



February 29, 2016

Mr. Corey R. Steel
Nebraska State Court Administrator
P.O. Box 98910
Lincoln NE 68509-8910

Re: District Court Clerks

Dear Mr. Steel:

We write with concerns about District Court Clerks failing to comply with an important state statute.

Neb. Rev. Stat. 71-6903 governs the forms used by pregnant women who wish to obtain a court-authorized abortion without the consent of her parents or guardians. Subsection (7) requires that:

A sufficient number of petition forms and instructions shall be made available in each courthouse in such place that members of the general public may obtain a form and instructions without requesting such form and instructions from the clerk of the court or other court personnel. The clerk of the court shall, upon request, assist in completing and filing the petition for waiver of consent.

In other words, the statute imposes several obligations upon court personnel:

- Display of the petition forms
- Knowledge of the process
- Willingness to assist the public in completing the petition

As you may recall, in 2005, ACLU discovered that several courthouses were not in compliance with this clear state law and requested the Nebraska Supreme Court to issue guidance that would remind court personnel of their role in this important process. In our travels across Nebraska, we noticed the same lack of displays and determined to do a survey to ascertain the breadth of the non-compliance.

ACLU COURTHOUSE SURVEY

Between July 2015 and February 2016, ACLU staff and volunteers checked twenty-five county courthouses with an emphasis on the largest counties. Disturbingly, we found that fifteen--over half--of the counties surveyed are not in compliance with state law and had no forms on display.

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COUNTY	ON DISPLAY	NOT DISPLAYED
Adams		x
Box Butte		x
Buffalo		x
Burt	x	
Cass	x	
Cherry		x
Cheyenne		x
Dodge		x
Douglas	x	
Fillmore	x	
Gage	x	
Garden		x
Hall	x	
Johnson	x	
Lancaster		x
Morrill	x	
Saline	x	
Otoe		x
Sarpy		x
Saunders		x
Scotts Bluff		x
Seward		x
Thayer	x	
Washington		x
York		x

In each county, if forms were not displayed, the ACLU surveyer then approached the District Court Clerk's desk to ask for a "judicial bypass" or "waiver of parental notification" form. We recorded the responses by court staff, which ranged from apologetic, to helpful, to ignorant, to flagrantly inappropriate. A few examples:

"After asking, I waited for 15 minutes but they hadn't found them yet so I left." (Adams)

"She knew exactly what I was asking for, went back and got it, and handed it to me very privately while asking if I needed help to fill it out." (Buffalo)

"The employee had no idea what I was asking for and made a few calls to other people. Then I was told "It's probably available online, or ask Planned Parenthood or your doctor." I left without any forms." (Garden)

"Employee said "I'll have to ask my supervisor." After a wait of 7 minutes, she reappeared and said "Sorry, I had to print it off the internet," and gave me a physical copy. When I checked back a couple of months later, there were forms out on display this time." (Lancaster)

“Employee at desk said “I don’t know what you’re talking about, we don’t have anything like that,” but co-worker overheard and interrupted to say “Yes we do, hold on.” After just a minute’s wait, the second worker came out with the form, offered to help fill it out, and asked if I needed anything else.” (Sarpy)

“Employee handed me a card with the Nebraska Supreme Court website listed on it and said “We don’t have anything here to give you.” (Scotts Bluff)

“Employee went into the back room to check, but came back and said the date was old so she wasn’t sure if it was current. She said she needed to call the County Attorney. A few minutes later, she came back and said the County Attorney told her the statute on the form was no longer valid, so the form was outdated. She told me to just go to the Nebraska Supreme Court website.” (Washington)

“Employee offered to help me right away—she hadn’t realized the folder was empty, so she handed me a form and promised to restock for other people right away.” (York)

THE NEED FOR WAIVER OF PARENTAL CONSENT FORMS

This exercise was not simply an academic question of compliance with the law—it is about ensuring access to information for young women in need of a constitutionally protected medical process.

