

New Jersey

Right to Choose v. Byrne, 91 N.J. 287, 450 A.2d 925 (1982)

This case recognizes that the right to choose an abortion is a fundamental right of all pregnant people pursuant to the New Jersey Constitution at article I paragraph 1. While the New Jersey Constitution does not require funding for elective abortions, in the Medicaid context, New Jersey must fund abortions necessary to protect a pregnant person's health. In this case, regarding a woman who could not afford medical care for either childbirth or abortion, the challenged statute unconstitutionally skewed the decision in favor of childbirth at the expense of the pregnant person's health.

NJ CONST. art I para. 1, Natural and Unalienable Rights

[N.J. Const., Art. I, Para. 1](#)

“All persons are by nature free and independent, and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing, and protecting property, and of pursuing and obtaining safety and happiness.

New Jersey Annotated Statutes, Title 10. Civil Rights (Chs. 1 — 7) Chapter 7. Freedom of Reproductive Choice (§§ 10:7-1 — 10:7-2)

§ 10:7-1. Findings and declarations

The Legislature finds and declares that:

- a. In cases such as *Right to Choose v. Byrne*, 91 N.J. 287 (1982) and *Planned Parenthood of Cent. N.J. v. Farmer*, 165 N.J. 609 (2000), the New Jersey Supreme Court has recognized that the right to reproductive choice is a fundamental right enshrined in the State Constitution, that this right is independent of the United States Constitution, and that Article I, paragraph 1 of the New Jersey Constitution is independent of, and protects reproductive autonomy to an extent that exceeds the protections established under, the United States Constitution.
- b. The New Jersey Supreme Court has found that the right to reproductive choice includes the right to determine whether and when to bear children. In particular, the citizens of New Jersey may: access contraception, including emergency contraception; may not be denied public benefits based on the choice to have additional children; may choose to terminate a pregnancy; and may choose to carry a pregnancy to term.
- c. Self-determination in reproductive choice is key to helping establish equality among the genders and to allowing all people of childbearing age to participate equally in the economic and social life of the United States and the State of New Jersey.
- d. An unplanned pregnancy can disrupt educational and career plans, forcing the pregnant person to drop out of school, abandon pursuit of a college or advanced degree, accept lower-paying employment or employment with limited opportunities for advancement, or delay entrance into the workforce, which can have the effect of limiting the person's lifetime earnings and can prevent the person from following a chosen career path.
- e. The right to choose whether and when to have children allows people to more effectively plan in a way that is compatible with the person's overall life goals. Although each person retains the right to exercise the freedom of reproductive choice regardless of the health and strength of the person's interpersonal relationships, where and how the person lives, or the person's income

level and overall resources, the essence of the right to reproductive choice is that people have the ability to make reproductive choices in a manner commensurate with their own personal beliefs, life plan, and moral code.

f. Governmental restrictions on reproductive choice, by their very nature, impinge on the constitutional right to reproductive autonomy, particularly when they fail to confer any benefits to patients in the form of improved health or safety. Moreover, restrictions of this nature often have a disparate impact that is predominantly felt by persons who already experience barriers to health care access, including young people, people of color, people with disabilities, people with low income, people living in rural areas, immigrants, and people who are transgender or non-binary.

g. The Legislature is committed to ensuring that no barriers to reproductive freedom exist in the State. Individuals have the right to make their own decisions concerning reproduction, including the right to contraception, the right to terminate a pregnancy, and the right to carry a pregnancy to term, without government interference or fear of prosecution.

h. It is both reasonable and necessary for the State to enable, facilitate, support, and safeguard the provision of high-quality, comprehensive reproductive and sexual health care, including the full range of evidence-based information, counseling, and health care services, to all individuals in the State, and to enable, facilitate, support, and safeguard the ability of such individuals to access affordable and timely reproductive health care services and to engage in autonomous reproductive decision-making, in consultation with health care professionals of their choosing, without fear of prosecution, discrimination, or unnecessary barriers to care. To achieve those ends, it shall be the policy of this State to:

- (1) explicitly guarantee, to every individual, the fundamental right to reproductive autonomy, which includes the right to contraception, the right to terminate a pregnancy, and the right to carry a pregnancy to term;
- (2) enable all qualified health care professionals to provide pregnancy termination services in the State;
- (3) advance comprehensive insurance coverage for reproductive care, including primary reproductive health care services, services to terminate a pregnancy, long-acting contraceptives, and long-term supplies of hormonal contraceptives, that enables the citizens of New Jersey to fully exercise their freedom of reproductive choice while recognizing the rights of certain religious employers to request an exemption from such coverage; and
- (4) ensure that all laws, rules, regulations, ordinances, resolutions, policies, standards, or parts thereof, that are currently in force or enacted in the future, conform to the provisions and the express or implied purposes of this act, and that any law, rule, regulation, ordinance, resolution, policy, standard, or part thereof that conflicts with the provisions of this act or its express or implied purposes is subject to invalidation.

[N.J. Stat. § 10:7-1 \(LexisNexis, Lexis Advance through New Jersey 220th First Annual Session, L. 2022, c. 118 and J.R. 8\)](#)

§ 10:7-2. Reproductive choice rights.

a. Every individual present in the State, including, but not limited to, an individual who is under State control or supervision, shall have the fundamental right to: choose or refuse contraception

or sterilization; and choose whether to carry a pregnancy, to give birth, or to terminate a pregnancy. The New Jersey Constitution recognizes the fundamental nature of the right to reproductive choice, including the right to access contraception, to terminate a pregnancy, and to carry a pregnancy to term, shall not be abridged by any law, rule, regulation, ordinance, or order issued by any State, county, or local governmental authority. Any law, rule, regulation, ordinance, or order, in effect on or adopted after the effective date of this act, that is determined to have the effect of limiting the constitutional right to freedom of reproductive choice and that does not conform with the provisions and the express or implied purposes of this act, shall be deemed invalid and shall have no force or effect.

b. The provisions of this section shall be enforceable under the "New Jersey Civil Rights Act," P.L. 2004, c. 143(C.10:6-1 et seq.) or in any other manner provided by law.

N.J.S. § 10:7-2

New Jersey Annotated Statutes

Title 2A. Administration of Civil and Criminal Justice (Subts. 1 — 12)

Subtitle 11. Criminal Procedure (Chs. 152 — 168A)

Chapter 160. Extradition (Arts. 1 — 2)

Article 2. Uniform Criminal Extradition Law (§§ 2A:160-6 — 2A:160-35)

§ 2A:65A-3. Refusal to perform or provide services or procedures; nonliability.

The refusal to perform, assist in the performance of, or provide abortion services or sterilization procedures shall not constitute grounds for civil or criminal liability, disciplinary action or discriminatory treatment.

L.1974, c. 111, s. 3, eff. Oct. 2, 1974.

§ 2A:65A-7. Patient immune from liability.

A woman upon whom a partial-birth abortion is performed shall be immune from civil or criminal liability for a violation of the provisions of this act.

§ 2A:160-14.1. Surrender of individuals seeking reproductive health care services lawful in New Jersey, prohibited

Notwithstanding the provisions of N.J.S.2A:160-14, the Governor shall not surrender, on demand of the executive authority of any other state, any person who:

a. is found in this State;

b. was not in the state whose executive authority is making the demand at the time of the commission of the alleged crime and has not fled therefrom; and

c. is charged in the state whose executive authority is making the demand with providing, receiving, assisting in providing or receiving, providing material support for, or traveling to obtain reproductive health care services that are permitted under the laws of this State, including on any theory of vicarious, joint, several or conspiracy liability.

As used in this section, “reproductive health care services” means all medical, surgical, counseling, or referral services relating to the human reproductive system including, but not limited to, services relating to pregnancy, contraception, or termination of a pregnancy.

