. Population Services International* 431 U.S. 678 (June 9, 1977).
[376] New York Public Health Law, § 2504 (2009).

circumstances. In *Sullivan v. Montgomery*, a New York court held in 1935 that a physician could administer an aesthetic to a 20 year old minor in an emergency without parental consent.[377] In *Bach v. Long Island Jewish Hospital*, a New York Court held in 1966 that a 19 year old married woman could consent to a medical treatment for a skin disorder because the guardianship of a minor with respect to her person was terminated upon marriage. [378] Neither *Sullivan* nor *Bach* was decided solely on the basis of the maturity of the minors in question, and hence do not provide clear recognition of a mature minor doctrine. Still, the language of the rulings suggested that maturity was an important consideration. In Sullivan, the court held that the physician was not liable because he was confronted with an emergency and had obtained the consent to the (minor) patient. In Bach, the court held that "in this case there is nothing to suggest that the plaintiff, at the time of executing the consent, had not reached the age of discretion, or that the plaintiff was under any physical or mental disability. Plaintiff's consent to the surgical procedure involved was an act of volition, and was a personal right which was validly exercised."

Abortion: New York was a repeal state; it legalized abortion effective July 1, 1970.[379] Any effect of the state's ambiguous judicial mature minor doctrines is unclear. However, shortly before the repeal law went into effect, officials of New York City hospitals announced that they would perform abortions without parental consent on minors aged 17 and older.[380] I have not found evidence on the policies of providers elsewhere in the state. The 1972 medical consent law referenced above permitted all women aged 18 and older to consent to medical care, including abortions.[381]

## North Carolina

Age of majority: North Carolina lowered the age of majority from 21 to 18 effective July 5, 1971.[382]

Contraception: North Carolina passed a medical consent law in 1971 to permit minors aged 18+ to consent to any medical treatment. It amended the law effective July 1, 1977 to expand access to "any minor…for medical health services for the prevention, diagnosis, and treatment….of pregnancy" excluding abortion.[383] The Attorney General issued an opinion stating that under this law physicians could provide family planning services to minors without parental consent.[384]

Abortion: North Carolina was a reform state; it adopted MPC provisions effective May 9, 1967. This law included a parental consent provision that was removed effective May 23, 1973 when the law was substantially amended in the wake of *Roe v. Wade*. [385] The State

[377] *Sullivan v. Montgomery*, 155 Misc. 448 (1935)
[378] *Bach v. Long Island Jewish Hospital*, 267 N.Y.S.2d 289 (1966).
[379] New York Penal Law, § 125.058 (2014); Merz, Jackson, and Klerman (1995).
[380] DHEW (1974); Paul, Pilpel, and Wechsler (1974; 1976); "Abortions on minors approved" *The Palm Beach Post*, June 27, 1970.
[381] New York Public Health Law, § 2504 (2009).
[382] N.C. Gen. Stat. § 48A-1 (2009); *Crouch v. Crouch*, 187 S.E. 2d 348 (1972).
[383] N.C. Gen. Stat. § 90-21.5 (2009).
[384] Op. Att'y. Gen. N.C. 55 (August 31, 1977).
[385] Merz, Jackson, and Klerman (1995).

Attorney General issued an opinion in 1975 stating that under *Roe* and *Doe* it is impossible to "engraft any age requirement on the decisional ability of a pregnant female" to have a first trimester abortion.[386] Contemporary sources differ on whether this opinion was used in practice to affirm minors' rights to consent to abortion.[387] North Carolina amended its medical consent law in 1977 to permit minors to consent to medical treatment related to pregnancy, specifically excluding abortion. This law would presumably have been unenforceable under the *Danforth* decision.[388]

North Carolina enacted a parental consent law effective October 1, 1995.[389] The law has survived a court challenge and continues to be enforced.[390]

## North Dakota

Age of majority: In 1960 the age of majority in North Dakota was 18 for females and 21 for males. North Dakota lowered the age of majority for males to 18 in effective July 1, 1971.[391]

Contraception: No statutory or case law, Attorney General's opinions, or secondary sources were found regarding minors' ability to consent to contraception in North Dakota.

Abortion: North Dakota's pre-Roe abortion law, which prohibited abortion unless performed to save the life of the woman, was held to be unconstitutional after *Roe*.[392] In ruling the North Dakota's abortion statute illegal, the court noted that the Attorney General "has advised the State's Attorney to prosecute abortion cases" which suggests that abortion may not have been clearly legal in North Dakota before November 1974.

After the pre-Roe law was struck down, North Dakota enacted a new law effective July 1, 1975 that required parental consent for minors.[393] Enforcement of the law, which did not provide a bypass option, was enjoined on July 9, 1979 and the parental consent provision

[386] Op. Att'y. Gen. N.C. (January 28, 1975) as quoted in DHEW (1978).
[387] DHEW (1978) concludes that no age requirement would be imposed on minors seeking abortions, but Paul, Pilpel, and Wechsler (1974, 1976) indicate that the age of consent for abortion in North Carolina was 18.
[388] In *Wilkie v. Hoke* 609 F. Supp. 241 (May 21, 1985), a District Court noted that the law "appears to be unconstitutional" because it lacks a judicial bypass option" in a case in which a minor was permitted to consent to abortion, but also states that "no ruling on this question is required by this motion." Newspaper articles describing North Carolina's history of abortion legislation indicate that the 1977 law was not enforced by the early 1980's. See, "State-by-state laws on abortion," *The Spokane Chronicle* (July 3, 1988); "N.C. joins 14 states in curbing some teens' access to abortion," *Charlotte Observer* (July 20, 1995).
[389] N.C. Gen. Stat. §§ 90-21.6 through 90-21.10 (2009); "Teens' abortion access limited, new consent requirement to involve family or judge," *Charlotte Observer* (October 1, 1995).
[390] *Manning v. Hunt* 199 F.3d 254 (July 11, 1997).
[391] N.D. Cent. Code § 14-10-01 (2009); Effective date reported in *Tang v. Ping* 209 N.W. 2d 624 (July 13, 1973).
[392] *Leigh v. Olson* 385 F. Supp. 255 (November 26, 1974).
[393] N.D. Cent. Code § 14-02.1-03 (2009); Merz, Jackson, and Klerman (1995).

