

## Early Legal Access: Laws and Policies Governing Contraceptive Access, 1960-1980

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### Introduction

In the 1960s, the birth control pill (“the Pill”) allowed women who were able to obtain a prescription much greater control over childbearing.<sup>1</sup> For two decades after the Pill was approved for contraceptive use, state laws regulated whether and to whom doctors could prescribe it and access to oral contraception was in large part determined by the state in which a woman resided.

A recent and growing literature in economics examines how changes in state laws regulating the Pill affected a host of women’s decisions as well as the well-being of children. The seminal 2002 work of Claudia Goldin and Lawrence Katz argued that changes to state laws governing the age of consent empowered younger and unmarried women to obtain contraception.<sup>2</sup> Subsequent studies appearing in leading economics and demography journals build on this work. Using changes in the legal age of consent as a “natural experiment” in access to the Pill, this literature now links the Pill to increases in women’s educational attainment<sup>3</sup> and labor-force participation,<sup>4</sup> wages,<sup>5</sup> birthrates,<sup>6</sup> and the outcomes of children.<sup>7</sup>

The advantage of using legal changes as a natural experiment is that they arose at different levels of government, for different reasons, and at different times. Heterogeneity in when, why, and how these laws changed make claims of causality in this literature compelling.

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<sup>1</sup> Elizabeth Siegel Watkins, *ON THE PILL: A SOCIAL HISTORY OF ORAL CONTRACEPTIVES, 1950–1970* (1998). Baltimore: Johns Hopkins University Press.

<sup>2</sup> Claudia Goldin & Lawrence Katz, *The Power of the Pill: Oral Contraception and Women’s Career and Marriage Decisions*, 110 *J. OF POLITICAL ECONOMY* 730 (2002).

<sup>3</sup> Heinrich Hock, *The Pill and the College Attainment of Men and Women* (2007) (unpublished), available at [http://ideas.repec.org/p/fsu/wpaper/wp2007\\_10\\_01.html](http://ideas.repec.org/p/fsu/wpaper/wp2007_10_01.html).

<sup>4</sup> Martha J. Bailey, *More Power to the Pill: The Impact of Contraceptive Freedom on Women’s Lifecycle Labor Supply*, 121 *QUARTERLY J. OF ECON.* 289 (2006).

<sup>5</sup> Martha J. Bailey, Brad J. Hershbein, & Amalia R. Miller, *The Opt-In Revolution: Contraception and the Gender Gap in Wages* (2011) (unpublished), available at [http://www-personal.umich.edu/~baileymj/Opt\\_In\\_Revolution.pdf](http://www-personal.umich.edu/~baileymj/Opt_In_Revolution.pdf).

<sup>6</sup> Melanie Guldi, *Fertility Effects of Abortion and Birth Control Pill Access for Minors*, 45 *DEMOGRAPHY* 817 (2008).

<sup>7</sup> Ananat, Elizabeth Oltmans & Daniel M. Hungerman, *The Power of the Pill for the Next Generation: Oral Contraception’s Effects on Fertility, Abortion, and Maternal & Child Characteristics* REVIEW OF ECONOMICS AND STATISTICS (forthcoming); Juan Pantano, *Unwanted Fertility, Contraceptive Technology and Crime: Exploiting a Natural Experiment in Access to The Pill*, Washington University working paper (2009).

Specifically, this literature demonstrates that *when* state laws changed is uncorrelated with a variety of measures of social, economic, political, and demographic variables—a result one would expect had access been “randomized.”<sup>8</sup> Because changes in these laws are, however, correlated with contraceptive access, they allow the effects of access to oral contraceptives to be *separated* statistically from important changes in social and economic outcomes over the 1960s and 1970s.

While strengthening the basis for causal inference, the diversity of legal changes that allowed access to the Pill has also limited research in this area. The independent coding of laws by different scholars has led to inconsistencies across sources. As shown in table 1, each of the four initial studies<sup>9</sup> coded legal changes based upon different information, assumptions, and classification schemes.<sup>10</sup> The four studies use different state laws in two thirds of the cases. These differences in coding make interpreting study results difficult and the induced measurement error may limit statistical inferences. They also make comparisons across studies difficult—when authors come to different conclusions, it is unclear whether discrepancies result from methodological differences, coding differences, or differences in datasets.

In this article, we provide a comprehensive overview of state legal changes relating to contraceptive access in the 1960s and 1970s. We describe of the body of laws in existence (including citations) to provide a reference for other researchers. This review also resolves differences across sources and identifies areas of ambiguity. After describing changes for each state across all of the relevant statutes, we recommend a uniform coding for social scientists and legal scholars to use in future research.

## Background

### A. A History of Contraception and the Birth Control Revolution

Historically women have attempted to control their fertility with a number of methods. Traditional methods include abstinence, withdrawal or coitus interruptus, and the rhythm method. While abstinence is the most reliable means of birth control, it is arguably more costly in terms of effort and foregone enjoyment. Having sexual intercourse without using any method often results in pregnancy. Approximately 89 out of 100 couples using no method at all are pregnant by the end of one year.<sup>11</sup> Although couples using withdrawal or rhythm methods experience a pregnancy less often, typical use of these methods results in 20 of 100 of these couples becoming pregnant by the end of one year.<sup>12</sup> This failure rate is similar to couples using diaphragms, sponge with spermicide, cervical cap, foams, creams, jellies, or vaginal suppositories. The risk of pregnancy is lower for couples using condoms:

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<sup>8</sup> Bailey *supra* note \_\_, Bailey *et al.*, *supra* note \_\_\_\_.

<sup>9</sup> We omit Goldin and Katz from this table, as they do not provide information on the year the law changed for each state.

<sup>10</sup> Goldin and Katz, *supra* note \_\_, at 1, Bailey *supra* note \_\_, at 2, Guldi, *supra* note \_\_, at 3, Hock, *supra* note \_\_, at 4.

<sup>11</sup> CLINICAL METHODS: THE HISTORY, PHYSICAL, AND LABORATORY METHODS tbl. 174.1 (3d ed. H.

Kenneth Walker *et al.* eds 1990), *available at*

<http://www.ncbi.nlm.nih.gov/bookshelf/br.fcgi?book=cm&part=A5091&rendertype=table&id=A5091>

accessed 11/20/09 [hereinafter CLINICAL METHODS].

<sup>12</sup> *Id.*

only 12 of 100 of these couples experience a pregnancy within one year.<sup>13</sup> All of these methods leave women to bear a substantial risk of pregnancy.

The birth control pill, or “the Pill”, ushered in the modern era of medical contraception. The first oral contraceptive, *Enovid*, was approved in 1957 for the regulation of menses and, then, by the FDA in 1960 as an oral contraceptive.<sup>14</sup> The Pill revolutionized birth control in several senses. First, it was much more effective than alternative methods. “Typical use” of the Pill (which accounts for forgetting to take it daily or at the same time each day) resulted in a pregnancy for only 3 of 100 couples within one year.<sup>15</sup> The only comparable methods in terms of reliability were sterilization (tubal ligation or vasectomy), which was not reversible, and the intrauterine device (IUD). The IUD, however, had dangerous side effects in the 1960s and 1970s, and was infrequently used.<sup>16</sup>

Two equally revolutionary aspects of the Pill relate to its independence from the act of intimacy. The Pill constituted the first female contraceptive. The Pill transferred control of contraception, which had long resided with men, to women who bore the high physical and opportunity costs of childbearing. A woman could independently decide to take the Pill; it did not require the consent or knowledge of men or discomfort to either party during sex. In addition, the Pill divorced the decision to use contraception from the time of intercourse. This lowered the costs of preventing pregnancy during intimacy to near zero and shifted decisions about contraception to times that were less heated.

These benefits of the Pill, however, could only be realized if a woman were able to obtain a prescription for it. Access was limited for married and unmarried women by two types of laws described in the next two sections.

## **B. State “Comstock” Statutes and *Griswold v. Connecticut*: Restrictions on Contraceptive Access for Married Women**

In 1873, Congress codified the first federal prohibition on the sale of contraception with the passage of the Comstock Act. Named for the zealous proponent of Victorian morality, Anthony Comstock, this law outlawed obscenities—including contraception—under the Commerce Clause. It banned the interstate mailing, shipping or importation of articles, drugs, medicines and printed materials of “obscenities”—defined to include anything used “for the prevention of conception.”<sup>17</sup> While this Act did not regulate trade in obscenities within states, its passage incited almost every state legislature to enact anti-obscenity statutes,

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<sup>13</sup> *Id.*

<sup>14</sup> CLINICAL METHODS, *supra* note \_\_\_, at 7

<sup>15</sup> *Id.*

<sup>16</sup> Jane E. Hutchings *et al.*, *The IUD After 20 Years: A Review*, 17 FAMILY PLANNING PERSPECTIVES, 244 (1985). Precursors to the modern IUD, pessaries, have been available since the early 1900s. Modern IUDs made from plastic, however, were not available until 1960. *Id.*

<sup>17</sup> Ch. 258 17 Stat. 598 (March 3, 1873). This Act was comprehensive. It banned any “book, pamphlet, paper, writing, advertisement, circular, print, picture, drawing or other representation, figure, or image on or of paper or other material, or any cast, instrument, or other article of an immoral nature, or any drug or medicine, or any article whatever for the prevention of conception.” Andrea Tone, *Contraceptive Consumers: Gender and the Political Economy of Birth Control in the 1930s*, 29 J. SOCIAL HISTORY 485, 488 (1996). In 1971, Congress amended the federal Comstock Act to permit the mailing of contraceptives. Public Law 91-662, § 3.

which often proscribed the sales or dissemination of information or articles relating to contraception. State Comstock laws remained on the books until the U.S. Supreme Court's 1965 *Griswold v. Connecticut*<sup>18</sup> decision struck down Connecticut's ban on the use of contraceptives for married women. In the aftermath of this decision, state legislatures across the country removed or revised their anti-obscenity laws' references to contraceptives. While some states eliminated references to contraception completely, others revised their obscenity statutes to apply only to unmarried women.<sup>19</sup>

By the 1960s, Comstock laws varied considerably in their scope and applicability to the Pill. 47 of the 48 lower states had enacted anti-obscenity laws (most before 1900), but only 31 states explicitly enumerated "contraception" among the regulated obscenities. Language in only 24 states additionally banned the "sales" of contraceptive supplies, which had the effect of impeding the distribution of oral contraception before the *Griswold* decision in 1965.<sup>20</sup> Women in states with sales bans were 25 to 30 percent less likely to have ever used oral contraception before the *Griswold* decision relative to women in the same census regions without these laws—even after adjusting for other characteristics within a regression framework.<sup>21</sup> But even after *Griswold*, the legal access of unmarried women and women below the legal age of adulthood (typically 21) was limited for at least another decade. The next section chronicles the confluence of legal and institutional changes that gradually extended legal access to contraception to unmarried women below the age of 21.

### **C. Legal Age of Majority and Unmarried Women below Age 21**

During the 1960 to 1980 period, states typically restricted legal minors' ability to consent for medical treatment. Unlike today, the legal age of majority in most states was 21 in the 1960s, which prohibited physicians and pharmacists from supplying prescription contraceptives without parental or a guardian's consent even if it wasn't prohibited by state laws. There were several exceptions: states typically granted "legal emancipation" to legal minors who were married and often to women under age 21 who were pregnant or already mothers. But, getting married or getting pregnant to get the Pill defeated the purpose of using it to avoid unwanted pregnancies before marriage. We, therefore, focus on changes in these laws that extended access to unmarried women under age 21.

Legal restrictions on the ability of unmarried, younger (under 21) women to consent for the Pill were lifted gradually during the late 1960s and early 1970s for reasons often unrelated to contraception. Most of these legal changes were due either to the expanding rights of legal minors or to changes in the definition of legal "minority." The trend toward the legal empowerment of minors began well before the introduction of the Pill. In 1956 an early Ohio case recognized a "mature minor" doctrine, waiving the requirement of parental consent for

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<sup>18</sup> 381 U.S. 479 (1965).

<sup>19</sup> Following the *Griswold* decision in 1966, for instance, Massachusetts limited its ban on the sales and advertisement of contraception to apply only to unmarried individuals (Mass. Gen. Laws c. 1921, §21). However, the Supreme Court ruled this statute unconstitutional in 1972 in *Eisenstadt v. Baird* (405 U.S. 438, 453 (1972)).

<sup>20</sup> See Martha J. Bailey, "Momma's Got the Pill": How Anthony Comstock and *Griswold v. Connecticut* Shaped U.S. Childbearing, 100 AM. ECON. REV. (2010) in demonstrating the effect of sales bans by comparing data on usage of the Pill from the 1955 *Growth of American Families Study* to that from 1965 and 1970 *National Fertility Studies*.

<sup>21</sup> Bailey, *supra* note \_\_\_, at 18.

emergency medical care if the minor was “intelligent and mature enough to understand the nature and consequences of the treatment.”<sup>22</sup> Other states codified mature minor doctrines. After the Pill was introduced, mature minor doctrines gave physicians latitude to prescribe oral contraception to young women without consulting their parents.<sup>23</sup>

At the same time judicial precedents extended more legal rights to unmarried women under 21, the war in Vietnam also catalyzed changes in the definition of legal adulthood. These changes arose because, under federal law, one could be drafted for service in Vietnam at age 18 but could not vote until age 21.<sup>24</sup> This discrepancy in the rights and obligations of young men reached national prominence during the 1968 national presidential election. After coming to office, Nixon’s support of lowering the federal voting age to 18 culminated in the ratification of the 26<sup>th</sup> Amendment to the U.S. Constitution in 1971. Following this trend, legislatures began extending the privileges and responsibilities of legal adulthood to eighteen-year-old men, which also meant extending legal majority to women in many states.<sup>25</sup> In these cases, extending the right to consent to younger, unmarried women had little, if anything, to do with obtaining contraception. Nevertheless, a lower age of majority provided *de facto* empowerment to consent to medical treatment and, by extension, to obtain the Pill without parental consent.

In addition to changes in the legal age of majority through statutory or judicial means, some state restrictions on younger women’s access to contraception were struck down by courts. Even after the 1965 *Griswold* decision, unmarried women or legal minors were often denied access to contraception. In 1972, the U.S. Supreme Court extended the reasoning of *Griswold* to unmarried minors in *Eisenstadt v. Baird*<sup>26</sup> and enjoined Massachusetts’ statute banning the sales of contraceptives to unmarried women<sup>27</sup>. Later, the 1976 *Planned Parenthood of Central Missouri v. Danforth* decision ruled that Missouri lacked a “compelling interest” in using age as the sole criterion under which to regulate access to abortion and, by extension, contraception. Both decisions, by no act of popular opinion, rendered the higher age of legal majority and marriage restrictions inapplicable to the prescription of oral contraception.

Less common were explicit state-level changes in the age of consent for medical care, comprehensive family planning statutes (enables minors to consent to treatments “for the prevention of pregnancy”), and Attorney General or other administrative agency decisions. We describe each of these types of laws by state in the next section.