[N.J. Stat. § 2A:160-14.1 \(LexisNexis, Lexis Advance through New Jersey 220th First Annual Session, L. 2022, c. 118 and J.R. 8\)](#)

New Jersey Annotated Statutes

Title 2A. Administration of Civil and Criminal Justice (Subts. 1 — 12)

Subtitle 9. Evidence (Chs. 81 — 84A)

Chapter 84A. The Evidence Act, 1960 (Arts. I — IV)

Article II. Privileges (§§ 2A:84A-17 — 2A:84A-32j)

§ 2A:84A-22.18. Definitions

As used in sections 1 and 2 of P.L.2022, c.51 (C.2A:84A-22.18 and C.2A:84A-22.19): “Person” includes an individual, partnership, association, limited liability company, or corporation.

“Reproductive health care services” means all medical, surgical, counseling, or referral services relating to the human reproductive system including, but not limited to, services relating to pregnancy, contraception, or termination of a pregnancy.

a. Except as provided in sections 3 through 7 of P.L.1968, c.185 (C.2A:84A-22.3 through C.2A:84A-22.7), section 1 of P.L.1970, c.313 (C.2A:84A-22.8), section 29 of P.L.1968, c.401 (C.45:8B-29), and subsection b. of this section, in any civil action or proceeding preliminary thereto or in any probate, legislative or administrative proceeding, a covered entity, as set forth in the medical privacy and security rules pursuant to Parts 160 and 164 of Subchapter C of Subtitle A of Title 45 of the Code of Federal Regulations, established pursuant to the “Health Insurance Portability and Accountability Act of 1996,” Pub.L.104-191, shall not disclose, unless the patient or that patient’s conservator, guardian, or other authorized legal representative explicitly consents in writing to the disclosure:

- (1) any communication made to the covered entity, or any information obtained by the covered entity from, a patient or the conservator, guardian, or other authorized legal representative of a patient relating to reproductive health care services that are permitted under the laws of this State; or
- (2) any information obtained by personal examination of a patient relating to reproductive health care services that are permitted under the laws of this State.

A covered entity shall inform the patient or the patient’s conservator, guardian, or other authorized legal representative of the patient’s right to withhold such written consent at or before the time reproductive health care services are rendered or at such time as the patient discloses any information relating to reproductive health care services that have been previously rendered.

b. Written consent of the patient or the patient’s conservator, guardian, or other authorized legal representative shall not be required for the disclosure of any communication or information:

- (1) pursuant to the laws of this State or the Rules of Court;
- (2) by a covered entity against whom a claim has been made, or there is a reasonable belief will be made, in an action or proceeding, to the covered entity’s attorney or

professional liability insurer or insurer's agent for use in the defense of the action or proceeding;

(3) to the Commissioner of Health, Human Services, or Banking and Insurance, or any professional licensing board operating under the authority of the Division of Consumer Affairs in the Department of Law and Public Safety for records of a patient of a covered entity in connection with an investigation of a complaint, if the records are related to the complaint; or

(4) if child abuse, abuse of an elderly individual, abuse of an individual who is incapacitated, or abuse of an individual with a physical or mental disability is known or in good faith suspected. For the purposes of this paragraph, the provision of or material support for reproductive health care services that are permitted under the laws of this State shall not constitute abuse.

Nothing in this subsection shall be construed to conflict with or displace any requirements or conditions for disclosure set forth under 45 C.F.R. §§.160.203 and 164.514.

c. Nothing in this section shall be construed to impede the lawful sharing of medical records as permitted by State or federal law or the Rules of Court.

[N.J. Stat. § 2A:84A-22.18 \(LexisNexis, Lexis Advance through New Jersey 220th First Annual Session, L. 2022, c. 118 and J.R. 8\)](#)

[§ 2A:84A-22.19. Disclosure of information, certain, expending of resources, certain, prohibited](#)

A public entity of this State or employee, appointee, officer or official or any other person acting on behalf of a public entity shall not provide any information or expend or use time, money, facilities, property, equipment, personnel or other resources in furtherance of any interstate investigation or proceeding seeking to impose civil or criminal liability upon a person or entity for:

(1) the provision, receipt, or seeking of, or inquiring or responding to an inquiry about, reproductive health care services, as defined in section 1 of P.L.2022, c.51 (C.2A:84A-22.18), that are legal in this State; or

(2) assisting, advising, aiding, abetting, facilitating, soliciting, or conspiring with any person or entity providing, receiving, seeking, or inquiring or responding to an inquiry about, reproductive health care services, as defined in section 1 of P.L.2022, c.51 (C.2A:84A-22.18), that are legal in this State.