was struck down in 1980.[394] The North Dakota legislature amended the parental consent law effective July 1, 1981; that law remains in effect.[395]

## Ohio

Age of majority: Ohio lowered the age of majority from 21 to 18 effective January 1, 1974.[396]

Contraception: Ohio had a Comstock law in place in 1960 that contained a legitimate business exemption.[397] The Ohio Supreme Court adopted a mature minor doctrine for medical treatment in *Lacey v. Laird* on December 12, 1956.[398] Effective July 28, 1975, Ohio passed a law requiring that consent for surgical or medical procedures be obtained for patients who lack legal capacity to consent.[399] This law does not overrule the pre-existing judicial mature minor doctrine; rather, it only applies to minors who are not sufficiently mature to understand the nature and consequences of a treatment.[400]

Abortion: Ohio enacted parental consent legislation effective September 16, 1974. The law was challenged and preliminary enjoined on March 11, 1976 and held to be unconstitutional on August 25, 1976 because it was inconsistent with the standards enunciated in *Danforth*.[401]

A parental notification law was enacted in November 1985. The law was challenged and a permanent injunction barring its enforcement was issued before its March 1986 effective date. The U.S. Supreme Court reversed on June 25, 1990 in *Ohio v. Akron Center for Reproductive Health*, and the law went into effect on October 5, 1990.[402] Subsequently, the Ohio General Assembly passed H.B. 421 on January 14, 1998, amending the law to require the consent of at least one parent. Following a judicial challenge, the state Supreme Court held that the parental consent provision of the law could be enforced in a ruling issued September 8, 2005.[403]

## Oklahoma

[394] *Leigh v. Olson* 497 F. Supp. 1340 (September 26, 1980).
[395] N.D. Cent. Code § 14-02.1-03.1 (2009) ; Merz, Jackson, and Klerman (1995); Bob Jansen "Newly effective laws bring change" The Bismarck Tribune July 1, 1981.
[396] Ohio Rev. Code Ann. § 3109.01 (2009).
[397] Bailey and Davido (2009).
[398] *Lacey v. Laird* 166 Ohio St. 12, 139 N.E. 2d 25 (1956). See, however, James Pohlman, "Developments in the Law: the Physician and the Minor Patient," The Ohio State Medical Journal, 70(1): 4-8 (1974). The author advises caution in applying the mature minor doctrine to minors under the age of 18.
[399] Ohio Rev. Code Ann. § 2317.54 (2009).
[400] Paul, Pilpel, and Wechsler (1976); DHEW (1978).
[401] Merz, Jackson, and Klerman (1995). *Hoe v. Brown* 446 F. Supp. 329 (1976).
[402] *Ohio v. Akron Center for Reproductive Health* 497 U.S. 502 (1990); "Court's decision stalls at least one abortion," Dayton Daily News (June 26, 1990); "Ohio abortion law pushes teens to court," Pittsburgh Post-Gazette (November 19, 1990); Merz, Jackson, and Klerman (1995).
[403] Cincinnati Women's Services v. Taft, 466 F. Sup. 2d 934 (2005).

Age of majority: In 1960 the age of majority in Oklahoma was 18 for females and 21 for males. The legislature lowered the age of majority for males from 21 to 18 effective August 1, 1972.[404]

Contraception: Oklahoma passed a family planning services law in 1967 establishing state family planning centers and stating that the State Board of Health could promulgate rules as to the eligibility of persons for the service. DHEW reports indicate that the Oklahoma Health Department did not require parental consent for contraception for minors referred by a recognized agency, clergyman, or physician.[405]

Oklahoma enacted a statute in effective May 29, 1975 granting a minor under the age of 18 the right to consent to health care if she is emancipated, married, or has a child. Minors who are or have been pregnant also may consent to care related to the prevention, diagnosis, and treatment of pregnancy.[406] Under this statute, an unmarried minor who had not previously had a child would not be permitted to consent to contraception. In 1986 the Attorney General issued an opinion that the statute violated Title X of the federal Public Health Services Act and that an entity receiving funds under this act would be precluded from requiring parental consent.[407]

Abortion: Oklahoma's pre-Roe statute banning abortion except to save the life of the woman was held to be unconstitutional on January 31, 1973.[408] Okla. Stat. Ann. tit. 63, § 2602, effective May 29, 1975, explicitly excludes abortion from services to which a minor can consent. This is presumably unconstitutional following *Danforth*.