The Nebraska Department of Health and Human Services does significant data collection on the question of who is accessing abortion services in our state. According to 2014 data, 10.1% of abortion patients were minors.¹ We don’t have data on what percent of those young women had parental or guardian consent and how many needed a judicial bypass procedure, but with 229 women accessing reproductive services in a single year, we know there are many, many young women affected by this law.

While the abortion service providers are only located in our state’s largest counties, the survey was important because women from all over the state come to those larger cities—and if they wished to file for a waiver of parental consent in their home county, they need informed court personnel to handle their application. Twenty-nine different Nebraska counties were the residence for Nebraska women who obtained an abortion in 2014.²

Consider the plight of a young woman who cannot safely request her parent or guardian’s help to get an abortion because she’s the victim of abuse or neglect. She has to figure out where to go for medical help as well as get legal help. If she walks

¹ “Nebraska 2014 Statistical Report of Abortions,” Table 3:

<http://dhhs.ne.gov/publichealth/Abortion%20Reports/2014%20Statistical%20Report%20of%20Abortions.pdf>

² “Nebraska 2014 Statistical Report of Abortion,” Table 20, Id.

into a courthouse for the first time alone and scared, she needs to find the form easily displayed. In the event the forms are temporarily out or she doesn't see them, she needs sympathetic and educated help from whoever is staffing the desk. Here is one personal story of what these teens go through:

By January, Kiera had stuffed so many small bills into the envelope hidden in her underwear drawer that it split open. Kiera knew her mother occasionally cased her room, so to be safe, she'd labeled the envelope "soccer camp."

"It had to be cash," says Kiera (not her real name). She lets out a nervous laugh. "I couldn't write a check and write 'abortion' on the memo line."

Kiera, who lives in the Florida panhandle, is thoughtful, sarcastic, and whip-smart. It's easy to forget that she's only 18. But in December—when she was staring down a positive pregnancy test, thinking, shit—she was only 17. Florida is one of 37 states where a minor can't have an abortion unless at least one of her parents knows about it. Twenty-one of those states (though not Florida) require at least one parent to grant permission.

Kiera's parents are divorced, and her father lives on the other side of the country. Her mother, Kiera says, is "unstable," unpredictable, and sometimes violent. Once, she kicked Kiera out of the house for forgetting to tell her about a sleepover, and it took a whole weekend for her to cool down. Kiera was sure that if she told her mom, who volunteered for an anti-abortion group, that she wanted to end her pregnancy, she'd be out of the house for good.

But when Kiera confided in a school counselor, she learned about another option: She could ask a judge for permission to have an abortion. Her panic melted away. "I thought, 'This will save me,'" she recalls. She started socking away every dollar she could get her hands on—lunch money, tips from her waitressing job. And she started calling courthouses....The judge adjourned the hearing without a ruling. It wasn't until two days later, after Kiera had already canceled her appointment at the clinic, that she got a call to come back to court. He'd granted her petition.³

Most teens won't need a waiver of parental consent—at least one scholarly study found that 90% of minors under the age of 15 involved a parent in their abortion.⁴ But for those who need the legal process, it is of key importance. 22% of teens who didn't obtain a parent's permission were fearful of physical abuse or being kicked out of their house.⁵ The parents in these cases are often very problematic, as in Kiera's

³ Redden, Molly. "This Is How Judges Humiliate Pregnant Teens Who Want Abortions," *Mother Jones*, Sept/Oct 2014. Available online: <http://www.motherjones.com/politics/2014/07/teen-abortion-judicial-bypass-parental-notification>

⁴ Stanley K. Henshaw and Kathryn Kost, "Parental Involvement in Minors' Abortion Decisions," 24 *Family Planning Perspectives* 196, 200 (1992).

⁵ *Id.*

story—12% of the teens don't even live with their parents and 14% of the parents abuse drugs and alcohol.⁶

CONCLUSION

Given the very important issues at stake, we request you issue immediate guidance to all court personnel outlining how they need to display the statutory materials and train all employees in appropriate processes for dealing with members of the public requesting this information.

We thank you for your assistance in ensuring all court personnel are in compliance with clear statutory law.



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Attorney at Law

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cc: Chief Justice Michael G. Heavican

⁶ Id.