### **The Legal Empowerment of Minors to Consent to the Pill**

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<sup>22</sup> Eve W. Paul *et al.*, *Teenagers, Family Planning, and the Law*, 8 FAMILY PLANNING PERSPECTIVES, 16 (1976) [hereinafter Paul *et al.* 1976].

<sup>23</sup> Eve W. Paul *et al.*, *Teenagers, Family Planning, and the Law*, 6 FAMILY PLANNING PERSPECTIVES 142 (1974) [hereinafter Paul *et al.* 1974].

<sup>24</sup> Other legal rights of adulthood included signing contracts; suing and being sued; making wills; inheriting property; holding public office; serving as jurors, policemen, and firemen; marrying and divorcing without parental consent; qualifying for welfare benefits; and attending X-rated movies.

<sup>25</sup> Several states regarded 18-year-old women as legal adults much earlier than the 1970s, while retaining 21 as the age of majority for men.

<sup>26</sup> 405 U.S. 438, 453 (1972).

<sup>27</sup> Mass. Gen. Laws c. 1921, §21.

## A. Terms and Concepts Defined

This section describes how the body of statutes, case law, and policies changed in each state to lift restrictions on access to the Pill for legal minors from 1960 to 1980.<sup>28</sup> We begin by defining a classification system to describe the diverse set of legal changes.

We define “age of majority” (AOM) as the age at which an individual is legally recognized as an adult. Prior to the ratification of the 26<sup>th</sup> amendment to the U.S. Constitution, which reduced the federal voting age to 18, some states had different ages of majority for men and women. Although we mention these Female Age of Majority (FAM) laws, these statutes alone did not allow *unmarried* women ages 18 to 20 to consent to contraception.

Without being recognized as a legal adult, minors could consent to the Pill if a state had a “mature minor doctrine” (MM). We note all statutes and/or case law specifically granting consent to minors “old enough or intelligent enough to understand the implications and consequences of medical treatment” as MM laws. These statutes often do not specify an age at which legal consent is possible; rather, many stipulate that the minor be able to understand the nature of the treatment. A more specific type of MM law relates to the ability to consent for medical care (CMC). CMCs are less general than mature minor doctrines in that they only pertain to medical care, but they are more specific in that they often define an exact age at which consent is permitted. Once the individual has reached the designated age, he or she is free to consent to any and all medical care.

In addition to AOM and MM laws, some states codified family planning (FP) laws in a manner that explicitly gave minors legal access to contraception. FP classification includes all statutes that specifically mention family planning or birth control or empower minors to consent to treatments “for the prevention of pregnancy.” When state statutes were ambiguous or their constitutionality was questionable, Attorney Generals or other state health agencies sometimes issued policy statements (POL), which supplied the legal standard. We use the classification, POL, to refer to non-statutory and non-judicial decisions or policies that may have granted access to contraceptives, including opinions of the Attorney General. Judicial decisions (JD) are court rulings that interpreted statutes or struck down existing state prohibitions on the provision of contraception or limited consent to medical care by unmarried women under age 21.

Finally, we describe four other types of legal changes, which are easily confused with changes in legal access to contraception for unmarried women under age 21. Emergency treatment statutes (ET) allowed unmarried minors to consent *only* for emergency care, which did not include birth control. Extension of emancipation provisions (EE) legally empowered certain classes of minors (pregnant and/or married minors, for instance), but they did not empower unmarried minors in general. Treatment for pregnancy or pregnancy-related care (TFP) provisions allowed unmarried minors to obtain medical care for existing pregnancies but did not allow unmarried minors to consent to medical care for the prevention of pregnancy. Finally, referral clauses (REF) allowed physicians to treat certain classes of unmarried minors if they had been referred by certain government agencies or individuals. Consequently, these clauses did not generally empower unmarried minors to consent for contraception.

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<sup>28</sup> Some additional detail for prior years is included, as noted, where appropriate.

## **B. Summaries of State Laws and Policies Governing Access to Contraception by Unemancipated Minors and Unmarried Women**

During the 1960s and 1970s, the age at which women could consent to the Pill was lowered at different times in different states for reasons largely unrelated to contraception or women's rights. In this section we provide a state-by-state summary of the statutes, case law, health-related policy, or Attorney General opinions that generated these changes. As we describe in part B. of the Background section, prior to the *Griswold* decision in 1965, many states had Comstock sales or advertising bans, some with physician exceptions, which limited access to the Pill. Furthermore, in some states the sales and advertising bans would have restricted Pill access for young, unmarried women until the 1972 *Eisenstadt v. Baird* decision. Therefore, we describe Comstock laws in states where a sales or advertising ban provided the *de facto* legal barrier to contraception.<sup>29</sup> For each state, our recommended coding of the earliest year an unmarried woman under the age of 21 had legal access to the Pill is summarized in the last two columns of table 1.

### **Alabama**

The statutory age of majority was later lowered to 19 in 1975,<sup>30</sup> but women as young as 14 would have been able to obtain contraception legally as early as 1971.<sup>31</sup> In 1971, Alabama codified a medical consent statute that allowed all minors ages 14 and older to consent to their own medical care: "Any minor who is 14 years of age or older, or has graduated from high school, or is married or having been married is divorced or is pregnant may give effective consent to any legally authorized medical, dental, health or mental health services for himself or herself, and the consent of no other person shall be necessary."<sup>32</sup> We found no other statutes that restricted or changed restrictions on legal access to contraception. In summary, the age of legal consent to contraception for unmarried women fell from 21 to 14 in 1971 via a CMC statute.<sup>33</sup>

### **Alaska**

The Alaskan legislature lowered the age of majority from 21 to 19 in 1959<sup>34</sup> and further, in 1977, to 18.<sup>35</sup> In 1968, an additional statute was passed allowing "[a] person [to] examine a female minor over the age of 15 years with regard to pregnancy...without the necessity of obtaining the consent of the minor's parent or guardian."<sup>36</sup> Later, a 1974 amendment stipulated that all minors could "give consent for the diagnosis, prevention or treatment of

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<sup>29</sup> Martha J. Bailey & Allison Davido, *Legal Appendix to "Momma's Got the Pill"*, (2010) (unpublished), available at [http://www-personal.umich.edu/~baileymj/Bailey\\_Griswold\\_Legal\\_Appendix.pdf](http://www-personal.umich.edu/~baileymj/Bailey_Griswold_Legal_Appendix.pdf), provide a more detailed description of Comstock laws by state except for Hawaii and Alaska.

<sup>30</sup> Ala. Code 1975 § 26-1-1 (effective July 22, 1975).

<sup>31</sup> Acts 1971, No. 2281, p. 3681, § 1.

<sup>32</sup> In 1971, the Alabama legislature passed a medical consent statute that allowed all minors ages 14 and older to consent to their own medical care. Acts 1971, No. 2281, p. 3681, § 1, codified AL Code § 22-8-4 (1975).

<sup>33</sup> With the exception of Delaware, 14 is the lowest age we assign in our coding.

<sup>34</sup> SLA 1959, ch. 37, § 1 (amending ACLA §20-1-1 (1949)).

<sup>35</sup> SLA 1977, ch. 63 § 5 (codified at AK Stat. §25.20.010).

<sup>36</sup> John F. Merz *et al.*, *A Review of Abortion Policy: Legality, Medicaid Funding, and Parental Involvement, 1967-1994*, 17 WOMEN'S RIGHTS L. REPORTER 1, 14 n.122 (1995) (noting that this statute became effective on August 6, 1974).

pregnancy.”<sup>37</sup> In summary, the legal age of consent for contraception for unmarried women fell to 19 in 1959 (AOM) and further to 15 in 1968 (TFP).

### Arizona

In 1962, the Supreme Court of Arizona limited the state’s long standing ban on contraception advertising and sales<sup>38</sup> to apply only to print advertising, effectively repealing the sales ban.<sup>39</sup> We also found one statute permitting married or emancipated minors to consent to their own care,<sup>40</sup> but we interpret this as an extension of the rights of emancipated minors and not a change in the legal age of consent for unmarried women under the age of legal majority. The age of majority became 18, effective May 5, 1972.<sup>41</sup> Although there are no explicit prohibitions on access to contraceptives for legal minors, a letter from the Attorney General in 1977 asserted their rights in these terms: “[a] state or local agency which administers family planning services under Titles V, XIX or XX of the Social Security Act or Title X of the Public Health Service Act, must provide contraceptive services to consenting, unemancipated minors and may not require that the minor’s parent or guardian also consent to such services.”<sup>42</sup> Thus, minors under the age of 18 appear to have access to contraceptive services as of 1977, and perhaps earlier. In 1972, the legal age of consent for contraception for unmarried women fell to 18 (AOM) and minors could consent as of 1977 (POL).

### Arkansas

Since at least 1948, the Arkansas Code stipulated that females over 18 were of the age of majority.<sup>43</sup> It is unlikely, however, that this law treated women as legal adults except for the purposes of marriage. An amendment, approved April 7, 1975, lowered the age of majority for males to 18.<sup>44</sup> Effective July 1973, Arkansas passed a law allowing pregnant minors of any age to consent to medical care other than abortion.<sup>45</sup> The law also provided that *any* female could consent to medical treatment or procedures “for herself when in given [sic.] connection with pregnancy or childbirth, except the unnatural interruption of a pregnancy.”<sup>46</sup> It appears this law permitted physicians to provide care to minors who were not pregnant, but it is unclear whether consent to contraception would have been covered under this statute. However, the statute goes on to grant the power of consent to “any unemancipated minor of sufficient intelligence to understand and appreciate the consequences of the proposed surgical or medical treatment or procedures.”<sup>47</sup> In summary, unmarried minors could consent for contraception as of 1973 (MM).

### California

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<sup>37</sup> SLA 1968, ch. 204, § 1; codified at AK Stat. §20.25.025.

<sup>38</sup> AZ R.S. § 288 (1901).

<sup>39</sup> *Planned Parenthood Committee of Phoenix, Inc., v. Maricopa County*, 375 P.2d 719 (Az. 1962).

<sup>40</sup> AZ Rev. Stat. Ann. §44-132 (1967).

<sup>41</sup> Ch. 146, Laws 1972.

<sup>42</sup> DEP’T HEALTH, EDUC., & WELFARE, FAMILY PLANNING, CONTRACEPTION, AND VOLUNTARY STERILIZATION : AN ANALYSIS OF LAWS AND POLICIES IN THE UNITED STATES, EACH STATE AND JURISDICTION, No. 74-16001, at 142 (1978) [hereinafter DHEW 1978]. .

<sup>43</sup> AR Code § 9-25-101 (1987), AR Stat. Ann. § 57-103 (1947).

<sup>44</sup> Acts 1975, No. 892, §1.

<sup>45</sup> Acts 1973, No. 32, §1, p.1028; *see also* Merz *et al.*, *supra* note \_\_\_, at n.150.

<sup>46</sup> AR R.S. § 82-363 (1976).

<sup>47</sup> *Id.*



Like Arizona, California banned the advertising and sales of contraceptives.<sup>48</sup> In 1965, the Weingand Resolution made family planning available to those deemed “adults” under section 25 of the Civil Code.<sup>49</sup> Though the age of majority remained 21 until 1972,<sup>50</sup> a 1968 law provided that minors over 15 and living on their own could consent to medical care.<sup>51</sup> We view this statute as an extension of the rights of emancipated minors rather than a change in the age of consent. Women under the age of legal majority did not have access to contraception until 1975.<sup>52</sup> This law, effective January 1, 1976, permitted minors “to consent to medical and surgical care related to the prevention or treatment of pregnancy.”<sup>53</sup> Prior to the 1975 amendment, the law provided that unmarried, pregnant minors could consent to medical care related to pregnancy.<sup>54</sup> In summary, the legal age of consent for contraception for unmarried women fell to 18 in 1972 (AOM) and to all minors as of 1976 (FP).

### Colorado

In 1960, a Colorado statute banned advertising and sales of contraception. However, an exception for physicians in the course of their “legitimate business” meant that married women of legal age could legally obtain contraception from their physicians.<sup>55</sup> Until July 1, 1973, the age of majority remained 21.<sup>56</sup> However, a consent to medical care statute allowed eighteen-year-olds to consent to medical care as early as 1971: “[a] minor eighteen years of age or older, or a minor fifteen years of age or older who is living separate and apart from his or her parent, parents, or legal guardian, with or without the consent of his or her parent, parents, or legal guardian, and is managing his or her own financial affairs, regardless of the source of his or her income, or any minor who has contracted a lawful marriage may give consent to...medical, dental, emergency health, and surgical care to himself or herself.”<sup>57</sup> The requirement that fifteen-year-olds be legally emancipated means this law did not provide for universal consent among minors under the age of 18.<sup>58</sup> Also in 1971, a comprehensive family planning statute provided that “all medically acceptable contraceptive procedures, supplies, and information shall be readily and practicably available to each person desirous of the same regardless of sex, race, age, income, number of children, marital status, citizenship, or motive.”<sup>59</sup> In conjunction with this family planning statute, Colorado also enacted a statute explicitly covering birth control in the same year: “[B]irth control procedures, supplies, and information may be furnished by physicians...to any minor who...requests and is in need of birth control procedures, supplies, or information.”<sup>60</sup> Because Colorado passed a consent to

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<sup>48</sup> CA P.C. §317 (1915); *see also* Bailey & Davido, *supra* note \_\_\_, at 3.

<sup>49</sup> CA Stat. Ch. 222, 5421 (1965).

<sup>50</sup> CA Civil Code § 25; Stats. 1971, c. 1748, p. 3746, §23; CA Fam. Code §§6501-2 (1994), section 6502 formerly CA Civil Code, § 25.1; Stats. 1972, c. 38, p.50, §4; Stats. 1973, c. 278, p.674, §1.

<sup>51</sup> Stats. 1968, ch. 371, p.785, §1, codified at CA Family Code §6922 (1994); *see also* CA Civil Code §34.6 (1982).

<sup>52</sup> Paul *et al.*, 1974, *supra* note \_\_\_, (referring to passage of California Senate Bill No. 395, Chapter 820).

<sup>53</sup> Paul *et al.*, 1976, *supra* note \_\_\_, at 18.. Though we could not locate the exact Senate Bill, we believe this bill to have been codified as CA Civil Code §34.5. Stats. 1953, c. 1654 p. 3383, §1; Stats. 1975, c. 820, p. 1873, §1; CA Fam. Code § 6925 (1994).

<sup>54</sup> CA Civil Code §34.5 (1971).

<sup>55</sup> CO R.S. §1778 (1908); *see also* Bailey & Davido, *supra* note \_\_\_, at 3.

<sup>56</sup> CO R.S. §13-22-101 (1987), source: L. 73, p. 543, §§1,2.

<sup>57</sup> CO Rev. Stat. Ann. §41-2-13 (added by 1971 Session Laws, Ch. 124, S.B. No. 169); from Lexis Nexis: Source: L. 71: p. 494, currently C.R.S. §13-22-103 (2006); *see also* CO R.S. §13-22-103 (1987).

