

The Judicial Waiver Process in Florida Courts

A REPORT

if
when
how

Lawyering for Reproductive Justice

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This report is modeled on similar studies including a report published in Michigan.¹

INTRODUCTION

Across the United States, people face extraordinary barriers when seeking abortion care. For young people under 18, those barriers are compounded when they are forced to involve their parent(s) or legal guardian.² If a young person cannot involve a parent, their only other option is to seek permission from a court to access abortion care in lieu of parental involvement; this process is referred to as a judicial waiver or bypass.

YOUNG PEOPLE'S ACCESS TO ABORTION IN FLORIDA

The law in Florida requires parental notification before a young person under 18 years of age can access abortion care.

[Florida's Parental Notice of Abortion Act](#) (PNA)³ requires one parent be given actual or constructive notice of the young person's decision to have an abortion at least 48 hours before the procedure.⁴ A parent may waive the notice requirement in writing with notarization. Notice is not required if the young person has been married and provides a marriage certificate or divorce decree; has a dependent child and provides the dependent child's birth certificate naming the young person as the parent; or is legally emancipated and provides documentation. The notice requirement may also be waived in a medical emergency, as determined by the physician, or if the young person has been granted judicial waiver by the court.

A judicial waiver permits a young person to bypass the notification requirement.

¹ *Michigan Youth Rights: The Assessment; A look into the judicial bypass process in Michigan.* A report by the Michigan Organization on Adolescent Sexual Health 2015

² Parental involvement laws require young people to involve a parent (in some states both parents) or legal guardian before they can access abortion care. For the sake of brevity we will use the term parent for both parent or legal guardian.

³ FL Statute 390.01114

⁴ Actual notice means in person or by telephone. Constructive notice means in writing. Seventy-two hours in advance of the procedure is required for constructive notice, 48 hours for actual notice. In addition, the Florida statute requires notice to be given either by the physician who will perform the abortion or a referring physician.

A judicial waiver of notice must be filed in the county where the young person resides. The waiver is granted if the court finds that the young person is sufficiently mature to decide whether to terminate their pregnancy or that the notification is not in the young person's best interest. The notification requirement may also be waived if there is evidence of child abuse or sexual assault by a parent or guardian.

Once the petition is filed, the court has three business days to issue a ruling on the petition. If there is no ruling, another petition can be filed with the Chief Judge of the Circuit to ensure there is a hearing held within 48 hours of the second petition.

The judicial waiver process is the only option for a young person to access abortion care if they are unemancipated and cannot involve a parent. Youth in foster care and those who are not in contact with a parent have no choice but to navigate the judicial waiver process in order to access abortion care. Regardless of whether a young person is living with a trusted adult or other family member, if that adult is not their parent or legal guardian, they would still need to obtain a judicial waiver to access abortion care.

THE COURT'S ROLE

County courthouses and clerks of court are relied on as a resource for young people seeking judicial waiver to the notification requirement

There are few resources for young people in Florida about the judicial waiver process, and those who need a waiver are generally referred to the clerk of court in their county.

The National Partnership for Women and Families (NPWF) published a legal guide for pregnant youth in 2009 which includes information about accessing abortion care and an outline of the waiver process.⁵ The guide states that young people can go directly to the clerk of court's office in the courthouse, but notes that the process is often easier if the young person connects with an attorney first. However, the guide is outdated with regard to services, directing young people to websites and programs that are no longer in operation.

A young person who seeks a judicial waiver is entitled to a court appointed attorney at no cost. However, for the court to appoint an attorney the young person must first contact their county clerk and start the process to file a petition. The information a young person gets regarding the waiver process may vary, and this can greatly impact their experience throughout the process or even their ultimate ability to access an abortion.

⁵ "Legal Guide for Pregnant Teens in Florida" <http://www.nationalpartnership.org/our-work/resources/repro/adolescent-health/legal-guide-fl-pregnant-teens.pdf>

COURT PREPAREDNESS

METHOD

The project coordinator reviewed other studies and a published report from Michigan on court staffs' responsiveness to calls for information on judicial bypass⁶ and prepared a script and answer classifications based on those studies. Prior to recruiting volunteers, test calls were made to randomly selected courthouses in counties around the state in order to get a sense of the responses callers could expect. Volunteers were recruited online through If/When/How law student chapters, through contact with coalition members whose interns volunteered to participate, and individuals known to the project coordinator. In all, 6 volunteers participated in the project. When a call was completed, the caller filled out a response form in which they rated each county based on nine criteria to indicate overall preparedness (see attached questionnaire). The caller also recorded their initial response to the call, how many extensions they had to go through to reach someone, how many times they called, the number of times they were transferred, the total duration of the call, and the department they called or from which they received information.