In June 4, 2001 the signed a law providing that "Any person who performs an abortion on a minor without parental consent or knowledge shall be liable for the cost of any subsequent medical treatment such minor might require because of the abortion."[409] Shortly after the law took effect in July, Nova Health Systems filed suit seeking declaratory and injunctive relief. This lawsuit indicates that Nova Health Systems (aka Reproductive Services in Tulsa, OK) had begun requiring parental consent in response to the law, and had turned away 31 minors seeking abortions between June 2001 and January 2002 as a result of the law. On June 14, 2002 a lower court issued a permanent injunction barring enforcement, but in 2004 an appellate court reversed and allowed the law to again take effect. [410] The legislature passed a broad parental notification law with clear bypass provisions effective May 20, 2005.[411] The legislature amended the law to require notification and consent effective November 1, 2006.[412]

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[404] Okla. Stat. Ann. tit. 15, § 13 (2009); *Rives v. Cheshewalla* 203 Okla. 555; 224 P.2d 264 (1950); DHEW (1978); *Taylor v. Taylor*, 46 Okla. B.J. 1374 (1975).
[405] DHEW (1974, 1978).
[406] Okla. Stat. Ann. tit. 63 ch. 53, §§ 2601 through 2605 (2009).
[407] Okla. Op. Atty Gen. No. 85-73 (January 24, 1986).
[408] *Jobe v. State* OK CR 51; 509 P.2d 481 (1973).
[409] Okla. Stat. tit. 63, § 1-740 (2009).
[410] *Nova Health Systems v. Fogarty*, Case No. 01-CV-0419-EA (June 14, 2002). Reversed 388 F.3d 744 (November 3, 2004).
[411] Okla. Stat. Ann. tit. 63, § 1-740.1 through 1-740.5 (2005); AP "Delay sought in enforcement of abortion law, pending appeal" The Daily Oklahoman June 1, 2005.
[412] Okla. Stat. Ann. tit. 63, § 1-740.1 through 1-740.5 (2006).

## Oregon

Age of majority: Oregon lowered the age of majority from 21 to 18 effective October 5, 1973.[413]

Contraception: Oregon passed a law effective September 9, 1971 that permitted all minors to consent to receiving birth control services and minors age 15 and older to consent to medical care.[414] Physicians may, but are not required to, notify parents.[415]

Abortion: Oregon was a reform state; it adopted MPC provisions effective August 22, 1969. The statute included a parental consent provision. The entire law, including the parental consent provision, was struck down after *Roe* on February 28, 1973.[416] Since this date Oregon has not replaced the parental involvement provision.

## Pennsylvania

Age of majority: Unless the context of a law indicates otherwise, the legal age of majority in Pennsylvania has been 21 since September 1, 1937.[417]

Contraception: Pennsylvania adopted The Minors' Consent Act effective February 13, 1970 that gave minors age 18 and over or minors who were married, pregnant, or graduated from high school the right to consent to medical care.[418] A district court decision on September 11, 1997 affirmed that the U.S. Constitution prevents an interpretation of Pennsylvania law that requires parental consent for minors to obtain contraception.[419]

Abortion: The Pennsylvania legislature passed the "Abortion Control Act," which included a parental consent provision, on September 10, 1974. Enforcement was enjoined before the law went into effect and the law was subsequently held to be unconstitutional on December 3, 1975.[420] The legislature subsequently passed a new "Abortion Control Act" in 1982. The law included five provisions that were immediately challenged as unconstitutional; (1) informed consent (2) spousal notification (3) parental consent (4) 24

[413] Oreg. Rev. Stat. § 109.510 (2007). Effective date reported in *Lekas v. Lekas,* 23 Ore. App. 601 (1975).
[414] Oreg. Rev. Stat. § 109.640 (2007); Merz, Jackson, and Klerman (1995).
[415] Oreg. Rev. Stat. § 109.650 (2007).
[416] DHEW (1978); Merz, Jackson, and Klerman (1995).
[417] 1 Pa.C.S. § 1991 (2009).
[418] 35 P.S. § 10101 (2009); DHEW (1974); Merz, Jackson, and Klerman (1995).
[419] *Parents United for Better Sch., Inc. v. Sch. Dist. of Philadelphia Bd. of Educ.*, 978 F.Supp 197 (1997); Lourdes M. Rosado, "Consent to treatment and confidentiality provisions affecting minors in Pennsylvania, Juvenile Law Center (2006).
[420] *Doe v. Zimmerman* 405 F. Supp. 534 (1975); Merz, Jackson, and Klerman (1995). Dolores Frederick, "State Abortion Code Same As New Ruling," *Pittsburgh Press* (July 2, 1976) confirms that minors could obtain abortions in Pennsylvania hospitals under the rulings on the 1974 law. The article quotes the director of Women's Health Services as saying they "have never required spousal or parental consent for abortions" and a legal assistant for the state welfare department as saying that the state had never required parental consent for abortions on minors but had left the decision up to physicians.

hour waiting period (5) reporting requirements. Enforcement of these five provisions was permanently enjoined by the District Court before the law could go into effect. The Court of Appeals affirmed the decision related to spousal notification, but reversed the decision related to the remaining four provisions. The Supreme Court affirmed the Court of Appeals' decision but remanded the case for further proceedings. The law went into effect on March 20, 1994.[421]

## Rhode Island

Age of majority: Rhode Island lowered the age of majority to 18 effective March 29, 1972.[422]

Contraception: No statutory or case law, Attorney General's opinions, or secondary sources were found regarding minors' ability to consent to contraception in Rhode Island.