<sup>58</sup> *See* the California notes for discussion of a similar statute.

<sup>59</sup> L. 71: p. 638, § 1; C.R.S. 1963: § 66-32-2; *see also* C.R.S. §§25-6-101 and 25-6-102 (2006).

<sup>60</sup> L. 71, p. 639, §3; C.R.S. §13-22-105 (1987).

medical care statute, a birth control law, and a comprehensive family planning statute in the same year, we update the coding to a family planning statute. Therefore, the legal age of consent for contraception for unmarried women fell to 18 in 1971 (FP/CMC).

### **Connecticut**

Connecticut retained an absolute prohibition on the *use* of contraception until the Supreme Court ruled this statute unconstitutional for married women in 1965 in *Griswold v. Connecticut*.<sup>61</sup> Effective October 1, 1971, any person 18 or over could consent to his or her own medical care,<sup>62</sup> though this provision was deleted in 1973.<sup>63</sup> The age of majority was reduced to 18 in 1972.<sup>64</sup> In summary, the legal age of consent for contraception for unmarried women fell to 18 in 1971 (CMC).

### **Delaware**

Delaware's ban on advertising and sales of contraception, dating to 1935, contained an exception for physicians in the course of their "legitimate business," and was repealed in 1971.<sup>65</sup> An amendment to a consent statute, approved July 13, 1971, enabled anyone 18 or over to consent to his or her own medical care: "Consent to the performance upon or for any minor by any licensed medical...practitioner...or any hospital or public clinic or their agents or employees of any lawful diagnostic, therapeutic or postmortem procedure, and to the furnishing of hospitalization and other reasonably necessary care in connection therewith, may be given by...[a] minor of the age of 18 years or more for himself or herself."<sup>66</sup> Prior to the 1971 amendment, only married minors could consent to "diagnostic, therapeutic or post-mortem procedure[s]." The age of majority was subsequently lowered to 18, effective June 16, 1972.<sup>67</sup> Effective April 16, 1970, minors over the age of 12 "who profess to be either pregnant or afflicted with contagious, infectious or communicable diseases" could consent "to any licensed physician, hospital or public clinic for any diagnostic and lawful therapeutic procedures, medical or surgical care and treatment...by any physician licensed for the practice of medicine...in this State..."<sup>68</sup> After another revision to the law, approved July 11, 1974, minors "who profess to be exposed to the chance of becoming pregnant" were also permitted to consent to any "*preventative...procedures [or] medical or surgical care*"<sup>69</sup> We found no other family planning statutes. In summary, the legal age to consent to contraception for unmarried women fell to 18 in 1971 (CMC).

### **District of Columbia**

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<sup>61</sup> 381 U.S. 479, 486 (1965). The prohibition, codified as Connecticut General Statutes Annotated §53-32, was repealed by P.A. 828, § 214, effective October 1, 1971.

<sup>62</sup> Public Act No. 304 §§ 1-3; U.S. Dep't of Health, Educ., and Welfare (DHEW), FAMILY PLANNING, CONTRACEPTION, AND VOLUNTARY STERILIZATION: AN ANALYSIS OF LAWS AND POLICIES IN THE UNITED STATES, EACH STATE AND JURISDICTION (AS OF SEPTEMBER 1971): A REPORT OF THE NATIONAL CENTER FOR FAMILY PLANNING SERVICES, HEALTH SERVICES AND MENTAL HEALTH ADMINISTRATION (1974), *DHEW Publication 74-16001*, at 158 [hereinafter DHEW 1974].

<sup>63</sup> P.A. 73-616, §16; CT Gen. Stat. Ann. §19-142(a) (1977).

<sup>64</sup> Public Act No. 127, signed May 9, 1972; DHEW 1974, p.158.

<sup>65</sup> DE Code 1935 §§4114-4116; *see also* Bailey & Davido, *supra* note \_\_.

<sup>66</sup> 13 DE Code Ann. Tit. 13, § 707 (Supp. 1975); 54 Del. Laws (1963), c. 386; 58 Del. Laws (1971), c. 272.

<sup>67</sup> 1 Del. C. 1953 §701; 58 Del. Laws (1971), c. 439, §1.

<sup>68</sup> DE Code Ann. Tit. 13, § 708 (1975); 57 Del. Laws, c. 369 (effective April 16, 1970); 58 Del. Laws, c. 459, *see also* Merz *et al.*, *supra* note \_\_, at n. 203.

<sup>69</sup> 59 Del. Laws, c. 441, §§ 1-3; 60 Del. Laws, c. 544, § 1(emphasis added); *see also* Paul *et al.* 1976, *supra* note \_\_).

On July 22, 1976, D.C.'s legal age of majority fell from 21 to 18.<sup>70</sup> Family planning policies in the District, however, were governed by the Bureau of Maternal and Child Health.<sup>71</sup> According to its 1966 *Policies and Procedures Manual*, the Bureau made available services including “birth control information and supplies” to “all categories of adults and minors.”<sup>72</sup> However, it prioritized limited funds and facilities on the basis of “factors of income, fertility, medical risks and marital status.”<sup>73</sup> Though this early policy shows the District’s interest in providing family planning services, we do not code this as giving universal access to contraceptives to unmarried minors. In 1971, D.C. regulation directed that “birth control information, services and devices shall be provided by the health facilities operated by the District of Columbia, and *may* be provided by any qualified person or institution without regard to the age or marital status of the patient or the consent of the patient’s parent or guardian.”<sup>74</sup> In summary, unmarried minors could consent for contraception as of 1971 (POL).

### **Florida**

Florida’s age of majority was lowered to 18, effective July 1, 1973.<sup>75</sup> The Florida legislature passed the Comprehensive Family Planning Act, effective July 1, 1972, seeking “to make available to citizens of the state of child-bearing age, comprehensive medical knowledge, assistance, and services relating to the planning of families and maternal health care.”<sup>76</sup> The program will include, among other things, “prescription for and provision of all medically recognized methods of contraception....Services shall be available to all persons desirous of such services, subject to the provisions of this act...”<sup>77</sup> However, services could only be provided to a minor who is married, pregnant, a parent, has the consent of a parent or legal guardian, or “may, in the opinion of the physician, suffer probable health hazards if such services are not provided.”<sup>78</sup> In summary, the age of legal consent for contraception for unmarried women fell to 18 in 1973 (AOM).

### **Georgia**

Effective July 1, 1972, the age of majority in Georgia became 18.<sup>79</sup> However, a 1968 amendment to the Georgia Family Planning Services Act of 1966 made family planning services available to anyone “requesting such services.”<sup>80</sup> In 1971, the “Georgia Medical Consent Law” provided that any minor 18 and over could consent to his or her own medical care; a 1972 amendment to the section enabled any female to consent to care in regards to the

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<sup>70</sup> Merz *et al.*, *supra* note \_\_\_, at n. 212.

<sup>71</sup> DHEW 1974, *supra* note \_\_\_, at 327.

<sup>72</sup> *Id.*

<sup>73</sup> *Id.* at 327-8.

<sup>74</sup> Regulation Governing the Provision of Contraceptive Information Services and Devices to Minors, Reg. No. 71-27 (approved August 1971), described in DHEW 1974, *supra* note \_\_\_, at 327.

<sup>75</sup> FL Stat. § 743.07 (2007).

<sup>76</sup> FL Stat. § 381.382 (1973); Laws 1972, ch. 72-132 §§1-6.

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> O.C. G.A. § 39-1-1 (2007); Ga. L. 1972, p. 193, § 1; GA Code Ann. § 74-104 (1973).

<sup>80</sup> GA Code Ann. §§99-3101-9 (1968 Cum. Supp.); enacted Ga. L. 1966, p. 228, §§ 1-3; amended Ga. L. 1968, p. 558, § 1; *see also* O.C.G.A. §§ 49-7-1 to 49-7-3 (2007).

prevention of pregnancy.<sup>81</sup> In summary, unmarried minors could consent for contraception as of 1968 (FP).

### **Hawaii**

Effective March 28, 1972, the age of majority was lowered from 20 to 18.<sup>82</sup> Hawaii revised a statute pertaining to the medical care of minors (originally enacted and effective May 9, 1968) in 1979. The statute then permitted minors, defined as those between the ages of 14 and 17, to consent to medical care, with an explicit mention of family planning services: “The consent to the provision of medical care and services by public and private hospitals or public and private clinics, or the performance of medical care and services by a physician licensed to practice medicine, when executed by a female minor who is or professes to be pregnant...or a minor seeking family planning services shall be valid and binding as if the minor had achieved his or her majority...”<sup>83</sup> Prior to the 1979 amendment, only those minors professing to be pregnant or having a venereal disease could consent to “medical care,” defined as “the diagnosis, examination and administration of medication in the treatment of venereal diseases and pregnancy.”<sup>84</sup> In summary, the age of consent for contraception for unmarried women fell from 20 to 18 as of 1972 (AOM).<sup>85</sup>

### **Idaho**

In the early 1960s, Idaho banned the advertising and sales of contraception. However, an exception for all licensed physicians meant that married women of legal age could legally obtain contraception from their doctors.<sup>86</sup> We found no additional family planning statutes or other laws relating to the medical care of minors. The age of majority for females has been 18 since at least 1932;<sup>87</sup> however, it is not clear that this statute, which fails to specify its scope, covers medical consent.<sup>88</sup> Until a 1972 amendment equalized the ages of majority for males and females at 18, the age of majority for males was 21.<sup>89</sup> On March 21, 1974, the state added a mature minor doctrine to the statute prohibiting the advertisement and sales of contraceptives by all except licensed physicians: “A physician or licensed or registered health care provider acting at the physician’s discretion or order may provide contraceptive services to any person who requests them if in the good faith judgment of the physician or provider, the person is sufficiently intelligent and mature to understand the nature and the

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<sup>81</sup> GA Code Ann. § 88-2904 (1979); Acts 1971, pp. 438, 439; Acts 1972, p. 688; entire act codified as §§ 2901-7.

<sup>82</sup> HI R.L. § 577-1 (1968).

<sup>83</sup> HI Rev. Stat. §577A-2 (1999), L. 1968, c. 58, §4; L. 1979, c. 230, pt of §1; see §577A-1 for definition of “minor,” “medical care” and “family planning services.”

<sup>84</sup> L. 1968, c. 58, § 4.

<sup>85</sup> Other scholars have described Hawaii law as permitting any person over the age of 19 to consent to medical care. H.F. Pilpel & N.F. Wechsler, *Birth Control, Teenagers and the Law: A New Look*, 3 FAMILY PLANNING PERSPECTIVES 37, 39 (1971). However, the referenced Section 577A-3 concerns only the disclosure of information about medical care: “[P]ublic and private hospitals, or public and private clinics or physicians licensed to practice medicine may, at the discretion of the treating physician, inform the spouse, parent, custodian, or guardian of any minor patient of the provision of medical care and services to the minor or disclose any information pertaining to such care and services after consulting with the minor...” HI Rev. Stat. §577A-3 (1970 Supp.).

<sup>86</sup> Stats. 1937, ch. 72 § 1; ID R.S. §6843 (1887); see also Bailey & Davido, *supra* note \_\_, at 3.

<sup>87</sup> Id. Code Ann. § 31-101 (1932).

<sup>88</sup> See Arkansas and Illinois for states that do specify “for all purposes.”

<sup>89</sup> Id. Code § 32-101 (1983); 1972, ch. 117, § 1, p. 233.

significance of the services.”<sup>90</sup> In summary, the legal age of consent for contraception for unmarried women fell to 18 in 1972 (AOM).

### **Illinois**

The Illinois anti-obscenity statute, as well as the component banning articles for “indecent or immoral use,” was first published in 1845. Although ambiguous in its relevance for contraception, the courts interpreted it as a prohibition on sales.<sup>91</sup> In 1961, Illinois revised its definition of obscenity to exclude items “for indecent or immoral use,” which removed this statute’s applicability to contraception.<sup>92</sup> Therefore, sales of contraception were no longer illegal after 1961. The age of majority for females “for all purposes” has been 18 since at least 1927;<sup>93</sup> the age of majority was lowered to 18 for all persons on August 24, 1971. Even if women were of legal age, however, they could not consent to birth control if *unmarried*. Effective September 22, 1969, “birth control services and information” could be given to minors, provided they were “referred for such services by a physician, clergyman or a planned parenthood agency.”<sup>94</sup> A statute relating to the medical care of minors was amended, effective August 28, 1969, to allow those 18 and over to consent to medical care.<sup>95</sup> In summary, the legal age of consent for contraception for unmarried women fell to 18 in 1969 (CMC).

### **Indiana**

In the early 1960s, Indiana law banned advertising and sales of contraception with an exception for physicians in the course of their “legitimate business.”<sup>96</sup> In 1963, Indiana deleted from this law provisions concerning the sale and distribution of articles for the prevention of conception.<sup>97</sup> Since March 8, 1965, Indiana has permitted married or emancipated minors to consent to medical care.<sup>98</sup> Effective July 26, 1973, the age of majority in Indiana became 18.<sup>99</sup> As of the same date, Indiana revised a statute concerning consent for the medical care of minors, providing that a “‘minor’...shall be any person under 18 years of age.”<sup>100</sup> Parental consent is not, however, required in an emergency.<sup>101</sup> In summary, the legal age of consent for contraception for unmarried women fell to 18 in 1973 (AOM).

### **Iowa**

The age of majority was lowered from 21 to 19 in 1972, and subsequently lowered to 18 in 1973.<sup>102</sup> We found no additional family planning statutes or other laws relating to the medical

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<sup>90</sup> DHEW 1978, *supra* note \_\_, at 186 (citing Idaho Code Ann. §18-603 (1974)).

<sup>91</sup> *Lanteen Laboratories v. Clark*, 13 N.E.2d 678, 682 (Ill. 1938).

<sup>92</sup> Ill. Stat. Ann. Ch. 38, §455 (1924); *see also* Bailey & Davido, *supra* note \_\_, at 3.

<sup>93</sup> Ill. R.S. Ch. 64, ¶ 1 (1927).

<sup>94</sup> Ill. R.S. Ch. 91, § 18.7 (1971).

<sup>95</sup> Ill. Ann. Stat. ch. 91, § 18.1 (1971).

<sup>96</sup> Ind. Ann. Stat. § 10-2803 (1956); *see also* Bailey & Davido, *supra* note \_\_, at 3.

<sup>97</sup> Ind. Ann. Stat. §§ 10-2803, 10-2804 (1956); *see also* DHEW 1974, *supra* note \_\_, at

<sup>98</sup> Ind. Ann. Stat. § 35-4409; Acts 1965, ch. 158, § 1, p. 256.

<sup>99</sup> Ind. Acts 1973, P.L. 313, §3; codified as IN Code §34-1-67-1 (1976).

<sup>100</sup> 1973 P.L. 97 § 7, p. 566; IN Stat. Ann. §16-8-3-1 (1973). Others have incorrectly utilized this statute’s enactment date (April 16, 1973), rather than its effective date of July 26, 1973. *Merz et al*, *supra* note \_\_, at 13 n. 302; 1973 Ind. Acts No. 313, §7 (codified as Ind. Code Ann. § 34-1-2-5.5).

