



NARAL
Pro-Choice America

THE “CHILD CUSTODY PROTECTION ACT” THREATENS YOUNG WOMEN’S HEALTH

The “Child Custody Protection Act”¹ (CCPA) is a dangerous anti-choice measure that threatens young women’s health. CCPA would prohibit anyone other than a parent—including a grandparent, aunt, adult sibling, or religious counselor—from accompanying a young woman across state lines for abortion care if the home state’s parental-involvement law has not been met. Trusted, caring, and responsible adults would be faced with the threat of prosecution if they responded to a request for help from a young woman who believes she cannot involve her parents. This would further isolate these teenagers in need, leaving them without adult assistance or guidance. Furthermore, CCPA would keep many young women from obtaining care from the doctor closest to their homes and would impose prohibitively complicated requirements on some young women to navigate the court systems in two states in order to obtain abortion care.

Summary of CCPA’s legislative history:

- This legislation passed the House of Representatives in the 105th Congress, the 106th Congress, and the 107th Congress, and the Senate in the 109th Congress.²
- Anti-choice lawmakers also have included CCPA in a larger piece of legislation, the “Child Interstate Abortion Notification Act,” which the House passed in April 2005 and September 2006.³
- In 2002, the Bush administration issued a Statement of Administration Policy supporting CCPA.⁴

CCPA WOULD FORCE THE GOVERNMENT INTO DOCTORS’ OFFICES AND FAMILIES’ LIVING ROOMS

CCPA would insert the government not only into the doctor-patient relationship, but into private family relationships as well.

- All parents hope that a teenager facing a crisis pregnancy will seek their guidance and support. In most instances, young women already involve one or both parents when considering abortion—without being required to do so by law.
 - One study found that 61 percent of parents in states without mandatory parental consent or notice laws knew of their daughter’s pregnancy.⁵

- But if a teen cannot or will not talk with her parents for whatever reason, responsible parents will—first and foremost—want to know that their daughter is safe.
- When a young woman cannot involve a parent in her decision to have an abortion—whether because the pregnancy is the result of incest or the young woman fears her parents’ reaction—the law, public policy, and medical professionals should encourage her to involve a trusted adult, not punish the adult for providing physical and emotional support. Most adolescents know this intuitively.
 - One study found that more than half of all young women who did not involve a parent in their decisions regarding a pregnancy did involve an adult, including ten percent who involved a step-parent or other adult relative.⁶
- **The government, however, cannot mandate healthy family communication where it does not already exist.**

CCPA WOULD FURTHER ISOLATE AND IMPERIL YOUNG WOMEN WHO DO NOT INVOLVE A PARENT IN THEIR DECISION TO HAVE AN ABORTION

Most young women find love, support, and safety in their homes. Some, however, justifiably fear that they would be physically or emotionally abused if forced to disclose their pregnancy to their parents. Young women who do not involve a parent often come from families in which government-mandated disclosure could have devastating effects.

In Idaho, a 13-year-old sixth-grade student named Spring Adams was shot to death by her father after he learned she planned to terminate a pregnancy caused by his incest.⁷

- In 2005, an estimated 899,000 children were determined to have been abused or neglected.⁸ Young women considering abortion care are particularly vulnerable because research indicates that any family member’s pregnancy can cause family violence to escalate.⁹
- Among minors who did not tell a parent of their abortion, 30 percent had experienced violence in their family, or feared violence or being forced to leave home.¹⁰
- In addition to fear of violence, some minors do not involve a parent because they believe that the knowledge would damage their relationship with the parent, they fear that it would escalate conflict or coercion, or they want to protect a vulnerable parent from stress and disappointment.¹¹

When a young woman believes that she cannot involve a parent, the law cannot solve the problem by mandating healthy, open family communication. Indeed, there is no evidence that laws like CCPA will do anything but isolate and endanger young women who believe that they cannot involve a parent. Instead of encouraging young women to involve a trusted adult who may be able to offer much-needed assistance, this law will cause some young women to face interstate travel alone for medical care, without adult assistance and supervision. Even worse,

it may force young women to turn to self-induced or illegal abortions. Either way the young woman's situation is rendered increasingly dangerous because of the law, which creates an obstacle rather than a vehicle for obtaining safe, legal reproductive-health care.

CCPA WOULD ENDANGER YOUNG WOMEN'S HEALTH

In Indiana, Rebecca Bell, a young woman who had a very close relationship with her parents, died from an illegal abortion because she did not want her parents to know about her pregnancy. Indiana law required parental consent before she could have a legal abortion.¹²

Young women who determine that they cannot involve a parent often seek help and guidance from other trusted adults in their lives, such as grandparents, aunts, adult siblings, or clergy. Such adults can provide a minor with valuable advice and assistance. However, this bill would discourage adults from providing young women with such help, further isolating minors in making and carrying out reproductive health decisions.