This section shall not apply to any investigation or proceeding when the conduct subject to potential liability under the investigation or proceeding would be subject to liability under the laws of this State if committed in this State. This section shall not apply if it is necessary for the agency or person to engage in conduct otherwise prohibited by this section in order to comply with a valid order issued by a court with jurisdiction over the agency or person, or to comply with applicable provisions of State or federal law.

[N.J. Stat. § 2A:84A-22.19 \(LexisNexis, Lexis Advance through New Jersey 220th First Annual Session, L. 2022, c. 118 and J.R. 8\)](#)

New Jersey Annotated Statutes

Title 9. Children — Juvenile and Domestic Relations Courts (Subts. 1 — 8)

Subtitle 4A. Consents and Contracts of Minors (Ch. 17A)

Chapter 17A. Disaffirmance; Limitations and Validity (§§ 9:17A-1 — 9:17A-6)

[PLANNED PARENTHOOD OF Cent. N.J. v. FARMER, 165 N.J. 609, 762 A.2d 620 \(2000\)](#)

This case declared New Jersey’s parental notification statute ([N.J. Stat. Ann. § 9:17A-1.1](#) to - 1.12) unconstitutional. The Court ruled that the parental notification statute violated the New Jersey Constitution because a minor’s right to control her reproductive decisions is among the most fundamental of her rights, and the State failed to demonstrate a real and significant relationship between the parental notice requirement and the State’s asserted interest in preserving the family and protecting parents’ rights. A law requiring a minor seeking an abortion to submit to parental notification or to obtain judicial bypass did nothing to create communication or repair the pre-existing parent-child relationship, especially where the State imposed no corresponding laws on minors who sought other medical and surgical care related to their pregnancies

§ 9:17A-1.1. Short title

Sections 2 through 13 of this act shall be known and may be cited as the “Parental Notification for Abortion Act.”

[N.J. Stat. § 9:17A-1.1 \(LexisNexis, Lexis Advance through New Jersey 220th First Annual Session, L. 2022, c. 118 and J.R. 8\)](#)

§ 9:17A-1.2. Findings relative to parental notification for abortion

The Legislature finds that there exist compelling and important State interests in protecting minors against their own immaturity, in fostering the family structure and preserving it as a viable social unit, and in protecting the rights of parents to rear their children.

The Legislature further finds that minors often lack the ability to make fully informed choices that take into account both immediate and long-range consequences of their actions; that the medical, emotional, and psychological consequences of abortion are serious and of indeterminate duration, particularly when the patient is a minor; that parents ordinarily possess information essential to a physician’s exercise of his best medical judgment concerning their child; and that parents who are aware that their minor daughter has had an abortion may better insure that the minor receives adequate medical attention after her abortion. The Legislature further finds that parental consultation regarding abortion is desirable and in the best interests of the minor. It is, therefore, the intent of the Legislature to further the interests stated above by enacting this parental notice provision

[N.J. Stat. § 9:17A-1.2 \(LexisNexis, Lexis Advance through New Jersey 220th First Annual Session, L. 2022, c. 118 and J.R. 8\)](#)

§ 9:17A-1.3. Definitions relative to parental notification for abortion

As used in this act:

“Abortion” means the use of any means to terminate the pregnancy of a female known to be pregnant with knowledge that the termination with those means will, with reasonable likelihood, cause the death of the fetus.

“Medical emergency” means a condition which, on the basis of the physician’s good faith clinical judgment, so complicates the medical condition of a pregnant unemancipated minor as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function.

“Parent” means a parent with care and control of the unemancipated minor, unless the parent has no custodial rights; or if there is no parent with care and control, then the foster parent or the guardian of the unemancipated minor; or a person standing in loco parentis to the unemancipated minor.