<sup>101</sup> Acts 1961, ch. 91, § 2, p. 178, IN Ann. Stat. §35-4408 (1969).

<sup>102</sup> IA Code Ann. §599.1 (1954), Acts 1972 (64 G.A.) ch. 1027, § 49; Acts 1973 (65 G.A.) ch. 140, § 49.

care of minors. In summary, the legal age of consent for contraception for unmarried women fell to 19 in 1972 (AOM) and then to 18 in 1973 (AOM).

### **Kansas**

Kansas repealed its ban on advertising and sales of contraception in 1963.<sup>103</sup> The age of majority became 18 effective July 1, 1972.<sup>104</sup> In 1965, the state passed a law allowing family planning centers to disseminate information about contraception to those individuals who had been referred by a doctor residing in the state,<sup>105</sup> but the first “mature minor” doctrine did not appear until a 1970 decision of the Kansas Supreme Court. In that case, *Younts v. St. Francis Hospital & School of Nursing, Inc.*, a hospital was sued for performing an allegedly unauthorized surgical procedure on a 17-year-old girl.<sup>106</sup> The court acknowledged the general rule that, in the absence of emergency, parental consent is necessary before treating a minor, but went on to recognize an exception for minors old enough and intelligent enough to understand the nature and consequences of the proposed treatment.<sup>107</sup> Before this court case, a 1969 statute enabled minors 16 and over to consent to medical care “where no parent or guardian is immediately available.”<sup>108</sup> However, given the court ruling in *Younts* about general medical care a year later, we code this statute as consent to emergency care only. In summary, unmarried minors could consent for contraception as of 1970 (MM).

### **Kentucky**

Effective January 1, 1965, the age of majority “for all purposes” in Kentucky became 18.<sup>109</sup> However, according to a Council of State Governments publication in 1973, the law prompted “a good deal of confusion [about the exact privileges granted to those 18 and older] and four years later [a] clarifying statute was passed.”<sup>110</sup> In 1968, the clause “all other statutes to the contrary notwithstanding” was added to the end of the original statute.<sup>111</sup> As evidence of the ambiguity necessitating this amendment, however, an opinion of the Attorney General from January 26, 1965 stated that “[a]ny person 18 years of age or over, if that person is otherwise competent, can give the necessary consent for a surgical operation or for hospital services and the consent of the parents is not required to protect the surgeon and the hospital.”<sup>112</sup> Additionally, according to a 1971 memo, the Director of the Kentucky Legislative Research Commission was reported to believe “that a court would hold that the 1968 law limited only the purchase of alcoholic beverages and treatment of handicapped

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<sup>103</sup> KS Gen. Stat. § 21.1101, repealed by L. 1963, ch. 222, § 1; *see also* Bailey & Davido, *supra* note \_\_, at 3.

<sup>104</sup> KS Stat. Ann. § 38-101 (1973), L. 1972, ch. 161, § 5.

<sup>105</sup> KS Stat. Ann. § 23-501 (1981), L. 1965, ch. 384, § 1.

<sup>106</sup> 469 P. 2d 330, 332 (1970).

<sup>107</sup> *Id.*, *see also* DHEW 1974, *supra* note \_\_, at 192.

<sup>108</sup> KS Stat. Ann. §38-123b (1973), effective July 1, 1969.

<sup>109</sup> KY R.S. §2.015 (1967), enacted Acts 1964, ch. 21, § 1. Some have erroneously reported that Kentucky lowered its age of majority from 21 to 18. For instance, Merz *et al*, *supra* note \_\_ (citing 1972 KY Acts ch. 98, effective July 26, 1972, a statute that relates “to the powers and duties of fiscal courts to control wild animals that carry diseases transmissible to man and domestic animals.”). However, as noted, the age of majority did, in fact, change in 1964, effective January 1, 1965, with the clarification added in 1968.

<sup>110</sup> THE COUNCIL OF STATE GOVERNMENTS, THE AGE OF MAJORITY 12-13. (Library of Congress Catalog # 73-187730).

<sup>111</sup> KY Acts ch. 100, § 1, approved March 25, 1968.

<sup>112</sup> Ky. Op. Atty. Gen. 65- 067,

children to persons 21 years of age and over.”<sup>113</sup> A 1972 amendment rewrote a section of the Kentucky Revised Statutes that had previously allowed minors to consent only to treatment for venereal disease. After the amendment, the statute read as follows: “Any physician, upon consultation by a minor as a patient, with the consent of such minor may make a diagnostic examination for...pregnancy...and may advise, prescribe for, and treat such minor regarding...contraception, pregnancy, or childbirth, all without the consent of or notification to the parent, parents, or guardian....”<sup>114</sup> Family planning services were extended to unmarried minors in 1972. In summary, the legal age of consent for contraception for unmarried women appears to have fallen to 18 in 1965 (AOM/POL) but this may not have been in practice until 1968 (AOM).

### **Louisiana**

In the early 1960s, Louisiana statutes banned only the advertising, but not the sale, of contraception.<sup>115</sup> This means that married women of legal age could legally obtain contraception from their doctors from the time oral contraception was introduced. The age of majority was lowered from 21 to 18 in 1972.<sup>116</sup> We found no additional family planning statutes or other laws relating to the medical care of minors. Therefore, the age of legal consent to contraception for unmarried women fell to 18 in 1972 (AOM).

### **Maine**

In the early 1960s, Maine statutes banned the advertising, but not the sales, of contraception,<sup>117</sup> which means that married women of legal age could legally obtain contraception from their doctors. Effective October 1, 1969, the age of majority in Maine was lowered from 21 to 20; effective June 9, 1972, it was lowered further to 18.<sup>118</sup> We found no additional family planning statutes or other laws relating to the medical care of minors. In summary, the legal age of consent for contraception for unmarried women fell to 20 in 1969 (AOM) and then to 18 in 1972 (AOM).<sup>119</sup>

### **Maryland**

Effective July 1, 1973, the age of majority in Maryland became 18.<sup>120</sup> A 1972 court case ruled that “[a] female minor over 16 years of age is emancipated from the control of her parents with respect to matters concerning pregnancy.”<sup>121</sup> In 1971, the Maryland legislature rewrote a statute that originally allowed only “a minor who is or professes to be married, or...[a] female minor who is or professes to be pregnant, or...a minor who is or professes to

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<sup>113</sup> Memorandum from James T. Fleming, Director, Kentucky Legislative Research Commission, July 14, 1971; Council of State Governments, 1972: p.13.

<sup>114</sup> KY R.S. § 214.185 (1977), enacted Acts 1970, ch. 104, § 1; 1972, ch. 163, paras. (1) to (6).

<sup>115</sup> LA R.S. § 14.88 (1950); *see also* Bailey & Davido, *supra* note \_\_, at 3.

<sup>116</sup> LA Civ. Code, Art. 37 (1961); Acts 1972, No. 98, § 1, approved June 25, 1972; currently LA Civ. Code, Art. 29.

<sup>117</sup> ME R.S. Ch. 135 § 10 (1930); *see also* Bailey & Davido, *supra* note \_\_, at 3.

<sup>118</sup> 1 M.R.S.A. § 73 (1979); 1969, c. 433 § 8; 1971 c. 598, § 8.

<sup>119</sup> In 1971, the legislature lowered the age of majority from 20 to 18. 1971, c. 598, § 8; ME RSA tit. 1, § 72.1. Accordingly, some have reported that 18 became the age of majority in 1971. Merz *et al.*, *supra* note \_\_. However, the legislature enacted the amendment to the age of majority during a special session of the 1971 legislature, and the Acts were not effective until June 9, 1972.

<sup>120</sup> MD Ann. Code, art. 1, § 24 (1987); 1973, ch. 651, § 1.

<sup>121</sup> *In re Smith*, 295 A.2d 238 (Md. 1972).

be afflicted with a venereal disease” to consent to his or her own medical care.<sup>122</sup> Effective July 1, 1971, consent was then permitted by any person 18 or over, or if the “minor seeks treatment or advice concerning venereal disease, pregnancy or contraception”<sup>123</sup> Because this statute allows for general consent to medical care if the minor seeks treatment regarding contraception, we code it as a family planning statute as well as a general consent for medical care statute. The reference to those 18 and over was deleted in 1977. According to a 1971 statute, minors can consent to medical treatment for “alcohol and drug abuse, venereal diseases, pregnancy, contraception other than sterilization, and in cases of rape or sexual abuse,” though minors could consent to *pregnancy* care as early as June 1, 1967.<sup>124</sup> In summary, unmarried minors could consent for contraception as of 1971 (CMC).

### Massachusetts

In the early 1960s, Massachusetts banned the sales and advertisement of contraception as obscenity. Following the *Griswold* decision in 1966, Massachusetts limited its ban on the sales and advertisement of contraception to unmarried individuals.<sup>125</sup> However, the Supreme Court ruled this statute unconstitutional in 1972 in *Eisenstadt v. Baird*.<sup>126</sup> Effective January 1, 1974, the age of majority became 18 in Massachusetts.<sup>127</sup> We found no additional family planning statutes or other laws relating to the medical care of minors. In summary, the age of legal consent for contraception for unmarried women fell to 18 in 1974 (AOM).

### Michigan

In the early 1960s, Michigan’s anti-obscenity law banned advertising, but not the sales of contraception, which means that married women of legal age could legally obtain contraception from their physicians.<sup>128</sup> Effective January 1, 1972, the age of majority in Michigan was lowered from 21 to 18.<sup>129</sup> Since at least 1966, a family planning statute has authorized the health department to provide family planning services to a medically indigent individual upon the individual's request.<sup>130</sup> The law contains no minimum age or parental consent requirements, but recipients must be “medically indigent,” a category defined to include women “receiving funds administered by the welfare department or when the cost of obtaining family planning services from a private physician or family planning clinic is beyond her financial resources or would cause a hardship on her or her family.”<sup>131</sup> We do not interpret this language to extend the legal capacity of minors to obtain contraceptives. Two judicial decisions appear to favor a mature minor doctrine.<sup>132</sup> However, we believe these

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<sup>122</sup> MD Ann. Code 1957, art. 43, § 135 (1971).

<sup>123</sup> 1971 Md. Laws ch. 758.

<sup>124</sup> 1967 Md. Laws ch. 468 (codified at Md. Code Ann., Health-Gen. s 20-102) (allowing “minors who profess to be in need of hospital or clinical care or services or medical or surgical care or services to be provided by a physician licensed to practice medicine, whether because of suspected pregnancy or venereal disease, regardless of whether such professed suspicions of pregnancy or venereal disease are, or are not subsequently substantiated on a medical basis”); *see also* Merz *et al.*, *supra* note \_\_, at 29 n.388.

<sup>125</sup> Mass. Gen. Laws c. 1921, §21; *see also* Bailey & Davido, *supra* note \_\_, at 3.

<sup>126</sup> 405 U.S. 438, 453 (1972).

<sup>127</sup> Mass. Gen. Laws c. 231, §85P (1986).

<sup>128</sup> MI Comp. Laws §11728 (1897); *see also* Bailey & Davido, *supra* note \_\_, at 3.

<sup>129</sup> 1971, p. 142, Act 79; MI C.L.A. §722.52 (1981).

<sup>130</sup> DHEW 1974, *supra* note \_\_, at 214 (citing MI C.L.A. §333.9131 (1981); MI C.L.A. §325.7a (1966)).

<sup>131</sup> DHEW 1974, *supra* note \_\_, at 217.

<sup>132</sup> *Bakker v. Welsh*, 108 N.W. 94 (Mich. 1906) (father’s consent to treatment of 17-year-old was not required where no facts indicated consent would have been withheld); *Bishop v. Shurly*, 211 N.W. 75, 84-



decisions are limited in scope and do not provide universal access to unmarried minors. In 1977, however, a federal district court ruled directly about the provision of birth control to minors.<sup>133</sup> In this case, parents of minor, unemancipated children brought a suit against the Ingham County Family Planning Center for prescribing birth control pills and devices to their children without parental consent, holding this was an “unconstitutional deprivation” of their rights as parents. In 1977, a federal district court agreed with the parents, ruling that the statute may not exclude parents from assisting a child’s decision regarding the use of contraceptives, absent a compelling interest.<sup>134</sup> However, this decision was reversed on appeal in 1980 by an appellate court ruling that gave greater weight to the minors’ right to privacy and to the state’s legitimate interest in the reduction of teenage pregnancy.<sup>135</sup> Minors, therefore, were restricted in their access to contraception without parental consent from 1977 to 1980,<sup>136</sup> but have had access to contraceptives without parental consent since 1980. In summary, the age of legal consent for contraception for unmarried women fell to 18 in 1972 (AOM) and then applied to all minors in 1980 (MM).

### Minnesota

In the early 1960s, Minnesota banned advertising and sales of contraception, but exempted physicians.<sup>137</sup> Although married women could obtain contraception, including the Pill, from their physicians, the legislature removed the words “for the prevention of conception” from the obscenity statute in 1965, which eliminated the statute’s applicability to contraception for adults (it remained in force for other obscenities). Effective June 1, 1973, the age of majority became 18.<sup>138</sup> Prior to the change in the age of majority, on May 27, 1971, a series of statutes concerning the consent to medical care of minors became effective. One section provides for an extension of the rights of emancipated minors, as in California.<sup>139</sup> Another statute provides that “any minor may give effective consent for medical, mental and other health services to determine the presence of or to treat pregnancy and conditions associated therewith.”<sup>140</sup> Though ambiguous in their applicability to consent for birth control, in 1972 an Attorney General decision interpreted them as “not making it a crime for physicians to furnish birth control devices to minors.”<sup>141</sup> The interpretation of these statutes remained in dispute for some time; they were again challenged in 1976 in *Maley v. Planned Parenthood of Minnesota, Inc.*<sup>142</sup> In this case, six couples filed a class action lawsuit, seeking to prevent Planned Parenthood from providing contraceptive services to unemancipated minors without parental consent.<sup>143</sup> However, the Minnesota court upheld the constitutionality of sections 144.343 and 144.344, writing that “under these sections Planned Parenthood could provide minors with contraceptive information and services without parental consent, unless a parent

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85 (Mich. 1926) (affirming a contract for surgery entered into by a 19-year-old on the grounds that surgery is a necessity).

<sup>133</sup> *Doe v. Irwin*, 428 F. Supp. 1198 (W.D. Mich. 1977).

<sup>134</sup> *Id.*, see also DHEW 1978, *supra* note \_\_.

<sup>135</sup> *Doe v. Irwin*, 615 F.2d 1162 (6th Cir. 1980).

<sup>136</sup> No information was found about practices prior to the district court decision in this case. See *Doe v. Irwin*, 428 F.Supp. 1198 (W.D.Mich. 1977).

<sup>137</sup> Minn. Code §§ 6572 and 6574 (1894).

<sup>138</sup> Minn. Stat. § 518.54(2) (1990).