ANALYSIS

At the completion of the calls, the project manager gathered summary statistics for all variables to demonstrate the percentages for each response callers received on the nine criteria used to measure preparedness. Using this data, counties were then labeled prepared, semi-prepared, unprepared, or unable to contact. Counties labeled prepared demonstrated sufficient enough knowledge in the process that someone seeking information could reasonably file a petition for a judicial waiver based on the information provided by court staff. Counties labeled semi-prepared demonstrated a limited amount of knowledge in the process or aspects of it (for example, whether the proceedings would be kept confidential or if a young person could access an attorney free of charge) but did not provide enough information that someone seeking a judicial waiver would feel sufficiently prepared for the process prior to filing the petition. Counties labeled unprepared demonstrated no knowledge of the process or indicated a judicial waiver would not be possible in the county. Counties were labeled unable to contact if callers were unable to reach court personnel to answer their questions.

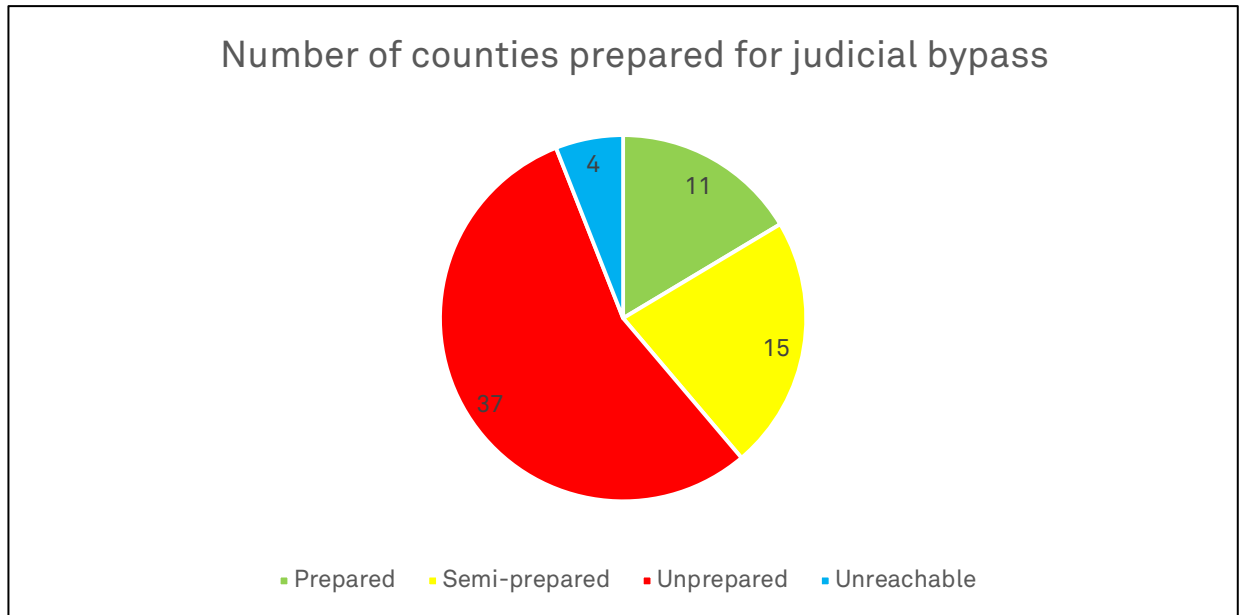
⁶ *Michigan Youth Rights: The Assessment; A look into the judicial bypass process in Michigan.* A report by the Michigan Organization on Adolescent Sexual Health 2015

County data was further broken down for analysis using demographic data from the American Community Survey five-year population estimates for females between the ages of 15-17. This enabled analysts to evaluate the effect, if any, of population most affected by parental notification laws on county preparedness. Similarly, counties with abortion clinics were identified to determine whether having a clinic or clinics affected preparedness.