Abortion: Rhode Island's pre-Roe statutes forbid abortion except to save the life of the woman. In 1980 the Rhode Island legislature passed the Informed Consent for Abortion Act, which governed the manner and time in which informed consent for abortions must be given. This act was challenged and enforcement enjoined before it went into effect. While that suit was pending, the legislature amended the act in 1981 to add a parental notification requirement. This was also unenforced, and the entire law was struck down on January 15, 1982.[423] The law was then repealed and replaced with a parental consent law that went into effect September 1, 1982.[424]

## South Carolina

Age of majority: South Carolina lowered the age of majority from 21 to 18 effective February 6, 1975.[425]

Contraception: South Carolina enacted a law effective June 2, 1972 that permits minors aged 16 or older to consent to health services "unless such involves an operation which shall be performed only if such is essential to the health or life of such child in the opinion of the performing physician."[426] The Attorney General stated in 1972 that contraception fell under the category of "health services," and that this law, therefore, permitted minors age 16 and older to consent to birth control.[427]

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[421] *Planned Parenthood of Southeastern Pennsylvania v. Casey* 200 U.S. 321 (June 29, 1992); Merz, Jackson, and Klerman (1995); Tamar Lewin, "Pennsylvanians await abortion law," *The New York Times* (March 19, 1994).
[422] R.I. Gen. Laws Ann. § 15-12-1 (2009). Effective date reported in *Calcagno v. Calcagno* 121 R.I. 723 (1978).
[423] *Women's Medical Ctr. of Providence, Inc. v. Roberts*, 530 F. Supp. 1136 (1982); Merz, Jackson, and Klerman (1995).
[424] R.I. Gen. Laws Ann. § 23-4.7-6 (2009).
[425] S.C. Const. Ann. Art. XVII, § 14 (2009). Effective date reported in *Cason v. Cason* 247 S.E.2d 673 (1978).
[426] S.C. Code Ann. § 63-5-330 through § 63-5-360 (2009). Formerly numbered § 32-565 et seq.
[427] Op. Atty. Gen. No. 3364 (August 23, 1972).

The act also allows "health services of any kind may be rendered to minors of any age without the consent of a parent or legal guardian where, in the judgment of a person authorized by law to render a particular health service, such services are deemed necessary unless such involves an operation which shall be performed only if such is essential to the health or life of the child." In 1976 the Attorney General stated that according to this statute a provider could provide family planning services to minors under age 16 if "in the judgment of the provider, the services are necessary to maintain the well-being of that child."[428]

Abortion: South Carolina was a reform state; it adopted MPC provisions effective January 29, 1970.[429] This statute required parental consent for minors. The statute was declared unconstitutional on July 16, 1973 with no comment on the parental consent requirement.[430] The Attorney General previously stated that no minor in South Carolina could consent to an operation since the state's medical consent law explicitly excludes surgery from the list of services to which minors may consent.[431] South Carolina repealed its pre-Roe abortion law in 1974 and replaced it with a new law that required parental consent for abortion for minors under 16. The law did not include a bypass provision and was ruled unconstitutional under *Danforth* on November 4, 1977.[432]

South Carolina enacted a new parental consent law in 1990 that states "no person may perform an abortion on a minor unless consent is obtained…" where minor is defined as a woman under the age of 17. This law has been enforced since May 26, 1990.[433]

## South Dakota

Age of majority: South Dakota recognized an age of majority of 18 for women and 21 for men since at least 1939.[434] The state recodified lowered the age of majority for males to 18 in 1972.[435] The differential age of majority is not mentioned in secondary sources, but is confirmed in the statutory language and judicial rulings referencing the age of majority.[436]

Contraception: No statutory or case law, Attorney General's opinions, or secondary sources were found regarding minors' ability to consent to contraception in South Dakota.

Abortion: South Dakota enacted a parental consent law effective March 28, 1973 as part of a broader abortion control act codified as §§22-16-18, 22-17-1, and 22-17-2. The law did not include a bypass provision and was presumably unconstitutional after *Danforth*, but it

[428] Op. Atty. Gen. No. 596 (March 11, 1976).
[429] Merz, Jackson, and Klerman (1995).
[430] *State v. Kenneth* 198 S.E.2d 253 (July 16, 1973).
[431] Op. Atty. Gen. No. 3364 (1972).
[432] *Floyd v. Anders*, 440 F. Supp. 535 (1977).
[433] S.C. Code Ann. §§ 41-41-10 through 41-41-31 (2009).
[434] S.D. Codified Laws § 43-1-1 (1939), subsequently renumbered § 26-1-1.
[435] S.D. Codified Laws § 26-1-1 (2009).
[436] See, e.g., *Gruba v. Chapman*. 1915. 36 S.D. 119, describing the differential age in a case involving a mortgage contract. *Comstock v. Comstock*. 1981. 116 Cal. App. 3d 481, which describes the application of the differential age of majority to a child support order.

remained unchallenged.[437] South Dakota amended its abortion statutes in 1993 and added a parental notification requirement. Enforcement of the law, which did not have a judicial bypass provision, was enjoined before it went into effect and it was eventually struck down.[438] The act was amended effective July 1, 1997 to include a judicial bypass provision and again effective July 1, 2005 to require parental notification of emergency abortions. [439]

**Tennessee**

Age of majority: Tennessee lowered the age of majority from 21 to 18 effective May 11, 1971.[440]

Contraception: The Family Planning Act of 1971 provides that contraceptive services can be provided to any minor who "requests and is in need of birth control procedures, supplies, or information."[441] In a letter dated July 23, 1971 the state Attorney General indicated that under this act physicians could provide contraceptives to minors without parental consent.[442]

Abortion: Tennessee enacted a parental notification statute effective July 1, 1979.[443] The state's Attorney General issued a letter on September 5, 1979 declining to enforce the law, and the law was found to be unconstitutional on October 24, 1979.[444]

In 1982 the General Assembly re-codified the state's abortion statutes without substantial changes. In1988 the General Assembly repealed the unenforceable parental notification law and enacted a parental consent law codified as § 37-10-301 et seq.[445] The parental consent requirement was held to be unconstitutional on June 30, 1989, one day before its scheduled effective date.[446] This ruling was appealed, but in the meantime the General Assembly passed a parental notification codified as Tenn. Code Ann. § 39-15-202(f), that was substantially identical to the 1979 parental notification law. The notification requirement became effective November 1, 1989, but the Attorney General stated that the law was substantially identical to the 1979 law that had been found unconstitutional and therefore could not be enforced.[447] Naral reports from this period indicate that the law was "unenforceable."[448] In 1991, The Tennessee Supreme Court determined that the