<sup>139</sup> Minn. Stat. Ann. § 144.341 (1989); see also CA Civil Code §34.6 (1982).

<sup>140</sup> Minn. Stat. Ann. § 144.343 (1989).

<sup>141</sup> Minn. Stat. §§ 144.341-144.347, 617.251 (1971), No. 494-b-39; 1972 Minn. AG LEXIS 35

<sup>142</sup> Cir. Case No. 37769 (Minn. Dist. Ct., Third Jud. Dist., Jan. 5, 1976).

<sup>143</sup> Paul *et al.* 1974, *supra* note \_\_, n.13.

specifically notifies Planned Parenthood that he/she does not wish his/her child to receive such services.”<sup>144</sup> This decision, therefore, reinforced the Attorney General’s broad interpretation of the statute. Legally, Planned Parenthood could provide contraceptives to unmarried minors as long as they had not been explicitly prohibited by parents. In the same year as the *Maley* decision, Minnesota enacted a statute establishing “a system of community health services under local administration.”<sup>145</sup> Family planning services are listed as one such service and are defined as “counseling; distribution of family planning information; referral to licensed physicians or local health agencies for consultation, examination, medical treatment, genetic counseling, and prescriptions for the purpose of family planning; and the distribution of family planning products, including contraceptives.”<sup>146</sup> No explicit eligibility requirements or stipulations are stated, so it is unclear whether the services were available to minors without parental consent. In summary, the age of legal consent for contraception for unmarried women may have fallen as early as 1972 (POL), but the law remained in dispute until 1976 when *Maley* was decided (JD).

### Mississippi

In the early 1960s, Mississippi banned advertising and sales of contraception; however, the words “for the prevention of conception” were removed in 1970, which eliminated the statute’s applicability to contraception for adults (it remained in force for other obscenities).<sup>147</sup> Bailey (2010) provides evidence that state sales bans were not enforced after *Griswold v. Connecticut*, so we do not treat this statute as restrictive after 1965. Although the age of majority appears to remain 21,<sup>148</sup> the legislature adopted a mature minor doctrine, effective May 25, 1966. The statute allows “[a]ny unemancipated minor of sufficient intelligence to understand and appreciate the consequences of the proposed surgical or medical treatment or procedures” to consent to his or her own medical care.<sup>149</sup> Effective July 1, 1972, “[c]ontraceptive supplies and information may be furnished by physicians to any minor who is a parent, or who is married, or who has the consent of his or her parent or legal guardian, or who has been referred for such service by another physician, a clergyman, a family planning clinic, a school or institution of higher learning, or any agency or instrumentality of this state or any subdivision thereof.”<sup>150</sup> In summary, unmarried minors could consent for contraception as of 1966 (MM).

### Missouri

In the early 1960s, Missouri banned advertising and sales of contraception with an exception for physicians in the course of their “legitimate business,”<sup>151</sup> which means that married women of legal age could legally obtain contraception from their physicians. The words “for the prevention of conception” were removed in 1967. From 1921 to at least 1978, the age of

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<sup>144</sup> DHEW 1978, *supra* note \_\_, at 244. Though the final *Maley* ruling was not issued until 1976, the district court came to the same conclusion during a preliminary stage of the case in 1973. Paul *et al.* 1974, *supra* note \_\_ n.13.

<sup>145</sup> DHEW 1978, *supra* note \_\_, at 244.

<sup>146</sup> Minn. Stat. §§ 145.911 and 145.922 (1976); Laws 1976, c. 9, §§ 1, 12, effective July 1, 1975. Though the specific legislation was found in the 1976 session laws, the effective date, as stated in the 1976 session laws, was July 1, 1975.

<sup>147</sup> Miss. Code Ann. § 2289 (1957).

<sup>148</sup> Miss. Code Ann. § 1-3-27 (1998).

<sup>149</sup> Miss. Code Ann. § 41-41-3 (1973).

<sup>150</sup> Miss. Code Ann. §§ 41-42-1 to 41-42-7 (1993).

<sup>151</sup> MO Rev. Stat. §§ 3799 and 3801 (1889); *see also* Bailey & Davido, *supra* note \_\_, at 3.

majority for females was 21.<sup>152</sup> A 1971 statute that originally permitted those under 21 to consent to *treatment for pregnancy* was revised in 1977 to allow anyone 18 or older to consent to his or her own medical care. Between 1971 and 1977, those under 18 could still consent to treatment for pregnancy.<sup>153</sup> However, the Attorney General issued an opinion in March of 1973, stating that “no law prohibits physicians from prescribing contraceptives to minors who do not have parental consent or who have not been emancipated by marriage or other means.”<sup>154</sup> Following this opinion, the law remained ambiguous. There were several important court cases interpreting Missouri’s statutes. In *Planned Parenthood of Central Missouri v. Danforth*,<sup>155</sup> the Supreme Court ruled that the state could not prohibit minors from obtaining abortions. However, the applicability of this ruling to minors’ right to obtain contraception was ambiguous until 1977, when, in *Carey v. Population Services*,<sup>156</sup> the Supreme Court cited the *Danforth* decision in ruling that a prohibition of contraceptive access to minors was unconstitutional as well. In summary, The age of legal consent for contraception for unmarried minors may have fallen as early as 1973 (POL), but the law remained in dispute until 1977 (JD).

### Montana

In the early 1960s Montana banned advertising and sales of contraception, with an exception for physicians,<sup>157</sup> which means that married women of legal age could legally obtain contraception from their physicians. Until a 1971 amendment changed the age of majority to 19 for both males and females, the age of majority for females was 18.<sup>158</sup> However, the statute does not enumerate the purposes for which women were considered legal adults during this period and has dubious applicability to consent for medical care or contraception. In 1973, the age of majority was reduced to 18 for both males and females.<sup>159</sup> In 1974, the Montana legislature rewrote a 1969 statute, similar to that in Maryland, that originally allowed only “a minor who is or professes to be married, or...[a] female minor who is or professes to be pregnant, or...a minor who is or professes to be afflicted with a venereal disease” to consent to his or her own medical care.<sup>160</sup> Following the amendment, consent was then permitted for “the prevention, diagnosis, and treatment” of pregnancy by female minors professing to be pregnant. We code the original 1969 statute as an extension of the rights of emancipated minors, because most states viewed minors as emancipated once married or pregnant. Thus, if a minor professed to be either married or pregnant, she would have been considered emancipated. We found no family planning statutes. In summary, the legal age of consent for contraception for unmarried women fell to 19 in 1971 (AOM) and then to 18 in 1973 (AOM).

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<sup>152</sup> MO R.S. § 475.010 (1978). *But see* DHEW 1978, *supra* note \_\_, at 253 (stating that “the age of majority is 18 (§475.010 (1974)). Whenever 21 is used as a qualifying or limiting factor in any statute, it shall be deemed to mean 18 years (except with respect to the legal drinking age)”). When we looked in the 1978 statutes, it still listed 21 as the age of majority. We have no verification of the statement in DHEW’s publication.

<sup>153</sup> MO R.S. §431.061 (1978); L. 1971 H.B. 73 §1, A.L. 1977 S.B. 48

<sup>154</sup> DHEW 1978, *supra* note \_\_, at 253 (citing Op. Atty. Gen. Mar. 9, 1973).

<sup>155</sup> 428 U.S. 52 (1976).

<sup>156</sup> 431 U.S. 678 (1977).

<sup>157</sup> MT Rev. Codes Ann. §94-3616 (1947); *see also* Bailey & Davido, *supra* note \_\_, at 3.

<sup>158</sup> This was the case since at least 1953.

<sup>159</sup> MT Rev. Codes Ann. § 64-101 (1953; 1977 Cum. Supp.); am. Sec. 16, ch. 240, L. 1971, am. Sec. 23, ch. 94, L. 1973.

<sup>160</sup> MT R.C. § 69-6101 (1970); En. Sec. 1, Ch. 189, L. 1969; am. Sec. 1, ch. 312, L. 1974.

## Nebraska

In the early 1960s, Nebraska banned advertising and sales of contraception.<sup>161</sup> The legislature lowered the age of majority from 21 to 20 effective December 25, 1969,<sup>162</sup> and from 20 to 19 effective July 6, 1972.<sup>163</sup> The age of majority remained 19 until at least 1993. We found no other family planning statutes or laws relating to the medical care of minors. However, as of September 1, 1970, Nebraska revised its welfare family planning policy. According to DHEW, the Nebraska Department of Public Welfare requires that birth control information and services be made available to all recipients of federally-aided public assistance ‘without regard to marital status, age or sex,’ and the policy does not indicate that parental consent is required for minors.<sup>164</sup> Note that recipients of federal aid would have been considered legal adults, so we do not interpret it as allowing all minors to obtain contraception. In summary, the legal age of consent for contraception for unmarried women fell to 20 in 1969 (AOM) and then to 19 in 1972 (AOM).

## Nevada

Nevada repealed its long-standing advertising ban on contraception in 1967.<sup>165</sup> As early as 1965, Nevada statutes were encouraging family planning. The legislature authorized the welfare division to “conduct a family planning service in any county of the state. Such services may include the dispensing of information and the distribution of literature on birth control and family planning methods.”<sup>166</sup> No later than 1965, a similar statute authorized the health division to “provide medical services, appliances, drugs and information for birth control.”<sup>167</sup> In another related law, effective July 1, 1971, the Family Planning Services and Population Research Law stated that “a bureau of Population Affairs has been established in the Department of Health, Welfare and Rehabilitation to ‘assist in making comprehensive voluntary family planning services readily available to all persons desiring such services’ and to ‘make readily available information, including educational materials, on family planning and population growth to all persons desiring such information.’”<sup>168</sup> However, according to researchers who had contacted officials in Nevada in 1971, in “the implementation of these statutes, the state health department requires parental consent for minors who have never married or given birth; the welfare department reports that although parental consent is not *required* for provision of services to minors, physicians or clinics may require parental consent for unmarried minors.”<sup>169</sup> Therefore, we do not interpret these earlier statutes as lowering the age of consent for unmarried minors, as this law did not allow minors who had

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<sup>161</sup> NE Compiled Stat. § 45 (1885); *see also* Bailey & Davido, *supra* note \_\_, at 3.

<sup>162</sup> Laws 1965, c. 207 § 1, p. 613; Laws 1969, c. 298, § 1, p. 1072

<sup>163</sup> NE R.S. § 38-101 (1972 Cum. Supp.); Laws 1972, LB 1086, § 1.

<sup>164</sup> DHEW 1974, *supra* note \_\_ at 235.

<sup>165</sup> NV R.L. §§6451 and 6455 (1912); NRS § 202.190; *see also* Bailey & Davido, *supra* note \_\_, at 3.

According to DHEW, until the repeal of § 202.190 in 1967, “the Attorney General had expressed the opinion that section 202.220, relating to the circulation of publications containing prohibited matter, forbade the installation and exhibition of vending machines containing contraceptives (Op. Atty. Gen. No. 35, 1951). Since contraceptives are no longer ‘prohibited matter,’ and since the 1967 revision of section 202.220 omitted all reference to section 202.190, it would appear that the prohibition against vending machines is no longer effective.” DHEW 1978, *supra* note \_\_, at 269.

<sup>166</sup> Nevada Revised Statutes 422.235 (added to NV R.S. by 1965, 529).

<sup>167</sup> NV R.S. §442.080, amended 1963, 947; 1965, 529.

<sup>168</sup> Pilpel & Wechsler, *supra* note \_\_, (citing NV R.S. Ch. 439 §§2-7 (1971)); *see also* DHEW 1974, *supra* note \_\_, at 236.

<sup>169</sup> DHEW 1974, *supra* note \_\_, at 237; DHEW 1978, *supra* note \_\_, at 268.

never been married and/or given birth to obtain contraception. This law was repealed in 1973.

The age of majority for females has been 18 since at least 1930: “All females of the age of eighteen years, and who are under no legal disability, shall be capable of entering into any contract, and shall be, for all intents and purposes, held and considered to be of lawful age.”<sup>170,171</sup> A 1973 amendment equalized the ages of majority for males and females at 18.<sup>172</sup>

Nevada additionally codified a doctrine (approved May 26, 1975), as part of an existing statute that permitted married or emancipated minors to consent to their own medical care. It appears, however, that only minors satisfying the requirements listed *and* who understand the ramifications of treatment can consent:

1. A minor may give consent for the health care services provided in subsection 2 for him or herself...if such minor is:
  - a. Living separate and apart from her or his parents or legal guardian, with or without the consent of such parent, parents or legal guardian, for a period of at least four months;
  - b. Married or has been married;
  - c. A mother, or has borne a child; or
  - d. In a physician’s judgment, in danger of suffering a serious health hazard if health care services are not provided...

Except as otherwise provided in NRS 442.250, the consent of the parent or parents or the legal guardian of a minor is not necessary for a local or state health officer, board of health, licensed physician or public or private hospital to examine or provide treatment for any minor, included within the provisions of subsection 1, who understands the nature and purpose of the proposed examination or treatment and its probable outcome, and voluntarily requests it<sup>173</sup>

The wording of this statute retained this form until at least 1977. We do not code this as a mature minor doctrine but as an extension of the rights of emancipated minors. In summary, the legal age of consent for contraception for unmarried women fell to 18 in 1973 (AOM).

### **New Hampshire**

Effective June 3, 1973, the age of majority was lowered from 21 to 18.<sup>174</sup> However, effective July 25, 1971, New Hampshire adopted a mature minor doctrine. Included at the end of a statute about treatment for drug abuse, the statute stated the following: “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.”<sup>175</sup> This appears to be a mature minor doctrine, but its appearance at the end of a statute relating to drug abuse

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<sup>170</sup> NV C.L. §300 (1930); NV R.S. §129.010 (1963); *see also* DHEW 1974, *supra* note \_\_\_, at 236.

<sup>171</sup> As we mention in the Terms and Concepts Defined section, we do not believe that these statutes alone allowed unmarried women ages 18 to 20 to consent to contraception.

<sup>172</sup> N.R.S. §129.010 (2003); 1973, p. 1578.

<sup>173</sup> Nev. Stat. ch. 716, § 1 (codified at Nev. Rev. Stat. § 129.030 (1993)).

<sup>174</sup> NH R.S.A. § 21-B:1 (1988); Laws 1973 Ch. 72, § 73.

<sup>175</sup> NH Rev. Stat. Ann. § 318-B:12-a (1984); 1971 N.H. Laws Ch. 136 § 1.

distinguishes it from mature minor doctrines in other states. In summary, unmarried minors could consent for contraception as of 1971 (MM).

### **New Jersey**

New Jersey banned advertising and sales of contraception, with a judicially construed physician exception in effect after 1963.<sup>176</sup> This means that married women of legal age could have obtained contraception legally from their physicians after 1963. Effective January 1, 1973, the age of majority was lowered from 21 to 18.<sup>177</sup> This section explicitly enumerates the “consent to medical and surgical treatment” as a right of those 18 and over. We found no other family planning laws. In summary, the legal age to consent to contraception fell to 18 in 1973 (AOM).