RESULTS

The call durations ranged from under one minute to over 30 minutes. Participants often described having to wait through multiple holds, either while waiting for someone to pick up the phone or while court personnel searched for answers to their questions. The average call time for prepared courts was approximately nine and a half minutes, while the average time for semi-prepared was almost 11. By contrast, the call time for unprepared courts was a little over 5 and a half minutes. Callers were typically only transferred once, but a few were transferred up to 3 times, with no variance between prepared, semi-prepared, and unprepared courts. The departments that callers reached varied, with some callers able to get information from someone answering a courthouse's main number to one who only received answers when she was transferred to the criminal court division. In the case of prepared counties, typically the juvenile or family court division provided the necessary information.

Table 1



Of Florida's 67 counties, 11 (16%) were classified as prepared or knowledgeable about the process. Though several counties were unable to sufficiently answer all the indicators used to determine preparedness, an overall awareness of how the process worked and general information about time, costs, and attorney and translator availability was enough for analysts to assume a young person calling about judicial waiver would be able to get the information they needed to proceed. The comment by a caller who reached someone with some knowledge of the process is typical of other similar calls:

“When I called the number, I was not sure what option to select because there was no option for juvenile services. I spoke with main operator who transferred me to Family Court. The person who answered was not too familiar with the process and stated they don't ‘get too many requests for this.’ She put me on hold and was [sic] transferred me to Juvenile division. When I spoke to the person in this department, she informed me I needed to come in person to the courthouse to pick up the forms that I needed to start the process. She was unsure of how long the process would take, so she put me on hold again. She then informed me that after I filed the paperwork, I would be called in for a hearing immediately (within 72 hours, give or take). I would then be notified of a court date. She indicated where I needed to go to pick up the paperwork (forms). She then informed me that the process was confidential and not would not cost me anything. Although she appeared to not have all the information I needed on hand, she made every attempt to help me.”

Some counties demonstrated preparedness without much prompting. For example:

“The clerk who answered was very knowledgeable about the procedure and was able to answer all of my questions, even providing detail about the procedure (ex. the judge must issue a ruling within 24 hours of hearing). When I asked about information for a non-English speaking person he told me the forms were only available in English so I would need someone to help fill those out but that at the hearing the court could have an interpreter present. He also told me that there were only a few people trained in the procedure in the Clerk's office so he would make sure one of them was around for the rest of the day in case I decided to come in; I found this very helpful and thoughtful.”

Overall, callers who found the court personnel knowledgeable generally commented on the helpfulness of the staff with whom they interacted. One clerk went so far as to offer

advice to the caller that they should visit a Planned Parenthood to get counseling before coming to court because the judge would ask about that. Another provided the caller with the number of the attorney in the county who handles judicial bypass cases so she could provide additional guidance for the process.

Semi-prepared counties

Fifteen (22%) counties were classified as semi-prepared in the judicial bypass process. Court staff who were semi-prepared typically demonstrated a degree of knowledge about aspects of the process, but were unable to provide information sufficient enough to assume a young person would be able to proceed with the information provided. For example, a caller who connected with someone in the family law division found that:

“The woman who answered told me that the clerk who usually would have that information was out for the week but that she would try to help me as much as she could. She put me on hold for a while while she researched the statute and read the Notice and Petition for the procedure. She was able to answer most of my questions and was very apologetic that she didn't know more.”

Most of the semi-prepared counties told callers they would need to come in to the courthouse to give them information about the process. The experience of a caller who spoke to someone at a main courthouse line is typical of the responses others received from these counties:

“I spent most of the 16 minutes either on hold waiting for someone to pick up my call or just waiting while she seemingly looked up the procedure. She didn't really know anything and when I finally got information it was just along the lines of ‘you have to come in in person, fill out a form, we will schedule a hearing.’ I asked the first question-- will her parents be notified-- and she didn't know. She tried to find info online but after a while just said I should come in.”

Counties were also classified as semi-prepared if they were able to answer some questions but provided incorrect information. For example, one clerk advised a caller that she would be able to file a judicial bypass petition in a county other than the one in which she resided, but the statute explicitly states that minors must seek a bypass in the county in which they reside. Some counties were also classified as unprepared if they were able to relate to the caller all the details of the bypass except for the fact that the young person is entitled to an attorney free of charge.