“Person standing in loco parentis” means (1) that the biological or adoptive parent consented to and fostered, the person’s formation and establishment of a parent-like relationship with the minor; (2) that the person and the minor live together in the same household; (3) that the person assumed obligations of parenthood by taking significant responsibility for the minor’s care, education and development, including contributing towards the minor’s support, without expectation of financial compensation; and (4) that the person has been in a parental role for a length of time sufficient to have established with the minor a bonded, dependent relationship parental in nature.

“Unemancipated minor” means a female under the age of 18 years who is unmarried and is not currently serving active duty in one of the military services of the United States of America or a female for whom a guardian has been appointed pursuant to N.J.S.3B:12-25 because of a finding of incompetency. For the purposes of this act, pregnancy does not emancipate a female under the age of 18 years.

[N.J. Stat. § 9:17A-1.3 \(LexisNexis, Lexis Advance through New Jersey 220th First Annual Session, L. 2022, c. 118 and J.R. 8\)](#)

[§ 9:17A-1.4. Written notice of pending operation](#)

- a.** Notwithstanding any other provision of law to the contrary, an abortion shall not be performed upon an unemancipated minor until at least 48 hours after written notice of the pending operation has been delivered in the manner specified in this act.
- b.** The notice shall be addressed to the parent at the parent’s last known address and delivered personally to the parent by the physician.
- c.** In lieu of the personal delivery required in subsection b. of this section, notice may be made by certified mail addressed to the parent at the parent’s last known address with return receipt requested and restricted delivery to the addressee, which means a postal employee may only deliver the mail to the authorized addressee. At the same time that notice is mailed by certified mail, it shall also be sent by first class mail to the parent at the parent’s last known address. The 48 hour period for notice sent under the provisions of this subsection shall begin at noon on the next day on which regular mail delivery takes place following the day on which the mailings are posted.

[N.J. Stat. § 9:17A-1.4 \(LexisNexis, Lexis Advance through New Jersey 220th First Annual Session, L. 2022, c. 118 and J.R. 8\)](#)

§ 9:17A-1.5. Notice not required if parent already notified

Notice of a pending abortion shall not be required under this act if the parent who is entitled to notice has set forth in a notarized writing that notice was received.

[N.J. Stat. § 9:17A-1.5 \(LexisNexis, Lexis Advance through New Jersey 220th First Annual Session, L. 2022, c. 118 and J.R. 8\)](#)

§ 9:17A-1.6. Notice not required if abortion due to medical emergency

Notice of a pending abortion shall not be required under this act if the attending physician certifies in the unemancipated minor's medical records that the abortion is necessary due to a medical emergency.

[N.J. Stat. § 9:17A-1.6 \(LexisNexis, Lexis Advance through New Jersey 220th First Annual Session, L. 2022, c. 118 and J.R. 8\)](#)

§ 9:17A-1.7. Waiver of parental notification by court proceedings

a. A minor may, by petition or motion, seek a waiver of parental notification from a judge of the Superior Court. The petition or motion shall include a statement that the minor is pregnant and is not emancipated.

b. The minor may participate in proceedings in the court on her own behalf, and the court may appoint a guardian ad litem for her. The court shall, however, advise her that she has a right to court appointed counsel, and shall, upon her request, provide her with such counsel.

c. Proceedings in the court under this section shall be confidential and insure the anonymity of the minor and shall be given such precedence over other pending matters so that the court may reach a decision promptly and without delay so as to serve the best interests of the minor. A judge of the Superior Court who conducts proceedings under this section shall make written factual findings and legal conclusions within 48 hours of the time that the petition or motion is filed unless the time is extended at the request of the unemancipated minor. If the court fails to rule within 48 hours and the time is not extended, the petition is granted and the notice requirement shall be waived. The judge shall order a record of the evidence to be maintained including the judge's written factual findings and legal conclusions supporting the decision.

d.

(1) If the judge finds, by clear and convincing evidence, that the unemancipated minor is sufficiently mature to decide whether to have an abortion, the judge shall authorize a waiver of notification.

(2) If the judge finds, by clear and convincing evidence, that there is evidence of a pattern of physical, sexual or emotional abuse of the minor by the parent, guardian or legal custodian, the judge shall authorize a waiver of notification. Notice of a determination made under this paragraph shall be made to the Division of Youth and Family Services.