### **New Mexico**

Effective June 18, 1971, the age of majority became 18.<sup>178</sup> On March 16, 1973, New Mexico enacted the “Family Planning Act”<sup>179</sup> in order to “assure that comprehensive family planning services are accessible on a voluntary basis to all who want and need them.”<sup>180</sup> Family planning services are defined as “contraceptive procedures and services (diagnosis, treatment, supplies and follow-up), social services, informational and educational services”; contraceptive procedures are “any medically accepted procedure[s] to prevent pregnancy.”<sup>181</sup> The Family Planning Act did not impose age requirements to receive services,<sup>182</sup> and it restricted facilities from imposing any prerequisites for family planning services, except for “a requirement of referral to a physician when the requested family planning service is something other than information about family planning or non-prescriptive items” or if required by law.<sup>183</sup> A statute enacted in 1973 allowed “any person, regardless of age, [to] consent to examination and diagnosis by a licensed physician for pregnancy.”<sup>184</sup> We interpret this law to mean that minors could consent to medical treatment related to their pregnancies. In summary, the legal age to consent to contraception fell to 18 in 1971 (AOM) and minors could consent as of 1973 (FP).

### **New York**

New York repealed its ban on advertising and sales of contraception, with exception for physicians, in 1965.<sup>185</sup> The law was amended, effective September 1, 1971, to allow the prescription and sale of contraceptives by physicians and pharmacists to anyone 16 or over.<sup>186</sup> Prior to the amendment, state law criminalized the sale or distribution of “any

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<sup>176</sup> N.J.S.A. 2A:170-76; *Sanitary Vendors Inc. v. Byrne*, 190 A.2d 876 (N.J. 1963); *see also* Bailey & Davido, *supra* note \_\_, at 3.

<sup>177</sup> N.J. Stat. § 9:17B-1 (2007), L. 1972, c. 81, § 1; N.J. Stat. § 9:17B-3 (1993), L. 1972, c. 81, § 3.

<sup>178</sup> NM Stat. Ann. § 13-13-1 (1976), enacted by Laws 1971, ch. 213, § 1.

<sup>179</sup> NM Stat. §§ 12-30-1 to 12-30-8, enacted by Laws 1973, ch. 107, §§ 1-8.

<sup>180</sup> NM Stat. § 12-30-3(B).

<sup>181</sup> NM Stat. Ann. § 12-30-2 (A, B); DHEW 1978, *supra* note \_\_, at 282.

<sup>182</sup> DHEW 1978, *supra* note \_\_, at 283.

<sup>183</sup> NM Stat. Ann. § 12-30-5.

<sup>184</sup> NM Stat. Ann. § 12-34-13 (1976); NM Laws 1973, ch. 359, § 13; *see also* DHEW 1974, *supra* note \_\_ at 249; DHEW 1978, *supra* note \_\_, at 282.

<sup>185</sup> Bailey & Davido, *supra* note \_\_, at 3.

<sup>186</sup> According to DHEW, “Section 6811 (8) reflects a liberalization of the law in New York regarding contraceptives effectuated by the 1965 repeal of former Section 1142 of the Penal Code. This repealed section prohibited the manufacture, sale, distribution and advertisement of ‘indecent articles,’ among which were included articles and medicines for the prevention of conception. Former Section 1145 of the Penal

instrument or article, or any recipe, drug or medicine for the prevention of conception to a minor under the age of sixteen years,” with exceptions for distribution and sales (but not advertising) by licensed pharmacists<sup>187</sup> and for distribution and sales by physicians in connection with their practices.<sup>188</sup> Thus, licensed physicians, in addition to licensed pharmacists, could have provided those sixteen or over with contraceptives. In 1975, however, *Population Services International v. Wilson*, which was later upheld in 1977 in *Carey v. Population Services International*, found all three aspects of this statute unconstitutional: (1) the restriction of sales of nonprescription contraceptives to licensed pharmacists, (2) the prohibition of sales of contraceptives to minors under the age of 16 and (3) the prohibition of the advertisement and display of contraceptives.<sup>189</sup> Effective June 2, 1972, all persons 18 or over could consent to their own medical care.<sup>190</sup> Effective September 1, 1974, the age of majority was lowered from 21 to 18.<sup>191</sup> Prior to the enactment of the consent to medical care statute in 1972, a lower court ruled that a 19½-year-old married woman could consent to non-emergency medical treatment.<sup>192</sup> But because the woman was married, we do not take this to support universal consent among unmarried minors prior to 1972. We found no relevant family planning statutes. In summary, the legal age to consent to contraception fell to 16 in 1971 (FP) and any minor could consent as of 1975 (JD).

### North Carolina

Effective July 5, 1971, the age of majority became 18.<sup>193</sup> A 1965 statute, similar to that in Kansas, permitted physicians to provide medical treatment to minors where “the parent or parents...to said child cannot be located or contacted with reasonable diligence during the time within which said minor needs to receive the treatment herein authorized...”<sup>194</sup> In light of a 1967 judicial decision that “in general, parental consent is required for treatment of an unemancipated minor under 18,” we code this as a statute relating to emergency treatment only.<sup>195</sup> A 1971 statute provided that any minor 18 or over could “consent to any medical treatment...for himself or for his child.”<sup>196</sup> This statute was revised in 1977 to allow any minor to consent “for medical health services for the prevention, diagnosis and treatment of...pregnancy.”<sup>197</sup> We found no additional family planning laws. In summary, the legal age to consent to contraception fell to 18 in 1971 (AOM/CMC) and minors could consent as of 1977 (FP).

### North Dakota

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Code exempted from classification as ‘indecent articles,’ articles or instruments used or applied by physicians (or by their direction or prescription) in their lawful practices for the cure or prevention of disease.” DHEW 1974, *supra* note \_\_, at 252.

<sup>187</sup> NY Educ. Law § 6811.

<sup>188</sup> 16 NY Educ. Law § 6807.

<sup>189</sup> *Population Services International v. Wilson*, 398 F. Supp. 321 (S.D.N.Y.1975), *aff’d Carey v. Population Services International*, 431 U.S. 678 (1977); *see also* DHEW 1978, *supra* note \_\_, at 285.

<sup>190</sup> NY Pub. Health Law § 2504 (1977), added L. 1972, ch 769, § 1.

<sup>191</sup> NY Dom. Rel. Law § 2 (1988), added L. 1909, ch 19; am. L. 1974, ch. 920, § 1.

<sup>192</sup> *Bach v. Long Island Jewish Hospital*, 49 Misc. 2d 207 (Sup. Ct. Nassau Co. 1966); *see also* DHEW 1974, *supra* note \_\_, at 253.

<sup>193</sup> NC Gen. Stat. §§ 48A-1; 48A-2 (1976), 1971, c. 585, §1.

<sup>194</sup> Gen. Stat. NC Ch. 90, Art. 1A, §90-21.1 (1975), 1965, c. 810, s.1

<sup>195</sup> *Sharpe v. Pugh*, 155 S.E.2d 108 (1967); *see also* DHEW 1974, *supra* note \_\_ at 258.

<sup>196</sup> NC Gen. Stat. § 90-21.5 (1975); 1971, c. 35.

<sup>197</sup> 1977, c. 582, § 2.

North Dakota banned only advertising contraception,<sup>198</sup> and beginning in 1959, prohibited sales of contraceptives from vending machines.<sup>199</sup> This means that married women of legal age could legally obtain contraception from their physicians in the early 1960s. The age of majority for females has been 18 since at least 1895, but the statute does not specify scope, and it is doubtful that this age pertained to the consent for medical care or contraceptives for unmarried women.<sup>200</sup> An amendment approved February 26, 1971, lowered the age of majority for males from 21 to 18.<sup>201</sup> We found no additional family planning statutes or other laws relating to the medical care of minors. In summary, the legal age to consent to contraception fell to 18 in 1971 (AOM).

## Ohio

Ohio courts adopted a mature minor doctrine as early as 1956,<sup>202</sup> securing the rights of mature minors to consent to their own medical care.<sup>203</sup> Legal interpretations held that minors could consent to minor surgery and general medical care under this decision.<sup>204</sup> However, Ohio also had an anti-obscenity statute. Ohio's statute was originally passed in 1885 and banned advertising and sales of contraception, with an exception for physicians in the course of their "legitimate business."<sup>205</sup> The words "for the prevention of conception" were removed in 1965. Effective January 1, 1974, the age of majority was lowered from 21 to 18.<sup>206</sup> We found no additional family planning statutes or other laws relating to the medical care of minors. In addition, the state health agency policy guidelines state that "services [that are provided by any 'programs applying for state health agency funding'] must be available to all women who desire family planning services regardless of age, marital status or maternity status" as of May 1971.<sup>207</sup> In summary, depending upon the enforcement of the Ohio Comstock statutes, minors may have been able to consent to medical care as early as 1956 (MM) or in 1965 when the Comstock statute was revised.

## Oklahoma

The age of majority for females has been 18 since at least 1937.<sup>208</sup> However, the statute does not enumerate the purposes for which women were considered legal adults. An amendment, effective August 1, 1972, equalized the ages of majority for men and women at 18.<sup>209</sup> We found no additional laws relating to the medical care of minors. Effective May 29, 1975, a statute permitted "any minor who is separated from his parents or legal guardian for whatever reason and is not supported by his parents or guardian" to consent to his or her own medical care. However, as in California, we view this statute only as an extension of the rights of emancipated minors and not a change in the legal age of consent. Additionally, it is interesting to note that under the "emergency services" subdivision of this statute, it explicitly mentions that "the prescribing of any medicine or device for the prevention of pregnancy

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<sup>198</sup> ND R.C. § 23-1205 (1943); *see also* Bailey & Davido, *supra* note \_\_, at 3.

<sup>199</sup> N.D. Cent. Code §12-43-12 (1960).

<sup>200</sup> R.C. 1895, § 2698; ND Cent. Code § 14-10-01 (1960).

<sup>201</sup> N.D. Cent. Code § 14-10-01 1971.

<sup>202</sup> *Lacey v. Laird*, 139 N.E.2d 25, 34 (1956) (holding that an 18-year-old could consent to surgery).

<sup>203</sup> DHEW 1974, *supra* note \_\_, at 265.

<sup>204</sup> *Id.*

<sup>205</sup> OH R.S. § 7027 (1896); *see also* Bailey & Davido, *supra* note \_\_, at 3.

<sup>206</sup> 1973 S 1, codified at OH R.C. § 3109.01.

<sup>207</sup> DHEW 1974, *supra* note \_\_: at 266-67.

<sup>208</sup> OK Stat. Ann. Tit. 15, § 13 (1937); *see also* DHEW 1974, *supra* note \_\_, at 269.

<sup>209</sup> OK Stat. Ann. Tit. 15 § 13 (1972); L. 1972, c. 221, §1.



shall not be considered...an emergency service.”<sup>210</sup> Another subdivision of this statute, amended in 1976, provides that “[a]ny minor who is or has been pregnant...” may also consent “to have services provided by health professionals...provided, however, that such self-consent only applies to the prevention, diagnosis and treatment of those conditions specified in this section.”<sup>211</sup> Prior to the amendment, consent was only permitted by “any minor who is pregnant.” Because pregnancy typically legally emancipated a minor, we code this law as an extension of emancipation and not as providing universal consent among unmarried minors. Effective May 18, 1967, Oklahoma enacted a series of family planning statutes.<sup>212</sup> No explicit eligibility requirements are stated in the statutes, only that they will be established by the State Board of Health. However, according to DHEW, “[a]ll categories of adults apparently are eligible for family planning services; no exclusions were noted in the CFPPD survey and none appear in the written policies. According to the Division of Maternal and Child Health’s *Guidelines for Family Planning Programs*, ‘minors may be accepted for services if: 1) ever married or ever pregnant; 2) bearing acceptable proof of impending marriage; 3) accompanied by parent or guardian requesting services; 4) referred by a recognized agency, a doctor, a nurse, or a clergyman...[However,] contraceptive *advice* may be given in *all* cases where the ‘health needs of the patient make it advisable...’ (first emphasis added).”<sup>213</sup> It is important to note that unmarried women or those without a referral could *only* obtain contraceptive *advice*. The guidelines do not generally allow contraceptive services to all minors. In summary the legal age to consent to contraception fell for unmarried women to 18 in 1972 (AOM).

## Oregon

Oregon has had an advertising and sales ban on contraception with a physician exception since at least 1935,<sup>214</sup> which means that married women of legal age could obtain contraception legally from their physicians. An amendment, approved July 20, 1973, lowered the age of majority from 21 to 18.<sup>215</sup> Before the legal age of majority changed, a statute approved June 15, 1971, provided all minors access to birth control<sup>216</sup>; it also stipulated when

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<sup>210</sup> OK Stat. tit. 63, § 2602. This section gives minors in need of emergency treatment the ability to consent.

<sup>211</sup> Laws 1976, c. 161, §.2.

<sup>212</sup> OK Stat. Ann. Tit. 63, Ch. 32, §§ 2071-5 (1984).

<sup>213</sup> DHEW 1974, *supra* note \_\_, at 271.

<sup>214</sup> OR C.L. Ann. §58-561 (1939); OR Rev. Stat. §§435.010 to 435.130; Bailey & Davido, *supra* note \_\_, at 3.

<sup>215</sup> OR Rev. Stat. §109.510 (1969), am. 1973 c.827 § 14.

<sup>216</sup> According to Merz *et al.*, “[t]he statute embodying the MPC [“Model Penal Code”] legislation included a parental consent provision, requiring the consent of a parent [Ore. Rev. Stat. §435.435 (1973)]. The law was struck down on February 28, 1973. Effective September 9, 1971, a separate law was enacted, enabling minors 15 years of age or older to consent to medical care [ORS §109.640]. The law gives physicians discretion to provide notice to the minor’s parent. The law was subject initially to the statutory parental consent provision. With the invalidation and subsequent repeal of the parental consent requirement, minors 15 and over have had capacity to consent to abortion since February 28, 1973.” See Merz *et al.*, *supra* note \_\_, at 25. We could not, however, verify these conclusions. The 1971 Oregon Session Laws read as follows: “The provisions of this 1971 Act [that allows access to birth control for all minors and those 15 and over to consent to medical care, ORS §109.640] do not amend or supersede the provisions of ORS 109.105, 109.115 or 435.435.” Section 435.435 states, “No pregnancy shall be terminated without the written consent of the pregnant woman and (a) The written consent of a parent who has custody or the guardian if the pregnant woman is an unmarried minor...” It appears that this parental consent statute (ORS §435.435) only applied to consent for abortion; we do not code the birth control statute (ORS §109.640) as falling under its provisions. We therefore code access to birth control for all minors from 1971. Note that

minors could consent to medical care: “Any physician or nurse practitioner may provide birth control information and services to any person without regard to the age of the person. A minor 15 years of age or older may give consent to hospital care, medical or surgical diagnosis or treatment...without the consent of a parent or guardian.”<sup>217</sup> A family planning statute was passed in 1967; however, it only stated that family planning and birth control services could be offered by county health and welfare departments to those with aggregate yearly income under \$6000.<sup>218</sup> After an amendment, approved July 12, 1973, the statute stipulated that “the Department of Human Resources and every county health department shall offer family planning and birth control services within the limits of available funds....The Director of Human Resources may designate which divisions shall initiate and conduct decisions of family planning *with each person who might have an interest in and benefit from such service.*”<sup>219</sup> In summary, unmarried minors could consent to contraception in 1971 (CMC).