Unprepared counties

Thirty-seven (55%) counties were classified as unprepared to assist a minor in the judicial bypass process. Typically, these counties could offer very little information to the caller about how the process worked; often court personnel said they had never heard of judicial bypass and were unable to answer questions regarding confidentiality, obtaining an attorney free of charge, or how the process works for non-English speakers. Many staff members told callers that they would need to contact a private attorney, and while some offered the number for legal aid organizations, others provided little direction for how a young person would go about retaining an attorney. For example, *“The woman I spoke to had no idea what I was talking about. She said I needed to get an attorney but I wouldn't be able to get one through them.”*

Some court personnel in unprepared counties gave legally inaccurate information to callers, like the assertion made by one clerk in a Family Court that a minor could only obtain an abortion without parental consent if they were legally emancipated from their parents. Still others responded to the callers' questions by asking if the caller had considered alternatives to abortion. For example, a caller who spoke to someone at the main courthouse number said *“The person was very rude and tried to give me information on adoption. She said she could give me information on alternatives to abortion if I wanted them.”*

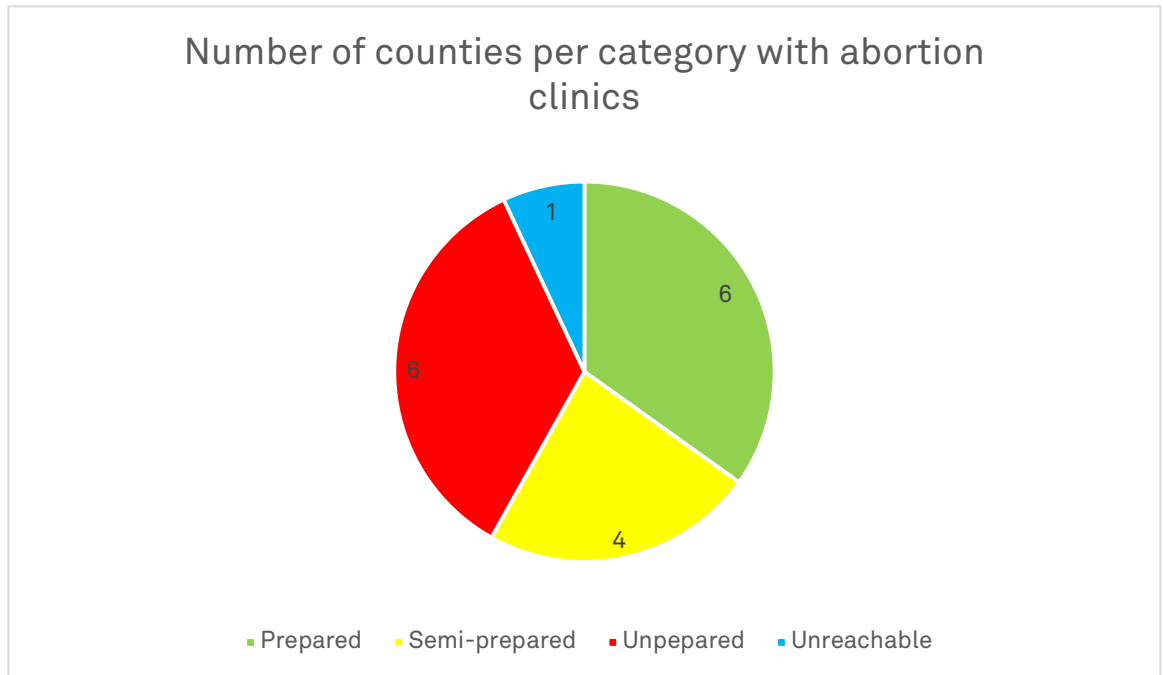
Directing callers to an abortion clinic for information was typical of unprepared courts. In many cases court staff were able to answer questions about confidentiality and costs, but in others they suggested coming in in person or calling a specific judge's office. In two calls, staff refused to answer any questions over the phone. For example, a caller reached a juvenile court clerk after three attempts and said that:

“The woman who picked up said that I had to come in person to the office. She wouldn't answer any questions on the phone because she said they are not allowed to give information on the phone. When I asked where I could find more information she said I could maybe try Planned Parenthood.”

