

ALR 5th

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From the editor

The legality of abortion has riven society like no other issue in modern times. Even though the constitutional right to an abortion was declared by the United States Supreme Court in the landmark case of *Roe v. Wade*, 410 U.S. 113, 93 S. Ct. 705, 35 L. Ed. 2d 147 (1973), reh'g denied, 410 U.S. 959, 93 S. Ct. 1409, 35 L. Ed. 2d 694 (1973), many legal issues concerning abortion are still judicially contested. Volumes 76 and 77 of ALR5th contain annotations addressing the validity, construction, and application of statutory restrictions on "partial birth" abortions and parental notification and consent regarding a minor's abortion. There are also annotations that address other privacy issues such as DNA database statutes and HIV testing without the consent of the person tested.

Jason B. Binimow, J.D.

Highlights

ABORTION

Partial birth statutes

Partial birth abortions entail a controversial procedure whereby all of the body of a fetus except the head is extracted from the uterus and into the vagina, following which the contents of the skull are extracted from the fetus; thereafter, the dead but otherwise intact fetus is taken from the mother's body. Many states have enacted legislation banning this procedure except when it is necessary to save the mother's life. In most of the cases that reached the federal courts, the courts have held such statutes unconstitutional, either because the statute is void for vagueness, or on the ground that the statute places an undue burden on a woman's right to terminate a pregnancy. It has been held, however, that state statutes restricting partial birth abortions can be applied in a constitutional manner. This annotation collects the cases in which courts have considered the validity, construction, and application of such statutes. Parental notification or consent regarding a



minor's abortion is discussed in the annotation at 77 ALR5th 1. 76 ALR5th 637

BLOOD TESTS

DNA database statutes

Every state has enacted a statute creating a DNA (deoxyribonucleic acid) database for use in solving various classes of crimes. While these statutes have frequently been challenged, the challenges usually have been unsuccessful. This annotation collects and analyzes state and federal cases discussing the validity, construction, and operation of state statutes creating or regulating DNA databases created for the purpose of enforcing the criminal law, and the regulations implementing such statutes. 76 ALR5th 239

CRIMINAL LAW

Delay in taking defendant into custody

If a criminal defendant is convicted and is sentenced to serve actual jail time, under ordinary circumstances

the sheriff either immediately or within a few days takes the defendant into custody to start serving the sentence. Nevertheless, there may be a delay in taking a defendant into custody, and the effect of such delay has been the subject of litigation. Similarly, where the defendant appeals, there may be a significant delay before the sentence is actually finalized by affirmance, and the defendant will be free in the meantime on an appeal bond. In such case, there may be mix-ups when the orders to commit the defendant are issued by the appeals court to the trial court. This annotation collects and discusses the cases considering the effect of a delay in taking a defendant into custody. **76 ALR5th 485**

COVENANTS

Change of character of neighborhood as affecting restrictive covenant

Restrictive covenants may be rendered invalid or unenforceable where there has been such a radical

change in the character of the neighborhood within and surrounding the restricted area that the original purpose of the covenant has been defeated, it is no longer of substantial value to the benefited land, and its enforcement would be unduly oppressive to the burdened land. Whether changed conditions are sufficient to justify the invalidation or nonenforcement of a restrictive covenant must be decided on a case-by-case basis, taking into account the totality of the circumstances, including such factors as the size of the restricted property, its location with respect to where the change has occurred, the type of change that has taken place, the character and conduct of the parties or their predecessors in title, and the purpose for which the covenant was imposed. This annotation collects and analyzes the cases concerning the effect of changes in the character of the neighborhood on the validity and enforceability of restrictive covenants. **76 ALR5th 337**

Coming Soon

Listed below are a few of the topics scheduled to be published in volume 77 of ALR5th, in April 2000. Some of the annotations listed may be rescheduled. Advance copies of coming annotations may be obtained by customers free of charge by calling 1-800-225-7488 or by sending an e-mail to alrles-rochester@westgroup.com.



POF 2d 1), the reader should refer to the Practice Aids. In addition, the Related Annotations section lists an interesting annotation on the admissibility of a blood alcohol test taken despite the defendant's objection or refusal to submit to a test (14 ALR4th 690). **77 ALR5th**

BLOOD TESTS

Authentication of blood sample

When a blood specimen has been drawn for purposes of scientific analysis other than the determination of its alcohol content, the proponent of the blood evidence ordinarily attempts to authenticate the sample tested by proving a chain of custody. This requires accounting for the sample's handling from the time it was first collected until the time it was analyzed. Unless the sample can be authenticated by other means, failure to make this accounting renders inadmissible the sample and any results of analysis of the sample. This annotation collects and analyzes cases which, in passing upon either the admissibility of a blood specimen collected for purposes of scientific analysis other than determination of its alcohol content, or the admissibility of the results of such analysis, have considered the sufficiency of the authentication of the specimen. The authentication of a blood sample taken from a human body for purposes of determining its alcohol content is discussed in the annotation at 76 ALR5th 1. For more information on blood typing (40 Am Jur