### **Pennsylvania**

Pennsylvania banned advertising of contraception, but not sales, until that law was repealed in 1972.<sup>220</sup> All prohibitive laws were repealed in 1972. The age of majority remained 21 until at least 1976.<sup>221</sup> However, a statute was enacted on February 13, 1970 that allowed any minor 18 or over to consent to medical care: “Any minor who is eighteen years of age or older, or has graduated from high school, or has married, or has been pregnant, may give effective consent to medical, dental and health services for himself or herself, and the consent of no other person shall be necessary.”<sup>222</sup> This law went into effect in April 1970, 60 days after enactment. We found no additional family planning laws. A 1933 judicial decision that allows intelligent minors to consent to procedures for their benefit seems to provide a mature minor doctrine,<sup>223</sup> yet its application to birth control is unclear.<sup>224</sup> It is difficult to know how the “benefit” standard would have applied in the context of contraception. In summary, the legal age to consent to contraception fell for unmarried women to 18 in 1970 (CMC).

### **Rhode Island**

Effective March 24, 1972, the age of majority was lowered from 21 to 18.<sup>225</sup> We found no additional family planning statutes. An emergency treatment law was passed in 1971,

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Merz et al. says the law was effective as of September 17, 1971; the session laws say *approved* June 15, 1971, but state no explicit effective date. We, therefore, do not find any conflict.

<sup>217</sup> OR Laws 551, Ch. 381 (1971), ORS §109.640 (1989); 1971 c.381 § 1.

<sup>218</sup> OR Laws 1967 c. 491 §1.

<sup>219</sup> OR Laws 1973 c. 253 §1; ORS §435.205 (1989) (emphasis added).

<sup>220</sup> PA Stat. Ann. Tit. 18 §4525 (1945); Dec. 6. P.L. 1482; see also Bailey & Davido, *supra* note \_\_, at 3.

<sup>221</sup> PA Stat. tit. 46, § 601(62) and (65) (1952).

<sup>222</sup> PA Stat. tit. 35, § 10101 (1977). This statute was enacted as one in a series of statutes concerning “Minors’ Consent to Medical, Dental and Health Services” PA Stat. tit. 35, §§ 10101-10105 (1977). Section 10102 concerns minors who have been married or have had children, while section 10103 permits minors to give consent “for medical and health services to determine the presence of or to treat pregnancy, and venereal disease...” Section 10104 is an emergency treatment statute, and section 10105 discusses the liability of physicians under these sections. We therefore code only section 10101 as effectively lowering the legal age of consent.

<sup>223</sup> *Zaman v. Schultz*, 19 Pa. D. & C. 309 (1933) (holding that a minor may “consent to a procedure which is for his or her benefit, if he is old enough and intelligent enough to understand the procedure).

<sup>224</sup> DHEW 1974, *supra* note \_\_, at 277.

<sup>225</sup> RI Gen. Laws § 15-12-1 (1996); P.L. 1972, ch. 20, §1.

permitting those 16 and over to consent to “routine emergency medical...care.”<sup>226</sup> In summary, the legal age to consent to contraception for unmarried women fell to 18 in 1972 (AOM).

### **South Carolina**

Effective February 6, 1975, the age of majority was lowered from 21 to 18.<sup>227</sup> On June 2, 1972, South Carolina approved a statute enabling minors 16 or over to consent to medical care: “Any minor who has reached the age of sixteen years may consent to any health services from a person authorized by law to render the particular health service for himself and the consent of no other person shall be necessary 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 and a consultant physician if one is available.”<sup>228</sup> In conjunction with this statute, an Attorney General opinion, dated August 23, 1972, stated that all minors 16 and over could obtain birth control pills without consent.<sup>229</sup> A similar statute, also from 1972, stated that “[h]ealth services of any kind may be rendered to minors of any age without the consent of a parent or legal guardian when, in the judgment of a person authorized by law to render a particular health service, such services are deemed necessary.”<sup>230</sup> We found no additional family planning statutes. In summary, the legal age to consent to contraception for unmarried women fell to 16 in 1972 (CMC/POL).

### **South Dakota**

South Dakota’s ban on contraception advertising was repealed in 1976.<sup>231</sup> Sales from vending machines were also prohibited.<sup>232</sup> The age of majority has been 18 for females since at least 1939.<sup>233</sup> The statute does not enumerate the purposes for which women were considered legal adults, and we have found no other clarification on this point. The lower female age of majority is not mentioned in DHEW (1974), which implies that it did not extend all the privileges of adulthood to women over 18. The age of majority for men was subsequently lowered to 18 in 1972.<sup>234</sup> We found no additional family planning statutes or other laws relating to the medical care of minors. In summary, the legal age to consent to contraception for unmarried women fell to 18 in 1972 (AOM).

### **Tennessee**

Effective May 11, 1971, the age of majority in Tennessee was lowered from 21 to 18.<sup>235</sup> As part of a series of family planning statutes, a birth control statute was also enacted in 1971, giving all minors access to contraception: “Contraceptive supplies and information may be furnished by physicians to any minor who is pregnant, a parent, or married, or who has the consent of the minor's parent or legal guardian, or who has been referred for such service by another physician, a clergy member, a family planning clinic, a school or institution of higher learning, or any agency or instrumentality of this state or any subdivision of the state, or who

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<sup>226</sup> R.I. Gen. Laws § 23-4.6-1 (1979), enacted by P.L. 1971, ch. 145, §1.

<sup>227</sup> S.C. Code Ann. § 15-1-320 (2006), 1976 Act No. 695, §§ 2, 3.

<sup>228</sup> SC Code of Laws § 44-45-10 (1977); 1972 (57) 2527; SC Code Ann. § 20-7-280.

<sup>229</sup> 1971-72 Ops. Att’y Gen., No 3364, p. 213.

<sup>230</sup> S.C. Code of Laws § 44-45-20 (1977); 1972 (57) 2527.

<sup>231</sup> SD C.L. § 22-24-7; repealed S.L. 1976, ch. 158, §24-11; Bailey & Davido, *supra* note \_\_, at 3.

<sup>232</sup> S.D. Code § 13.1726 (1939 Supp.); SD C.L. §§22-24-8 and 22-24-9 (1967).

<sup>233</sup> SD Code § 43.0101 (1939).

<sup>234</sup> SD C.L.A. § 26-1-1 (1967.); S.L. 1972, ch. 154, §1.

<sup>235</sup> Acts 1971, ch. 162, § 3, TN Code Ann. § 1-3-113 (1979).

requests and is in need of birth control procedures, supplies or information.”<sup>236</sup> The most important part of this law is the last part that suggests minors can be given contraceptives *upon request*. A letter from the Attorney General further supports these guidelines, stating, “physicians, both those in private offices and those in local health departments, may provide contraceptive procedures and supplies to minors without the consent of their parents.”<sup>237</sup> However, a letter clarifying the *Rules and Regulations of the Family Planning Act of 1971*<sup>238</sup> sent to all local health departments by the Commissioner of Public Health on September 14, 1971, seems to be more restrictive: “Contraceptive supplies and information may be furnished to any minor who requests it [sic] when directed by a physician.”<sup>239</sup> In summary, the legal age to consent to contraception for unmarried women fell to 18 in 1971 (AOM/FP).

## Texas

Effective August 27, 1973, the age of majority in Texas was lowered from 21 to 18.<sup>240</sup> Though the Texas Civil Practices and Remedies Code was amended in 1973, the Texas Probate Code did not change its definition of “minors” until September 1, 1975.<sup>241</sup> Effective January 1, 1974, Texas Annotated Civil Statutes article 4445b was amended and recoded as TX Family Code §35.03.<sup>242</sup> After amendment, the statute then permitted minors 16 or over and living apart from their parents and managing their own financial affairs to consent to medical care. As with other statutes of this type, we code this statute as an extension of the rights of emancipated minors and not a change in the legal age of consent. We found no additional family planning statutes. In summary, the legal age to consent to contraception for unmarried women fell to 18 in 1973 (AOM).

## Utah

The age of majority for females has been 18 since at least 1943.<sup>243</sup> The statute, however, did not enumerate for what purposes females had obtained their majority, stating only that “the period of minority extends...to the age of 18 years.”<sup>244</sup> The statute was amended in 1975 to make both men and women legal adults at the age of 18, as the age for men was previously 21.<sup>245</sup> Despite the lower age of majority for females since the 1940s, there seemed to be considerable ambiguity regarding whether physicians could prescribe birth control to women under the legal age of majority. On July 21, 1971, the Attorney General advised “*not* to provide family planning information or services to minors without parental consent ‘until such time as the state legislature may adopt appropriate legislation.’...In support of this view the Attorney General cites the common law requirement of parental consent in the absence of an emergency, plus the expression of legislative intent inferred from the statute dealing with

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<sup>236</sup> Acts 1971, ch. 400, § 1; TN Code Ann. §§ 53-4601 to 53-4607 (1977); quoted text is § 53-4607.

According to DHEW, these statutes were collectively called the Family Planning Act of 1971 and became effective on May 25, 1971. DHEW 1974, *supra* note \_\_, at 293.

<sup>237</sup> Letter from Lance D. Evans, Assistant Attorney General to Thurman T. McClean, Jr., Staff Attorney, Department of Public Health, July 23, 1971; DHEW 1974, *supra* note \_\_, at 292.

<sup>238</sup> TN Code Ann. §§ 53-4601 to 53-4607

<sup>239</sup> DHEW 1974, *supra* note \_\_, at 292-93.

<sup>240</sup> TX Codes Ann., Civil Practice & Remedies Code §129.001 (1989); Acts 1973, 63<sup>rd</sup> Leg., p. 1723, ch 626, §1.

<sup>241</sup> Acts 1975, 64<sup>th</sup> Leg., p. 104 ch. 45 §1; TX Rev. Civil Statutes, Probate Code § 3(t) (1975).

<sup>242</sup> Article 4445b is a statute concerning venereal disease.

<sup>243</sup> UT Code Ann. § 14-1-1 (1943).

<sup>244</sup> *Id.*

<sup>245</sup> L. 1975, ch. 39, § 1, approved March 24, 1975.

prophylactics....”<sup>246</sup> However, the following year, a Utah district court held in *Jane Doe v. Planned Parenthood Association of Utah* that it was unconstitutional to deny the plaintiff, who was a 16-year-old girl, and others over age 14, family planning services upon request.<sup>247</sup> This decision was reversed in 1973 by the Utah Supreme Court, which reasoned that it did not violate equal protection to deny contraception to single minor children because “they are not in the same class with married people.”<sup>248</sup> However, in 1975, a federal district court ruled that the state regulation requiring parental consent for a minor to obtain family planning assistance violated federal law requiring AFDC and Medicaid programs to provide family planning services to all recipients “upon request and on a confidential basis.”<sup>249</sup> The court also found that the regulations infringed on minors’ constitutional right to privacy without a compelling state interest.<sup>250</sup> The court reasoned that while states may infringe on minors’ right to privacy when it is necessary for their own safety, the family planning agency had employed trained personnel to counsel and examine minor patients, thereby affording “adequate protection to minors from physical harms associated with birth control.”<sup>251</sup> The court recognized the “fundamental importance” of contraception to minors, and perceived “no developmental differences between minors and adults that may affect the gravity of the right asserted by sexually active minors to family planning services and material.”<sup>252</sup> Finally, the court noted that because the parental consent requirement applied only to family planning services, it was vulnerable on equal protection grounds. Utah law does not prohibit minors from obtaining contraceptives from their private physicians without parental consent, so the regulations burdened the fundamental rights of indigent minors only.<sup>253</sup> The state regulations were consequently enjoined.<sup>254</sup>

The Utah legislature then amended the state code in 1981 to prohibit the distribution of contraceptive services to an unmarried minor without parental consent.<sup>255</sup> However, this was held to be an unconstitutional infringement upon the right to decide whether to bear or beget children because it failed to provide a procedure whereby a mature minor or a minor who could demonstrate that his or her best interests are contrary to parental notification could obtain contraceptives confidentially.<sup>256</sup> In addition, this state law was held to be in conflict with federal law.<sup>257</sup>

We found no additional family planning statutes or other laws relating to the medical care of minors. In summary, unmarried women ages 18 and older and unmarried minors could consent for contraception as of 1975 (AOM/JD).

## Vermont

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<sup>246</sup> DHEW 1974, *supra* note \_\_, at 300 (citing Op. Atty. Gen. No. 71-017, July 21 1971).

<sup>247</sup> Memorandum Decision No. 204803, District Court, Salt Lake City, May 15, 1972.

<sup>248</sup> *Doe v. Planned Parenthood Association of Utah*, 510 P. 2d 75, 76 (1973); *see also* DHEW 1978, *supra* note \_\_, at 341-42.

<sup>249</sup> *TH. v. Jones*, 425 F. Supp. 873, 878 (D. Utah 1975), *aff’d*, 96 S. Ct. 2195 (1976).

<sup>250</sup> 425 F. Supp. 880-82; *see also* DHEW 1978, *supra* note \_\_, at 342

<sup>251</sup> 425 F. Supp. at 881.

<sup>252</sup> *Id.*

<sup>253</sup> *Id.* at 882.

<sup>254</sup> *Id.*

<sup>255</sup> Utah Code Ann. §§76-7-322 to 76-7-323; 76-7-325 (2007).

<sup>256</sup> *Planned Parenthood Ass’n v. Matheson*, 582 F. Supp. 1001, 1009 (D. Utah 1983).

<sup>257</sup> *Id.* at 1004-07.

Effective July 1, 1971, the age of majority was lowered from 21 to 18.<sup>258</sup> We found no additional family planning statutes or other laws relating to the medical care of minors. In summary, the legal age to consent to contraception for unmarried women fell to 18 in 1971 (AOM).

### Virginia

The age of majority was lowered from 21 to 18, effective July 1, 1972.<sup>259</sup> A 1971 amendment permitted minors to “consent to medical or health services required in case of birth control, pregnancy or family planning.”<sup>260</sup> The Attorney General interpreted this amendment to mean that any mentally competent person, regardless of age or marital status, can validly consent, without parental involvement, to medical, surgical, and health services including birth control, pregnancy services, and family planning—but with exception for abortion.<sup>261</sup> We found no additional family planning statutes. In summary, unmarried minors could consent for contraception as of 1971 (POL/FP).