Unable to be reached

Four (6%) counties were unable to be reached when callers were calling courthouses. When callers called three of the four counties they were given numbers or transferred to other numbers where they were unable to reach a person to whom they could direct their questions. A call to a fourth county was never answered by personnel or a machine.

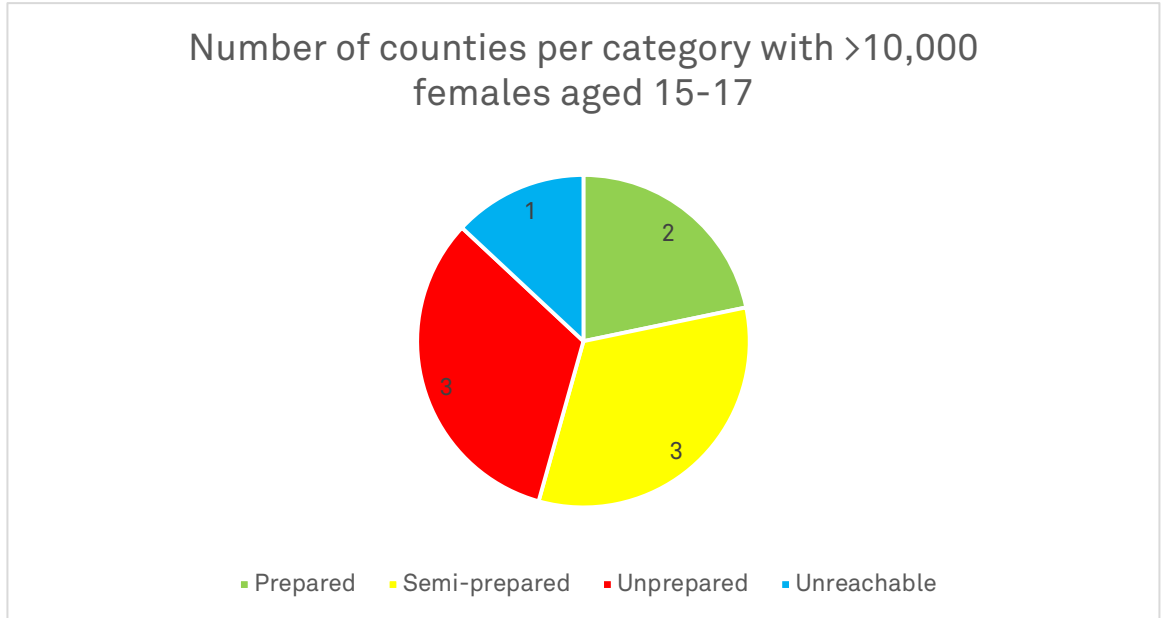
Table 2



Counties with abortion clinics

Seventeen counties in Florida have at least one abortion clinic. Of those, six (35%) were classified as prepared, four (24%) were classified semi-prepared, 6 (35%) were unprepared, and one (6%) was unable to be contacted. Of the eleven counties classified as prepared six (54%) had at least one abortion clinic operating in the county. Of the 15 semi-prepared counties, four (27%) had abortion clinics. Of the 34 unprepared counties, six (18%) had abortion clinics. Only one (6%) county with an abortion clinic was unable to be reached.

Table 3



Counties by population of females aged 15-17

Nine (13%) counties in Florida have over 10,000 females between the ages of 15 and 17. Of those nine, two (22%) counties were classified as prepared, while three (33%) were semi-prepared, three (33%) were unprepared, and one (11%) was unable to be reached. The average population of females aged 15-17 for both prepared and semi-prepared counties was over 6,000, while the average for unprepared counties was nearly 4,000.

LIMITATIONS

There were a few limitations to this study. First, the volunteer callers were not asked to follow-up or make additional calls if they were unable to get sufficient information during their initial call. There is some indication that when callers pursued referrals they were more likely to obtain the necessary information to initiate a judicial bypass.

Second, callers' ages ranged from 17 to 45. There is no indication that court personnel made assumptions about who a caller was calling for, but it is possible that some bias may have been introduced if court staff ascertained that they were speaking with an adult, rather than a person under 18 years of age.

DISCUSSION

Overall, a majority of counties in Florida did not demonstrate that they are prepared to sufficiently assist a young person seeking a judicial bypass. While many suggested that the caller call an abortion clinic, which could have yielded information on the process, ultimately a young person seeking a bypass would have ended up either having to call the courthouse again or go in person to file the petition. Additionally, there is no indication that clinics would have a better sense of the process than the staff charged with facilitating it in courthouses.