ABORTION

Parental notification or consent regarding minor's abortion

The history of state statutes requiring parental consent to or notification of a minor's abortion, and decisions dealing with their validity, construction, and application, largely reflects attempts by state legislatures and the courts to conform to pronouncements made in a series of decisions of the United States Supreme Court dating from 1976. The Supreme Court established early on that a state cannot, consistent with federal constitutional standards, enact legislation that makes parental consent such an inflexible condition of a minor's right to obtain an abortion that the minor's parent or parents have an absolute veto power over her decision, but it has been recognized that a state statute that merely requires parental notification of a minor's planned abortion does not, in itself, give parents this sort of veto power, and does not violate the federal constitution as applied to immature minors who are dependent upon their parents. Nevertheless, it has been acknowledged that a state statutory requirement of parental notifi-

cation of a minor's intended abortion can run afoul of federal constitutional standards if it mandates such notification in every instance, without creating exceptions for minors who are sufficiently mature to make the abortion decision on their own, or those for whom an abortion would be in their best interests. This annotation discusses the validity, construction, and application of statutes requiring parental notification of or consent to a minor's abortion. The validity, construction, and application of partial-birth statutes is considered in the annotation at 76 ALR5th 637. **77 ALR5th**

UNINSURED MOTORISTS

Uninsured motorist coverage

Uninsured and underinsured motorist provisions of automobile liability policies, while providing coverage for injuries caused by the negligence of unidentified hit-and-run drivers, commonly contain limitations restricting coverage to accidents arising out of physical contact between the insured and unidentified vehicles. The limitations are chiefly intended to eliminate fraudulent and collusive claims by insisting that there be evidence, in the form of collision damage, to prove that an accident did in fact involve another vehicle. While many courts have strictly applied the requirements to "miss-and-run" accidents in which there was no contact between the insured

and unidentified vehicles, some courts and commentators have criticized the limitations, particularly when applied to exclude coverage in cases in which the injuries in question were clearly shown to be caused by an unidentified vehicle that left the scene after causing an accident. This annotation collects and analyzes those cases in which courts have construed and applied physical contact requirements to claims for uninsured motorist coverage for injuries allegedly caused by unidentified "miss-and-run" vehicles. **77 ALR5th**

BLOOD TESTS

Damage action for HIV testing without consent of person tested

Privacy, particularly medical privacy, is a zealously guarded right. When that privacy is invaded, and a person is tested for HIV without consenting to that test, a number of claims may be available to that person, such as a claim for intrusion on seclusion. This annotation collects and analyzes the state and federal cases discussing an action to collect damages for subjecting the plaintiff to a blood test for the presence of antibodies to the human immunodeficiency virus (HIV), so as to test for acquired immune deficiency syndrome (AIDS), to which the plaintiff did not consent, where the test was not performed pursuant to a court order. **77 ALR5th**

Index

The following is a complete list, arranged alphabetically by topic, of annotations contained in the current volume 76 or scheduled for publication in volume 77 of ALR5th. Some of the annotations listed may be rescheduled.



ABORTION

Validity, construction, and application of statutory restrictions on partial birth abortions. **76 ALR5th 637**

Validity, construction, and application of statutes requiring parental notification or consent regarding minor's abortion. **77 ALR5th 1**

BLOOD TESTS

Authentication of blood sample taken from human body for purposes of determining blood alcohol content. **76 ALR5th 1**

Mental incapacity as justifying refusal to submit to tests for driving while intoxicated. **76 ALR5th 597**

Authentication of blood sample taken from human body for purposes other than determining blood alcohol content. **77 ALR5th**

Validity, construction, and operation of state DNA database statutes. **76 ALR5th 239**

Damage action for HIV testing without the consent of the person tested. **77 ALR5th**

CIVIL RIGHTS

Visual impairment as handicap or disability under state anti-discrimination law. **77 ALR5th**

COVENANTS

Change in character of neighborhood as affecting validity or enforceability of restrictive covenant. **76 ALR5th 337**

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Effect of delay in taking defendant into custody after conviction and sentence. **76 ALR5th 485**

CUSTODY AND SUPPORT OF CHILDREN

Basis for imputing income for purpose of determining child support where obligor is voluntarily unemployed or underemployed. **76 ALR5th 191**

DIVORCE

Propriety of equalizing the income of spouses through alimony awards. **77 ALR5th**

PARENT AND CHILD

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SEARCH AND SEIZURE

Effect of retroactive consent on legality of otherwise unlawful search and seizure. **76 ALR5th 563**

UNIFORM COMMERCIAL CODE

What constitutes “fixed amount of money” for purposes of [rev] § 3-104 of Uniform Commercial Code providing that negotiable instrument must contain unconditional promise to pay fixed amount of money. **76 ALR5th 289**

When is instrument issued or transferred for “value” under UCC § 3-303. **77 ALR5th**

When is instrument “payable to bearer or to order” as required to constitute negotiable instrument under Article 3 of Uniform Commercial Code, [rev] § 3-104(a)(1). **77 ALR 5th**

UNISURED MOTORISTS

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