[437] DHEW (1978); Merz, Jackson, and Klerman (1995).
[438] *Planned Parenthood v. Miller* 63 F.3d 1452 (1995).
[439] S.D. House Bill 1087; S.D. Codified Laws § 34-23A-7 (2009); Naral (2010).
[440] Tenn. Code Ann. § 1-3-105 (2009).
[441] Tenn. Code Ann. § 68-34-107 (2009).
[442] Letter from Lance D. Evans, Attorney General, to Thurman T. McLean, Jr., Staff Attorney, Department of Public Health (July 23, 1971).
[443] Tenn. Pub. Acts 762, codified as Tenn. Code Ann. § 39-302(f).
[444] *Planned Parenthood of Nashville v. Alexander*, No. 79-843-II (October 24, 1979); Op. Att'y Gen. No. 88-35 (February 22, 1988) describes that office's refusal to defend the 1979 law.
[445] Tenn. Pub. Acts 868, codified as Tenn. Code Ann. § 37-10-301 et seq.
[446] *Planned Parenthood v. McWherter*, 716 F. Supp. 1064 (June 30, 1989).
[447] See Merz, Jackson, and Klerman (1995) and *Planned Parenthood of Nashville v. McWherter*, 817 S.W.2d 13 (September 9, 1991).
[448] NARAL (1991).

parental consent statute (Tenn. Code Ann. §§ 37-10-301 et seq.) had been repealed by implication when the legislature enacted the parental notification statute (§ 39-15-202(f)), but would not deliver an opinion on the constitutionality of either statute. The Court addressed the Attorney General's argument that the notification law was not enforceable, concluding "The fact that a prior notification statute was determined to be unconstitutional by a trial-level court some 12 years ago does not overcome the presumption that the law reenacted in 1989 is constitutionally valid…in the absence of a proper court challenge, the issue is currently nonjusticiable."[449] The following year Planned Parenthood of Nashville and Memphis Planned Parenthood challenged the parental notification requirement. The parental notification provision was upheld and allowed to go into effect on November 19, 1992, the first time it was enforced since the seventies.[450]

While an appeal of this ruling was pending, the General Assembly repealed the parental notification law (§ 39-15-202(f)) and revived the parental consent law (§§ 37-10-301 et seq.) on May 26, 1995. Despite this legislative change, the plaintiffs declined to amend their complaint to challenge the parental consent law rather than the now repealed notification law. The trial court, however, ruled on the constitutionality of the newly re-enacted parental consent law, upholding its constitutionality in August 1995. This ruling was challenged, and enforcement of the consent law was enjoined on July 9, 1996.[451] In 1998 the Court of Appeals ruled that the trial court erred in ruling on the constitutionality of the parental consent law when neither party had the opportunity to present evidence or legal arguments regarding that law.[452] The injunction was reversed on May 5, 1999 and the law became effective January 14, 2000.[453] Naral reports from 1989 to present indicate that a parental consent law was being enforced in Tennessee in 1993-1995

## Texas

Age of majority: Texas lowered the age of majority from 21 to 18 effective August 27, 1973.[454]

Contraception: A Texas law passed in 1973 governing minor's access to medical care allows minors to consent to medical care if they are married, legally emancipated, over age 16 and living independently, or pregnant and consenting to pregnancy-related care excluding abortion.[455] No law specifically grants minors the ability to consent to contraception. However, Texas places other restrictions on minors' access to contraception. In 1997 the legislature passed a budget bill with a rider requiring that clinics receiving state funds (but not Title X funds) must obtain parental consent to provide

[449] *Planned Parenthood of Nashville v. McWherter*, 817 S.W.2d 13 (September 9, 1991).
[450] Naral (1993, 1995).
[451] *Memphis Planned Parenthood v. Sundquist* 2 F. Supp. 2d 997 (August 27, 1997); NARAL (2000).
[452] *Planned Parenthood of Middle Tennessee v. Sundquist*, Appeal No. 01A01-9601-CV-00052 (August 12, 1998).
[453] *Memphis Planned Parenthood v. Sundquist*, 175 F.3d 456 (May 5, 1999).
[454] Tex. Civ. Prac. and Rem. Code § 129.001 (2010); DHEW (1978); Merz, Jackson, and Klerman (1995).
[455] Tex. Fam. Code § 32.003 (2010); DHEW (1978).

minors with contraception. The requirement went into effect with a February 4, 1998 Supreme Court ruling.[456]

Abortion: Texas passed a parental notification statute in 1999 effective January 1, 2000.[457] In addition, in 2005 Texas enacted a parental notification and consent statute effective September 1, 2005 via its licensing statutes for doctors.[458] Neither law has not been challenged in court.