Though not universal, callers typically found that calls to prepared and semi-prepared counties were “smooth” and staff to be “kind” and “wonderful.” By contrast, while calls to some unprepared counties were “not very bad,” one caller found the court staff person with whom she spoke to be “very rude” and another classified another unprepared county as “the worst call I did.” In a few cases where callers were referred to other divisions or told to call back, they were unable to do so and thus did not obtain sufficient information. In one particular county, the person who initially answered the phone had never heard of a judicial bypass and asked another person in the room what the caller needed to do. The person they asked seemed to indicate knowledge of the process, as the original staff person returned to the phone and gave the caller a name and number to call. It is unknown whether calling that number would have resulted in getting necessary information.

Another issue encountered by callers across preparedness levels was the overall lack of awareness on the part of court staff. It is likely that for the vast majority of young people calling for information on judicial bypass, that call will be their first encounter with the court system. In several calls when the person who answered was uninformed about the judicial process, they made it clear that they wanted to assist the caller, and in a few looked up the statute and attempted to walk the caller through the process while they read it aloud. In many cases, however, callers were interrupted, talked over, or hung up on.

One consistent feature of calls across preparedness level was that one person in a courthouse seemed to be the designated person to discuss judicial bypass. If that person was available, the caller was able to get the information they would need to successfully submit a petition. If that person was not available, the caller’s experience varied: sometimes the person who answered would attempt to get the information they needed in order to assist them, other times it was suggested they call back when the person would be available. In one instance, the caller was told to call back when the person who handled judicial bypass cases returned from vacation, but was never told the person’s name.

A final issue that arose during the calls was the not-uncommon request that a caller leave a name and number so they could be called back after the necessary personnel returned or the information the caller required was obtained. This practice has the possibility of compromising a young person's privacy at a time when it is most necessary to protect it. There may be times when a call back to a young person is required, but there is no mention that the person asking to call back encouraged the caller to use a pseudonym or ensured that the number they would be calling is a private number inaccessible to anyone besides the young person or someone they trusted.

RECOMMENDATIONS

To improve access to abortion care for young people in Florida, courts must provide clear, consistent, accurate, and unbiased information about the judicial waiver process

Florida courts are overwhelmingly unprepared to answer questions about the judicial waiver process. Court staff's inability to provide accurate and unbiased information compromises young people's right to abortion access, which is protected under the Florida Constitution.⁷

Florida courts should make clear, consistent, accurate, and unbiased information about the judicial waiver process readily accessible to the public to ensure young people can access the waiver process. The Office of the State Courts Administrator oversees Florida's 67 Clerk of Court offices and should be responsible for the development and state-wide implementation of guidelines to standardize courthouse responses to questions about the judicial waiver process. Court staff, including Clerks of Court, should be trained to provide accurate, unbiased information when asked about the process or when a young person appears in court to file a petition in person.

Such measures may include:

- a) A step-by-step guide detailing the procedures for judicial waiver from the initiation of a petition for judicial waiver to a court's final ruling, and, if applicable, by county, an expected timeline for proceedings; where the minor can locate and obtain materials, physically or online; where and how a petition and any necessary paperwork may be filed; and a list of important deadlines.

⁷ Article X, Section 22, FL Constitution. The Florida Constitution required an amendment to allow parental notification and required the Legislature to provide exceptions such as the judicial waiver process.

- b) A list of each county's clerk of court, including addresses, current business hours, and the direct contact information for a staff member who is familiar with the judicial waiver procedures in a particular circuit's jurisdiction.
- c) Information about how to access the names and contact information for attorneys who provide services on a pro bono basis to minors seeking a judicial waiver.
- d) Information about the evidentiary standard that the court is required to use when deciding whether to grant or deny a judicial waiver, including a list of evidence the minor must provide to the court during the hearing.
- e) The Office of State Courts Administrator must provide an adequate amount of published materials in hard copy to each clerk of court and to each health care provider that offers abortion services which includes all of the information regarding judicial waiver procedures.
- f) The Office of State Courts Administrator must publish a clearly visible hyperlink on its website that directs the public to a standalone webpage, which may not share a uniform resource locator (URL) with any other information, containing all of the information required.⁸

⁸ Recommendations a-f were part of an amendment to HB 1335: Parental Notice for Abortion, introduced by State Representative Anna V. Eskamani in the 2019 legislative session, which would have codified the Office of the State Courts Administrator's responsibility to provide the above recommendations.

