

JUDICIAL BYPASS: Questions and Answers

What is a judicial bypass?

In Kansas, there are consent laws that require all minors (17 and under) to receive consent to obtain an abortion from both parents, legal guardian, or at least the consent of the parent with primary custody. Because there are many reasons someone may not be able to talk to their parent(s) about wanting an abortion, there is a procedure that allows minors to waive this requirement – to “bypass” the consent law. If you follow the steps outlined below, you may be able to meet with a judge to receive their permission to move forward with the abortion without your parents knowing. The process and legal standard the judge will use are explained below.

****What do I have to do to apply for a “judicial bypass”? (Read this carefully!)****

First, make an appointment to come into the clinic to talk about the options. This will not only help you discuss all of your options, but it is REQUIRED by state law. During the meeting with the counselor, if you believe an abortion is your best option, and you would like to apply for a “judicial bypass”, notify the counselor of this belief. The counselor will then notify the court who will appoint an attorney to help you through the process of applying, called “petitioning” for the “judicial bypass.”

VERY IMPORTANT! The law requires that a minor who wants to apply for a judicial bypass go to the required counseling session with someone who is 21-years or older! This person CANNOT be associated with the clinic (so we cannot provide an adult for you), and it MUST be someone that the court would view as having a personal interest in your best interest. Suggestions for people to consider asking to accompany you to your appointment: teachers, coaches, parent volunteers, extended family, church, close friends’ family members, college course classmates/TAs/instructors, etc. (Your boyfriend cannot be this person because the court may view it as him “coercing” you into obtaining an abortion.) Please let the clinic know if you will need a translator for your or your adult escort for the counseling session.

Do I really need a lawyer?

No. An adult may petition on your behalf for the “judicial bypass”, but it is highly recommended that you accept the offer of an attorney representing you because of the legal forms and steps in the process to ensure it is all done properly to increase your chance of having your petition granted. There is a list the court will have of Kansan lawyers who are willing to help minors with “judicial bypass” procedures on a PRO BONO basis, which means FOR FREE.

Will it cost me anything to get a lawyer or to meet with a judge?

No. The lawyers the court will have a list of are all willing to help on a pro bono basis (free), and it does not cost you anything to file the petition with the court or to meet with the judge.

What happens at the hearing with the judge?

The Judge will ask you and your attorney questions. You will be asked to identify yourself and you will be asked questions under oath (meaning you are promising to tell the truth). The hearing is usually informal and like a meeting. It is confidential. It is not a trial. It typically does not last long.

Who will be at the hearing?

The hearing is private. No one is allowed to attend except you, whomever you bring with you, an attorney, and the Judge, and possibly the judge's clerk or secretary.

Is the judge allowed to tell my parents?

No. No one from the Court may contact, notify, or consult your parent(s), boyfriend, tutor, guardian, or anyone else. Who YOU choose to tell is up to YOU. All information is kept completely confidential.

You may have to sign a form that contains your initials and your parents' names and addresses, but this information must be kept completely confidential.

What does the judge have to decide?

To obtain a "judicial bypass", the state requires that the minor provide "clear and convincing evidence" to show that either (a.) they are mature and well-informed enough to make the abortion decision on their own, or (b.) parental or legal guardian consent would not be in the minor's best interest.

"Clear and convincing" is a legal standard that means the facts the minor shows more likely than not prove they are mature enough. Such factors MAY include: out-of-school activities, handling of personal finances, age, school participation, and other such factors.

What kinds of questions will I have to answer?

The judge may want to know that you understand the abortion procedure, that you have thought carefully about your decision, and that no one is forcing you to do this. The Judge might also want to know about your other responsibilities at home, school, or work, or plans for the future that show your maturity.

How long will it take the judge to decide?

The judge often decides right after the hearing. However, if he does not, he still has to decide very quickly because Kansas law states that if he does not decide within 48 hours, the request will automatically be granted.

What happens if the judge rules in my favor?

The judge will give you an “order” giving you permission to get an abortion. You must take this Order with you when you go for the abortion, along with any other forms or identification required by your abortion provider.

What if I change my mind?

You are always free to change your mind if you decide you do not want to get an abortion. The order is just there so that you may have the abortion if you want it.