(3) If the judge finds, by clear and convincing evidence, that the notification of the parent is not in the best interests of the minor, the judge shall authorize a waiver of notification.

e. If the judge does not make a finding specified in subsection d. of this section, the judge shall dismiss the petition or motion and notice shall be given as provided for in section 5 of this act.

f. An expedited confidential appeal shall be available to a minor for whom the court denies an order waiving notification. No filing fees shall be required of any minor at either the trial or the appellate level. Access to the trial court for the purposes of such a petition or motion, and access to the appellate courts for purposes of making an appeal from denial of the same, shall be

afforded such a minor on an emergent basis in accordance with the Rules of Court.

[N.J. Stat. § 9:17A-1.7 \(LexisNexis, Lexis Advance through New Jersey 220th First Annual Session, L. 2022, c. 118 and J.R. 8\)](#)

§ 9:17A-1.8. Fact sheet for distribution to unemancipated pregnant minors

The Department of Health shall prepare a fact sheet for distribution to unemancipated pregnant minors who are seeking abortion services.

a. The fact sheet shall be written in terms generally understood by a teenager and shall explain the parental notification requirements of this act, including, but not limited to:

- (1) that a minor may, by petition or motion, seek a waiver of parental notification from a judge of the Superior Court;
- (2) that a minor may participate in proceedings in the court on her own behalf, that the court may appoint a guardian ad litem for her and that the minor has a right to court appointed counsel, which shall be provided to her by the court upon her request; and
- (3) the procedure established by the court for petitioning or making a motion before the court.

b. The department shall distribute the fact sheet, at no charge, to ambulatory care facilities and hospitals licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.), public and private agencies and physicians' offices that provide family planning services and prenatal care.

c. The physician who is responsible for providing notification to an unemancipated minor's parent pursuant to this act, or his designee, shall provide the unemancipated minor with a copy of the fact sheet at the time the minor initially requests abortion services from the physician

[N.J. Stat. § 9:17A-1.8 \(LexisNexis, Lexis Advance through New Jersey 220th First Annual Session, L. 2022, c. 118 and J.R. 8\)](#)

§ 9:17A-1.9. Entitlement to benefits unaffected

Nothing in this act shall be interpreted to deny a pregnant unemancipated minor who is under the age of 18 any benefits to which she would otherwise be entitled pursuant to law.

[N.J. Stat. § 9:17A-1.9 \(LexisNexis, Lexis Advance through New Jersey 220th First Annual Session, L. 2022, c. 118 and J.R. 8\)](#)

§ 9:17A-1.10. Violation; penalty

Any person who performs an abortion in violation of this act shall be subject to a civil penalty of not less than \$1,000 and not more than \$5,000 and shall be liable in a civil action by a parent wrongfully denied notification. A person shall not be liable under this act if the person establishes by written evidence that the person relied upon evidence sufficient to convince a careful and prudent person that the representations of the unemancipated minor regarding information necessary to comply with this section are bona fide and true, or if the person has attempted with reasonable diligence to deliver notice, but has been unable to do so.

[N.J. Stat. § 9:17A-1.10 \(LexisNexis, Lexis Advance through New Jersey 220th First Annual Session, L. 2022, c. 118 and J.R. 8\)](#)

§ 9:17A-1.11. Rules, regulations

The Commissioner of Health, in consultation with the Department of Law and Public Safety, shall promulgate rules and regulations pursuant to the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), concerning procedures for physicians to follow in effectuating the notice required pursuant to the provisions of P.L.1999, c.145 (C.9:17A-1.1 et al.).

[N.J. Stat. § 9:17A-1.11 \(LexisNexis, Lexis Advance through New Jersey 220th First Annual Session, L. 2022, c. 118 and J.R. 8\)](#)

§ 9:17A-1.12. Provisions of act severable

If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the sections which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

[N.J. Stat. § 9:17A-1.12 \(LexisNexis, Lexis Advance through New Jersey 220th First Annual Session, L. 2022, c. 118 and J.R. 8\)](#)