## Utah

Age of majority: The age of majority in 1960 in Utah was 18 for females and 21 for males. In 1975 Utah lowered the age of majority from 21 to 18 for males in response to a U.S. Supreme Court ruling that the different standard for men and women was discriminatory.[459]

Contraception: On July 21, 1971 the state Attorney General issued an opinion advising the Utah Division of Family Services against providing contraceptives to minors without parental consent "until such time as the state legislature may adopt appropriate legislation."[460] In 1973 the Utah Supreme Court reversed a lower court decision and upheld the right of a Utah Planned Parenthood agency to require parental consent to distribute contraceptives to minors on the grounds that it did not violate any federal or state law.[461] Two years later, a Federal District Court ruled it was unconstitutional to require parental consent for minors at clinics receiving federal aid both because this conflicted with federal regulations and because it violated a minors' right to privacy.[462]

In 1983 Utah enacted a law requiring that "any person before providing contraceptives to a minor…shall notify the minor's parents or guardians of the service requested."[463] Before the law took effect it was ruled unconstitutional and enforcement was enjoined.[464] In 1985 Utah enacted a law prohibiting the use of public funds to provide contraception or abortion to minors without parental consent. A U.S. District Court held that this violated Title XIX of the Social Security Act.[465] The law was amended in 1988 to apply only to state or political subdivision of funds.[466]

Abortion: Effective March 20, 1973, Utah repealed its pre-Roe abortion legislation prohibiting abortion except to save the life of the mother and replaced it with a comprehensive abortion control law (codified as §§ 76-302 to 76-319) that included a parental consent provision. The statutes were ruled unconstitutional on September 7,

[456] *Patterson v. Planned Parenthood of Houston*, 971 S.W.2d 439 (February 4, 1998).
[457] Tex. Fam. Code § 33.001 et seq. (2010).
[458] Tex. Occ. Code § 164.052 (2010).
[459] Utah Code Ann. § 15-2-1 (2009); *Stanton v. Stanton*, 421 U.S. 7 (1975).
[460] Op. Atty. Gen. No. FO71-017 (July 21, 1971).
[461] *Doe v. Planned Parenthood Ass'n. of Utah*, 29 Utah 2d 356 (1973).
[462] *In T.H. v. Jones*, No. C 74-276 (July 23, 1975).
[463] Utah Code Ann. § 76-7-325 (2009).
[464] *Planned Parenthood Ass'n v. Matheson*, 582 F. Supp. 1001 (1983).
[465] *Planned Parenthood Ass'n v. Dandoy*, 635 F. Supp. 184 (1986).
[466] Utah Code Ann. § 76-7-321 – 324 (2009).

1973.[467] The state repealed this law and enacted a replacement effective April 4, 1974 that required parental notification "if possible."[468] The law was upheld by Utah state courts in 1980 and by the U.S. Supreme Court on March 23, 1981 in the case of immature and unemancipated minors.[469] The law appeared to be enforced in the case of unemancipated, immature minors.[470] The status of the law with respect to mature minors is somewhat unclear. In 1986, the Utah Supreme Court heard a case related to a 17-year-old seeking permission to forgo parental notification on the grounds that she was mature. The Court denied this request, but the opinion suggests that the law was being enforced. [471] Effective May 1, 2006 Utah enacted a parental consent statute.[472]

## Vermont

Age of majority: Vermont lowered the age of majority from 21 to 18 effective July 1, 1971.[473] The law was amended effective March 29, 1972 to clarify that "The statutory revision commission shall delete any other reference to 'twenty-one years of age' or any similar phrase wherever it may appear in the Vermont statutes annotated in a context prescribing age of majority and insert in lieu thereof the words 'age of majority' or other language as may be required by the context to effect the same purpose." [474]

Contraception: No statutory or case law, Attorney General's opinions, or secondary sources were found regarding minors' ability to consent to contraception in Vermont.

In 2005 Vermont enacted legislation making Plan B emergency contraception available over the counter, making it one of 8 states to do so prior to a 2006 change in federal policy. The Vermont statute made no mention of minors.[475]

Abortion: Vermont's pre-Roe statute making it illegal for a physician to perform an abortion except to save the life of the mother was held to be unconstitutional by the state Supreme Court on January 14, 1972.[476] The court held that the law was inconsistent because it allowed a woman to abort her child, but did not permit a physician to aid her in doing so. Attorney General James Jeffords issued an advisory following the ruling stating that physicians and women should not be prosecuted for abortions as long as they were performed in the first trimester and to preserve the physical and mental health of the woman. Despite these rulings, there seems to have been little immediate change in the number of abortions performed in Vermont. A newspaper article from April 1972 states that "a check of Vermont Hospitals showed that they have not been inundated with abortion requests and that administrators and trustees have been reluctant to change their

[467] *Doe v. Rampton*, 366 F. Supp. 189 (1973).
[468] Utah Code Ann. § 76-7-304 (2009).
[469] *H.L. v. Matheson*, 450 U.S. 398 (1981).
[470] Merz, Jackson, and Klerman (1995); English and Kenney (2003).
[471] *H.B. v. Wilkinson, 639 F. Supp 952 (1986).*
[472] Utah Code Ann. § 76-7-304.5 (2009).
[473] 1 V.S.A. § 173 (2010); Council of State Governments (1972, 1973); Agis Salpukas, "Youths see little effect from newly won rights." *New York Times* (January 1, 1972).
[474] 1 V.S.A. § 173 (2010).
[475] 26 V.S.A. (2017) added in 2005 by House Bill 237.
[476] *Beecham v. Leahy*, 287 A.2d 836 (January 14, 1972).

policies, which were based on the strict statute."[477] According to the article, the Medical Center Hospital in Burlington maintained the same policy as under the older law, the Central Vermont Medical Center in Berlin had made no decision because a physician had not requested permission to perform an abortion, and Planned Parenthood Vermont stated that it was still referring Vermont women to New York state for abortions and would not change this procedure until Vermont hospitals changed their positions. A subsequent article from October of 1972 stated that there had been no change in hospital positions at that time.[478]