APPENDIX

COURTHOUSE CALL QUESTIONNAIRE

Volunteer: “Hi, I am calling to find out how a girl who is not 18 who wants an abortion can get a judge’s permission to avoid telling her parents. (If unaware of judicial bypass process, proceed straight to question 8)”

1. How does she start? What will she have to do to get the judge’s permission?
 - a. Knowledge of process, requirements, and details
 - b. Unfamiliar with process, unable to provide details
 - c. Denial of procedure through judge, rejection
2. So, her parents will not be notified?
 - a. No, they will not be notified
 - b. Yes, they will be notified
 - c. Not sure
3. Will everything remain confidential?
 - a. Yes, it will remain confidential
 - b. No, it will not remain confidential
 - c. Not sure
4. Is there any kind of public record of the event?
 - a. No, it will be sealed
 - b. Yes, there will be a public record
 - c. Not sure
5. This sounds like a complicated process. Is there somebody who can help her with it? Does she need a lawyer?
 - a. No, she has a right to court-appointed counsel
 - b. Yes, she will need a private lawyer
 - c. Not sure
6. Will it cost money?
 - a. No, there will be no costs to her
 - b. Yes, it will cost her money
 - c. Not sure
7. How long will the process take?
 - a. Will be handled within 5 business days
 - b. Unspecified, long time
 - c. Not sure
8. Where can I get information about this process?
 - a. Abortion Clinic
 - b. Clerk website
 - c. In-person
 - D. Not sure
9. Where can someone get information if they do not speak English?
 - a. Translator available
 - b. Not sure

PREPAREDNESS BY COUNTY

UNABLE TO REACH	FEMALE POPULATION 15-17 YEARS OLD	COUNTIES WITH CLINICS
Baker County	622	
Broward County	35,209	✓
Levy County	652	
Marion County	5,493	

PREPARED COUNTIES	FEMALE POPULATION 15-17 YEARS OLD	COUNTIES WITH CLINICS
Alachua County	3,739	✓
Bay County	2,973	
Clay County	4,728	
Duval County	16,059	✓
Flagler County	1,701	
Hamilton County	215	
Hernando County	3,138	
Lake County	5,530	
Lee County	11,137	✓
Seminole County	9,022	✓
St. Lucie County	5,469	✓

SEMI-PREPARED COUNTIES	FEMALE POPULATION 15-17 YEARS OLD	COUNTIES WITH CLINICS
Bradford County	429	
Brevard County	9,593	
Calhoun County	508	
Citrus County	1,930	✓
Desoto County	552	
Hardee County	518	
Hillsboro County	25,718	✓
Indian River	2,359	
Leon County	4,493	✓
Martin County	2,529	✓
Okaloosa County	3,263	
Okeechobee County	542	
Orange County	24,743	
Palm Beach County	24,329	✓
Pasco County	8,982	

UNPREPARED COUNTIES	FEMALE POPULATION 15-17 YEARS OLD	COUNTIES WITH CLINICS
Charlotte County	2,217	
Collier County	5,400	✓
Columbia County	1,304	
Dixie County	227	
Escambia County	5,273	
Franklin County	106	
Gadsden County	759	
Gilchrist County	331	
Glades County	112	
Gulf County	236	
Hendry County	804	
Highland County	1,528	
Holmes County	281	
Jackson County	774	
Jefferson County	122	
Lafayette County	174	
Liberty County	72	
Madison County	305	
Manatee County	6,001	
Miami-Dade County	46,425	✓
Monroe County	922	
Nassau County	1,370	
Osceola County	7,220	✓
Pinellas County	14,220	✓
Polk County	12,416	✓
Putnam County	1,352	
Santa Rosa County	3,297	
Sarasota County	5,431	✓
St. Johns County	4,599	
Sumter County	696	
Suwannee County	595	
Taylor County	337	
Union County	256	
Volusia County	8,228	
Wakulla County	567	
Walton County	841	
Washington County	377	