### Washington

In the early 1960s, Washington banned advertising of contraception. This statute was amended to remove the words “for the prevention of conception” in 1971.<sup>262</sup> No other statutes prohibited the sales of contraception. The age of majority “for all purposes” was officially 21, but until 1970 there was a “saving” clause, reading, “[t]his act shall not apply to females who shall have attained the age of eighteen years at the time this act shall go into effect.”<sup>263</sup> Under our coding, this is a FAM law, but it is not found to apply to women for purposes other than contracting for marriage.<sup>264</sup> There was a 1970 amendment to a consent to medical care statute, permitting persons 18 and over “to make decisions in regard to their own body...to the full extent allowed to any other adult person including but not limited to consent to surgical operations.”<sup>265</sup> The age of majority was subsequently lowered to 18 in 1971.<sup>266</sup>

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<sup>258</sup> VT Stat. Ann. Tit. 1, § 173 (1972), amended Act No. 90 §1.

<sup>259</sup> VA Code § 1-13.42 (1979); 1972, cc. 824, 825; *see also* Merz, *supra* note \_\_; DHEW 1974, *supra* note

<sup>260</sup> 1971, Ex. Sess., c. 183 (amending section 32-137 of the Virginia Code). DHEW reports that this amendment became effective on July 1, 1972. DHEW 1974, *supra* note \_\_, at 307. We were not able to verify this statement; the session laws state the amendment was *approved* March 16, 1971. The statute book states all special session laws are effective on the first day of the fourth month following the month of adjournment of the special session. We have no verification of the date of adjournment for the Ex. Session of 1971, however. The statute book also noted that all 1972 regular session laws were effective on July 1, 1972. It is possible that DHEW made a mistake and assumed the amendment was made in the regular 1972 session and not the 1971 Ex. Session, but it is unclear. However, given the Attorney General letter concerning this statute issued in 1971, it seems reasonable to code 1971.

<sup>261</sup> DHEW 1974, *supra* note \_\_, at 307 (citing letter from Attorney General Andrew P. Miller to the Hon. Mack I. Shanholtz, M.D., State Health Commissioner, on April 28, 1971).

<sup>262</sup> WA Rev. Code § 9.68.030; Bailey & Davido, *supra* note \_\_, at 3.

<sup>263</sup> WA Rev. Code § 26.28.010 (1961), added Laws, 1923, ch. 72.

<sup>264</sup> DHEW 1974, *supra* note \_\_, at 311-12.

<sup>265</sup> Laws 1970, Ex. Sess., ch. 17, § 1; reenacted by Laws 1971, Ex. Sess., ch. 292, §2 as WA Rev. Code §26.28.015 (1986).

<sup>266</sup> WA Rev. Code § 26.28.010 (1986); Laws, 1971, Ex. Sess., ch. 292, § 1.

In 1967, the Washington Supreme Court extended the rights of emancipated minors when it recognized their ability to consent for surgery.<sup>267</sup> We do not code this court case, however, as it involves surgery performed on an emancipated minor; we do not find the ruling applicable to all minors. The following year, a Washington Board of Health Policy directed that all persons were eligible for family planning without parental consent, including never-pregnant, never-married minors.<sup>268</sup> It is unclear, however, how this ruling affected private physicians and non-profits not governed by the Washington Board of Health. In summary, unmarried minors may have been able to consent to contraception as early as 1968 (POL), but the relevance of this for non-state funded organizations was clarified in 1970 to extend to all women 18 and over (CMC).

### West Virginia

Effective June 9, 1972, the age of majority became 18.<sup>269</sup> West Virginia enacted a series of family planning statutes in 1966.<sup>270</sup> One provides that local boards of health provide services to “indigent and medically indigent persons on request and with the approval of said licensed physician.”<sup>271</sup> We read this as only subsidizing services for “indigent” persons over the legal age of majority. In addition, the *Operational Procedures Manual for Family Planning and Child Spacing Clinics*, dated August 1970, states, “services shall be available without regard to race, age, religion, nationality, maternity, or marital status,” but the “age” apparently referred to women above the legal age of majority. The Health Department reported in a survey conducted by the Center for Family Planning and Program Development that unmarried minors needed consent as of 1971.<sup>272</sup> Under the state health agency policy, access for minors required parental consent as of 1976.<sup>273</sup> In summary, the legal age of consent for contraception for unmarried women fell to 18 as of 1972 (AOM).

### Wisconsin

Wisconsin banned advertising and sales of contraception, with exception for physicians.<sup>274</sup> After *Griswold*, the statute was subsequently revised to prohibit sales to unmarried persons.<sup>275</sup> However, the U.S. Supreme Court ruled a similar Massachusetts law illegal in *Eisenstadt v. Baird*,<sup>276</sup> and *Baird v. Lynch*<sup>277</sup> noted that “it is no longer unlawful to sell or dispose of contraceptives to unmarried persons.”<sup>278</sup> The law contained no explicit mention of minors, so although not legally prohibited, it is unclear whether minors could have been

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<sup>267</sup> *Smith v. Seibly*, 431 P.2d 719, 723 (Wash. 1967) (ruling that an 18-year-old married minor who earns his own living and maintains his own home is emancipated for the purpose of giving valid consent to surgery if a full disclosure of the ramifications, implications and probable consequences of the surgery has been made by the doctor in terms which are fully comprehensible to the minor).

<sup>268</sup> WAC248-128-001 for Board of Health policy adopted August 3, 1967, codified July 1, 1968.

<sup>269</sup> WV Code § 2-3-1 (1979); 1972, c. 61.

<sup>270</sup> 1966, c. 33, codified as WV Code §§ 16-2B-1 to 16-2B-4.

<sup>271</sup> According to DHEW, before a liberalizing 1969 amendment [1969, c. 60] to these family planning statutes, enacted in 1966, “eligibility for family planning service was restricted to persons who were married and living with their spouses.” DHEW 1974, *supra* note \_\_, at 317. After the amendment, all “indigent” and “medically indigent” persons were eligible.

<sup>272</sup> DHEW 1974, *supra* note \_\_, at 317.

<sup>273</sup> DHEW 1978, *supra* note \_\_, at 360.

<sup>274</sup> WI Stat. § 151.15 (1957); *see also* Bailey & Davido, *supra* note \_\_, at 3.

<sup>275</sup> WI Stat. § 450.11 (1969).

<sup>276</sup> 405 U.S. 438, 453 (1972).

<sup>277</sup> Civ. No. 71-C-254 (W.D. Wis., Nov. 26, 1974).

<sup>278</sup> DHEW 1978, *supra* note \_\_, at 362.

provided with contraceptives. According to a 1977 Attorney General Opinion, “only a registered pharmacist or practitioner could prepare, compound or dispense birth-control pills.”<sup>279</sup> Effective March 23, 1972, the legal age of majority became 18.<sup>280</sup> Wisconsin also enacted a family planning statute, effective May 19, 1978.<sup>281</sup> There are no stated eligibility requirements, so it is unclear whether minors would have been granted access under the statute; the statute only states that “the department shall promulgate all rules necessary to implement and administer this section.” According to DHEW, however, “the Division of Health reported minors may be provided contraceptive services without parental consent.”<sup>282</sup> We found no additional laws relating to the medical care of minors. In summary, the legal age of consent for contraception for unmarried women fell to 18 as of 1972 (AOM); unmarried minors could consent for contraception as of 1978 (FP).

### Wyoming

Wyoming’s ban on advertising and sales of contraception contained an exception for physicians in the course of their “legitimate business.”<sup>283</sup> Although married women of legal age could legally obtain contraception from their physicians under this statute, the legislature removed language applying to contraception in 1969. An amendment approved March 5, 1973 set the age of majority at 19.<sup>284</sup> The age of majority was further lowered to 18 in 1993.<sup>285</sup> On February 18, 1969, Wyoming approved a series of comprehensive family planning laws,<sup>286</sup> including one authorizing “[t]he department of health [to] provide and pay for family planning and birth control information and services...to any person who may benefit from this information and these services.”<sup>287</sup> Additionally, the state Division of Health and Mental Services provided conceptive services (but not sterilization or abortion) to minors without parental consent at the one family planning program under its direction.<sup>288</sup> The Division also reported the use of maximum income levels for contraceptive services, but no further information was available.<sup>289</sup> In summary, unmarried minors could consent to contraception as of 1969 (FP).

### Conclusion

This article documents the complex legal environment that regulated women’s legal access to contraception and how it changed through the 1960s and 1970s—changes that extended legal access to the Pill to younger, unmarried women. Recent research has relied upon different sets of legal changes to examine how the Pill, and the improved control over childbearing it conferred, led to revolutionary changes in the education, careers, and relationships of U.S. women and men.

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<sup>279</sup> Op. Atty. Gen., May 16, 1977 (interpreting revised form of section 450.11).

<sup>280</sup> WI Laws 1971, ch. 213; *see also* DHEW 1978, *supra* note \_\_, at 363.

<sup>281</sup> WI Stat. §253.07 (1999).

<sup>282</sup> DHEW 1978, *supra* note \_\_, at 364-65.

<sup>283</sup> WY Stat. §§6-103 to 6-105 (1959); Bailey & Davido, *supra* note \_\_, at 3.

<sup>284</sup> Laws 1973, ch. 213 §1; WY Stat. §14-1-101 (1994).

<sup>285</sup> 1993 S.L. WY ch. 1, §1.

<sup>286</sup> WY Stats. §§35-508 to 35-513 (1975), Laws 1969, ch. 32, §§1 to 5; WY Stat. §42-5-101 (1994).

<sup>287</sup> *Id.* § 35-508.

<sup>288</sup> DHEW 1978, *supra* note \_\_, at 362.

<sup>289</sup> DHEW 1978, *supra* note \_\_, at 368.



This article contributes to this literature by presenting a more complete accounting of the legal environment of the 1960s and 1970s, resolving differences across studies, identifying areas of legal ambiguity, and recommending a legal coding for use in future research. This new, common legal coding will allow for results to be compared across studies. Using the coding suggested in this paper offers a uniform point of departure for researchers interested in evaluating the impact of the Pill on women's outcomes.

Table 1: Earliest Year Unmarried, Childless Women Could Consent for Contraception: Previous Coding and Recommended Coding

	Goldin and Katz <sup>a</sup>	Bailey <sup>b,e</sup>	Guldi <sup>c</sup>	Hock <sup>d,e</sup>	Discrepancies	New Coding <sup>e</sup>	Law Type
Alabama	1969-71	1971	1971	1971		1971	CMC
Alaska	<1969	1960	<1967	1960	X	1960	AOM
Arizona	1969-71	1972	1972	1972	X	1972	AOM
Arkansas	<1969	1960	<1967	1960	X	1973	MM
California	<1969	1972	1972	1972	X	1972	AOM
Colorado	1969-71	1971	1971	1971		1971	FP/CMC
Connecticut	1969-71	1972*	1972	1971	X	1971	CMC
Delaware	1971-74	1972*	1972	1972	X	1971	CMC
DC	1969-71	1971	1971	1974	X	1971	POL
Florida	1971-74	1974*	1973	1972	X	1973	AOM
Georgia	<1969	1968	1968	1971	X	1968	FP
Hawaii	--	1970	1970	1975	X	1972	AOM
Idaho	<1969	1963	<1967	1960	X	1972	AOM
Illinois	1969-71	1969**	1969	1961	X	1969	CMC
Indiana	1971-74	1973	1973	1973		1973	AOM
Iowa	1971-74	1973	1972	1972	X	1972	AOM
Kansas	1971-74	1970	1970	1970	X	1970	MM
Kentucky	<1969	1968	1968	1965	X	1965/68	AOM/POL
Louisiana	1971-74	1972	1972	1972		1972	AOM
Maine	1969-71	1971	1972	1972	X	1969	AOM
Maryland	1969-71	1967	1967	1971	X	1971	CMC

Massachusetts	1971-74	1974	1974	1974		1974	AOM
Michigan	1969-71	1972	1972	1972	X	1972	AOM
Minnesota	1969-71	1973	1973	1973	X	1972/76	POL/JD
Mississippi	<1969	1966	<1967	1970	X	1966	MM
Missouri	--	1976	1973	1977	X	1973/77	POL/JD
Montana	1969-71	1971	1971	1960	X	1971	AOM
Nebraska	1971-74	1972	1972	1972		1972	AOM
Nevada	<1969	1969	1969	1960	X	1973	AOM
New Hampshire	1969-71	1971	1971	1971		1971	MM
New Jersey	1971-74	1973	1973	1973		1973	AOM
New Mexico	1969-71	1971	1971	1971		1971	AOM
New York	1969-71	1971	1971	1972	X	1971	FP
North Carolina	1969-71	1971	1971	1971		1971	AOM/CMC
North Dakota	1969-71	1972*	1971	1960	X	1971	AOM
Ohio	1971-74	1965	<1967	1974	X	1960/65 <sup>f</sup>	MM
Oklahoma	<1969	1966	<1967	1960	X	1972	AOM
Oregon	1969-71	1971	1971	1971		1971	CMC
Pennsylvania	1969-71	1971	1971	1970	X	1970	CMC
Rhode Island	1971-74	1972	1972	1972		1972	AOM
South Carolina	1971-74	1972	1972	1972		1972	CMC/POL
South Dakota	1971-74	1972	1972	1972		1972	AOM
Tennessee	1969-71	1971	1971	1971		1971	AOM/FP
Texas	1971-74	1974*	1973	1973	X	1973	AOM
Utah	<1969	1962	<1967	1960	X	1975	AOM/JD
Vermont	1969-71	1972	1971	1972	X	1971	AOM
Virginia	1971-74	1971	1971	1971		1971	POL/FP
Washington	1969-71	1971	1971	1971		1968/70	POL/CMC

West Virginia	1971-74	1972	1972	1972		1972	AOM
Wisconsin	1969-71	1973	1972	1974	X	1972	AOM
Wyoming	1971-74	1969	1969	1973	X	1969	FP
Cases where at least one study disagrees					34		

- a. Goldin and Katz (2002: table 2, columns 4-6) present the legal age to obtain contraceptive services without parental consent in three years: 1969, 1971, and 1974. We present year ranges implied by their table. “—” indicates that the law did not change between 1969 and 1974. In Hawaii and Missouri, the legal ages were 20 and 14, respectively, in all three years.
- b. Bailey (2006: table 1) codes the first year that an unmarried, childless woman under the age of 21 could legally obtain contraceptive services without parental or spousal consent. \*When laws became effective in the second half of the calendar years, she codes the next calendar year. \*\*Illinois is a typo in the published version of Bailey (2006). The coding used in her analysis is 1969.
- c. The coding in Guldi (2008) is available from the author upon request. Her coding is the first year that an unmarried, childless woman under the age of 21 could have legally obtained contraception without parental consent. The earliest year Guldi coded is 1967. Any legal changes that occurred prior to this are assigned <1967.
- d. Hock (2007: table A1). Hock’s depiction of the coding does not enable one to compute legal access by age 21. His coding represents access “for a single woman by age 18 or 19”.
- e. For changes in years prior to 1960, Bailey and Hock assign the year 1960.
- f. Depending upon the enforcement of the Ohio Comstock statutes, minors may have been able to consent to medical care as early as 1956 (MM) or in 1965 when the Comstock statute was revised. Further details are discussed in the state-by-state section.