Statistics on abortions and abortion referrals further suggest that abortion did not become available in Vermont following the court ruling in January of 1972. From January through September of 1972, the state of Vermont reported that 16 legal abortions were performed in the state.[479] Of those, 10 were at the Vermont Women's Health Center during its first two weeks of operation after opening in September of 1972.[480] This center provided abortions, but was characterized by a member of its board of trustees in October of 1972 as "a small clinic with four part-time physicians and no possibility or desire to handle a large number of patients."[481] By the end of 1972, CDC surveillance figures indicate that 193 legal abortions had been performed in Vermont, up from 9 the year before.[482] In 1973, the number of legal abortions performed in Vermont rose to 1,401 following the legalization of abortion nationwide with *Roe v. Wade*.[483] This corresponds to about 117 abortions per month in 1973 versus about 1 abortion per month during the first nine months of 1972 and 59 per month in the last 3 months of 1972. These rough calculations combined with reports that no providers routinely performed abortions until a small clinic opened in October suggest that despite the Vermont State Supreme Court ruling legalizing abortion in January 1972, abortion did not begin to become available in the state until late in that year and even then it was available at only one small provider. For this reason, I do not treat Vermont as a repeal state.

No statutory or case law, Attorney General's opinions, or secondary sources were found regarding minors' ability to consent to abortion in Vermont.

## Virginia

Age of majority: Virginia lowered the age of majority to 18 effective July 1, 1972.[484]

Contraception: Virginia law grants minors the ability to consent to "medical or health services required in case of birth control, pregnancy, or family planning" excepting

[477] "Little change in Vermont abortion situation." *Nashua Telegraph* (April 12, 1972).
[478] "Emotional and legal storm descends on health center." *Nashua Telegraph* (October 11, 1972).
[479] "Emotional and legal storm descends on health center." *Nashua Telegraph* (October 11, 1972).
[480] "Emotional and legal storm descends on health center." *Nashua Telegraph* (October 11, 1972).
[481] "Emotional and legal storm descends on health center." *Nashua Telegraph* (October 11, 1972)..
[482] Smith and Bourne (1973).
[483] Joyce et al. (2013).
[484] Va. Code Ann. § 1-204 (2009). Effective date reported in *Hurdle v. Prinz*, 218 Va. 134 (1977).

sterilization and abortion. The portion of the law relevant to the ability to consent to birth control was effective November 1, 1971.[485]

Abortion: Virginia was a reform state; it adopted MPC provisions effective July 1, 1970. This statute included a parental consent provision for minors under age 19 which was subsequently lowered to 18 when the age of majority was lowered on July 1, 1972.[486] This parental consent provision presumably was invalidated by Danforth. A December 6, 1976 letter from the Assistant Attorney General stated that the "at present, Virginia does not require any consent from minors for an abortion."[487] The parental consent provision was formally repealed on July 1, 1979.[488]

In 1997 Virginia passed the Parental Notice Act requiring 24 hours advance notice to parents before a minor's abortion. The law was slated to go into effect on July 1, 1997, but the day before a U.S. district judge issued a preliminary injunction barring enforcement. Later that same day, on appeal from the state, the enjoinment order was stayed and the law was able to go into effect on scheduled.[489] Effective July 1, 2003, the law was amended to require parental consent.[490]

## Washington

Age of majority: The Washington state legislature set the age of majority at 21 in 1923.[491] In 1970 the Washington state legislature acted to expand the rights of young persons for specific enumerated purposes including permitting persons aged 18 and older to "make decisions in regard to their own body and the body of their lawful issue."[492] The following year the legislature lowered the age of majority from 21 to 18 effective August 9, 1971.[493]

Contraception: The Washington State Board of Health adopted a policy on August 3, 1967 for the state health department regarding family planning programs funded by the state and operated by local health departments. The policy was codified as WAC § 248-128-01 on July 1, 1968. The regulation directed that all categories of minors were eligible for family planning services including contraception.[494] It is not clear whether this regulation affected private physicians and other non-profits not governed by the board of health. [495]

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[485] Codified as § 32-423, since renumbered; see Va. Code Ann. § 54.1-2969 (2009). Effective date reported in Op. Atty Gen. Va. 354 (June 9, 1971).
[486] Merz, Jackson, and Klerman (1995).
[487] Unpublished letter cited by DHEW (1978).
[488] Described in Op. Atty Gen. Va. 3 (March 26, 1979); Merz, Jackson, and Klerman (1995)..
[489] *Planned Parenthood of the Blue Ridge v. Camblos*, 155 F.3d 352 (1998).
[490] Va. Code Ann. § 16.1-241 (2009).
[491] 1923 Ex. Sess., ch. 72, codified as Code Wash. § 26.28.010. The act included a saving clause stating that it did not apply to females who had attained the age of 18 prior to its effective date.
[492] 1970 Ex. Sess., ch. 17, codified as Code Wash. § 26.28.015.
[493] Rev. Code Wash. § 26.28.010 (2009).
[494] WAC §248-128-001 adopted effective July 1, 1968. This statute is described in DHEW (1974).
[495] WAC §248-128-001 adopted effective July 1, 1968.

The state legislature enacted a reproductive privacy statute on November 5, 1991 stating that "every individual has the fundamental right to choose or refuse birth control."[496]

Abortion: Washington was a repeal state; it passed a law effective December 3, 1970 legalizing abortion within four months of conception.[497] This law contained a parental consent provision for minors under the age of 18 that was challenged and ruled unconstitutional on January 7, 1975.[498] The state has enacted no other parental involvement laws. Moreover, Washington's reproductive privacy statute cited above states that "every woman has the fundamental right to choose or refuse to have an abortion."[499]

## West Virginia

Age of majority: West Virginia lowered the age of majority from 21 to 18 effective June 9, 1972.[500]

Contraception: A July 15, 1992 ruling of the Supreme Court of Appeals of West Virginia recognized a mature minor doctrine.[501]

Abortion: West Virginia enacted a parental notification statute effective May 23, 1984. The statute include a physician bypass option that states "parental notification…may be waived by a physician, other than the physician who is to perform the abortion, if such other physician finds that the minor is mature enough to make the abortion decision independently or that notification would not be in the minor's best interest."[502] The physician granting the bypass must in no way be associated professionally or financially with the physician performing the abortion.

## Wisconsin

Age of majority: Wisconsin lowered the age of majority from 21 to 18 effective March 23, 1972.[503]

Contraception: Wisconsin had a Comstock law that prohibited the sale of contraception to unmarried people. The law was declared unconstitutional in *Baird v. Lynch* in 1974, and the case history indicates that the law was being enforced as of late 1974.[504]

Abortion: Wisconsin had a pre-Roe statute prohibiting abortions except to save the life of the pregnant woman. This statute was challenged, and on March 5, 1970 a U.S. District

[496] Rev. Code Wash. § 9.02.100 (2009).
[497] Merz, Jackson, and Klerman (1995).
[498] *State v. Koome*, 530 P.2d 260 (1975).
[499] Rev. Code Wash. § 9.02.100 (2009).
[500] W. Va. Code § 2-3-1 (2009).
[501] *Belcher v. Charleston*, 422 S.E.2d 827 (1992).
[502] W. Va. Code § 16-2F-3 (2009).
[503] Wis. Stat. § 990.01 (2009). Effective date reported in 61 Op. Atty Gen. Wis. 245 (May 24, 1972).
[504] *Baird v. Lynch*, 390 F. Supp. 740 (November 26, 1974).

Court held that the prohibition of abortions prior to quickening was unconstitutional, but refused to grant injunctive relief at that time.[505] On November 18, 1970, in response to the continued prosecution of the plaintiff, the District Court ordered that enforcement be enjoined to "protect and effectuate" the previous judgment.[506] Early the following year the state Attorney General noted that pending decision of the appeal in the case, "both doctors and prosecutors are uncertain or their rights and liabilities."[507] The decision was appealed to the U.S. Supreme Court, which vacated the injunctive judgment (but not the earlier declarative judgment) and remanded it back to the district court on April 19, 1971.[508]

Inspired by the initial judgment in the Babbitz case, Dr. Alfred Kennan opened an abortion clinic in Madison in January 1971. On April 19, 1971, the day of the Supreme Court Decision vacating the injunction against prosecuting Babbitz, the Kennan abortion clinic was raided and Kennan was arrested. On April 27, 1971 enforcement against Kennan was enjoined in light of the earlier declarative judgment in Babbitz.[509] Kennan re-opened his clinic on May 17 and resumed performing abortions. [510] In January of 1972, the U.S. Supreme Court refused to allow the prosecution to go forward. Wisconsin's abortion law remained in limbo until the *Roe v. Wade* decision.[511]

Wisconsin did not pass significant abortion legislation affecting minors until 1985 when, effective November 20, 1985, it enacted the "Abortion Prevention and Family Responsibility Act." This act, codified as Wis. Stat. § 46.24, stated that abortion providers must "strongly encourage the minor patient to consult her parents or guardian regarding the abortion unless the minor has a valid reason for not doing so."[512]

Effective July 1, 1992 Wisconsin passed a statute requiring the consent of a parent or, in lieu of a parent, a grandparent, aunt, uncle, or sibling who is over 25 years of age.[513]

## Wyoming

Age of majority: Wyoming lowered the age of majority from 21 to 19 effective January 1, 1973, and again from 19 to 18 effective July 1, 1993.[514]

Contraception: Wyoming's age of majority statute also enumerates the conditions under which a minor may consent to health care treatment. These include marriage, active

[505] *Babbitz v. McCann* 310 F. Supp. 293 (March 5, 1970).
[506] *Babbitz v. McCann* 320 F. Supp. 219 (November 18, 1970).
[507] 60 Op. Atty Gen. Wis. 26 (January 22, 1971).
[508] *McCann v. Babbitz*, 402 U.S. 903 (April 17, 1971).
[509] *Kennan v. Nichol*, 326 F. Supp. 613 (April 27, 1971).
[510] David Garrow, *Liberty and Sexuality.* New York: MacMillan (1995): 487-488.
[511] Press coverage from the period illustrates the uncertainty. See, e.g., "State Abortion Law Still in Legal Woods," *The Milwaukee Journal* (April 20, 1971); "Abortion Clinic Stirs Up Madison; Threat Delays Its Reopening after raid by police," *The New York Times* (May 2, 1971); "High Court Denies State Abortion Bid," *The Milwaukee Journal* (January 18, 1972); "Hospital Staff Urges Clinic for Abortions," *The Milwaukee Journal* (January 22, 1973); "Who gets an abortion?", *The Modesto Bee* (February 11, 1973).
[512] 85 Wis. Laws ch. 56; Merz, Jackson, and Klerman (1995).
[513] Wis. Stat. § 48.375 (2009).
[514] Wyo. Stat. § 14-1-101 (2010). See also DHEW (1978); *Thomas v. Thomas*, 913 P.2d 854 (1996).

military service, and emancipation.[515] In 1969 Wyoming passed a law authorizing the state department of health to provide family planning services to "any person who may benefit from this information and these services."[516]

Abortion: Wyoming passed a parental notification statute requiring 48 hours advance notice and written consent of at least one parent effective June 8, 1989.[517]

[515] Wyo. Stat. § 14-1-101 (2010).
[516] Wyo. Stat. § 42-5-101 (2010); DHEW (1974, 1978).
[517] Wyo. Stat. § 35-6-118 (2010).

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