- **By criminalizing adults who help young women during crisis pregnancies, the law would expose young women to increased health risks.** In one study, 93 percent of minors who did not involve a parent in their decision to obtain an abortion were still accompanied by someone to the doctor's office.¹³ Although legal abortion care is very safe, it is typically advisable that any kind of medical patient have accompaniment, even for minor surgery. But the CCPA would force some minors to drive themselves to out-of-state clinics, without the help of trusted adults or friends, thereby exposing them to greater health risks.
- **Young women may have no alternative but travel to another state to obtain, or even discuss the option of, abortion services.** Access to abortion providers in the United States is severely limited. Eighty-seven percent of counties have no abortion provider.¹⁴ **Thus, for some women, a reproductive-health facility in another state may be the closest one to their home.** For instance, a reproductive-health clinic in Duluth, Minnesota, serves women from Minnesota, Wisconsin, Michigan, and Ontario, Canada.¹⁵ CCPA would criminalize a grandmother who accompanies her granddaughter to an out-of-state facility—even if the facility was the closest to the young woman's home and they were not attempting to evade a parental-involvement law.
- **When faced with parental-involvement mandates, young women who feel they cannot involve a parent take drastic steps.** The American Medical Association has noted that “[b]ecause the need for privacy may be compelling, minors may be driven to desperate measures to maintain the confidentiality of their pregnancies. They may run away from home, obtain a ‘back alley’ abortion, or resort to self-induced abortion. The desire to maintain secrecy has been one of the leading reasons for illegal abortion deaths since . . . 1973.”¹⁶

- **Obstacles such as parental-involvement laws increase the health risks to women by increasing the gestational age at which young women obtain abortion services.** The American Medical Association concluded in a 1992 study that parental consent and notice laws “increase the gestational age at which the induced pregnancy termination occurs, thereby also increasing the risk associated with the procedure.”¹⁷ Although abortion care is far safer than childbirth, the risk of complications significantly increases for each week that elapses after eight weeks.¹⁸ The CCPA imposes yet another obstacle on top of those imposed by state parental-involvement laws, creating additional logistical and legal difficulties that may well lead to further delays in obtaining the desired treatment and consequently increase the risk of the procedure.

CCPA INFRINGES ON CONSTITUTIONAL RIGHTS

- Under CCPA, a young woman who determined that she could not involve her parents in her decision to have an abortion may have to go through a judicial bypass in two states, which could constitute an unconstitutional undue burden.¹⁹ **For instance, if the young woman lived in a state with a consent law, but the closest doctor was in a state that also had a consent law, the minor would have to go through the judicial bypass in each state if she felt that she could not obtain either parent’s consent.** Moreover, requiring two judicial proceedings necessarily results in delays, thereby further compounding the medical risk of the procedure.
- The sponsors of CCPA present it as an initiative that protects the rights of states to enforce their parental-involvement laws. The legislation, however, infringes on fundamental principles of federalism in at least two ways:
 - **Right to Travel.** Under the U.S. Constitution, each citizen has the right to move freely from one state to another and to enjoy the “privileges and immunities” of a state he or she visits.²⁰ For example, this principle allows citizens from states that outlaw gambling to gamble in states where it is permitted. By saddling a young woman with the laws of her home state wherever she may travel, CCPA violates her constitutionally protected right to travel. Such legislation flies in the face of established Supreme Court precedent, such as *Doe v. Bolton*, which struck down Georgia’s law forbidding out-of-state residents from obtaining abortion services in Georgia.²¹ The Supreme Court also held in *Saenz v. Roe* that the protection afforded to individuals by the citizenship clause of the Fourteenth Amendment limits the federal government. “It provides important protections for nonresidents who enter a State whether to obtain employment . . . [or] to procure medical services.”²² The Supreme Court has further held that a compelling state interest must be shown in support of any classifications that serve to penalize the constitutional right to move between states. No such interest has been demonstrated by the supporters of CCPA.²³

- **Consistent State Laws.** In addition, CCPA violates the sovereignty of states that have chosen not to enact parental involvement laws. Currently, seven states and the District of Columbia have no parental-involvement mandate on the books, and an additional seven states have such laws, but do not enforce them.²⁴ If enacted, this legislation would require such states to enforce the restrictive law of a teen's resident state, violating the constitutional principles of comity among the states.
- **If CCPA becomes law, a person could be prosecuted for accompanying a teenager to a neighboring state, even if that person does not intend, or even know, that the parental-involvement law of the state of residence has not been followed.** By creating this type of law, known as a strict liability statute, the CCPA could violate the due process rights of a person who assists a young woman facing a crisis pregnancy.²⁵
- Although CCPA contains an exception when a teen's life is in jeopardy, **the exception is dangerously narrow.** The exception limits the situations that would qualify under it by enumerating certain circumstances, but not others. The Supreme Court has found such an approach inadequate.²⁶
- **Moreover, the legislation unconstitutionally contains no exception whatsoever to protect a teen's health.** As the Supreme Court noted in *Planned Parenthood of Southeastern Pennsylvania v. Casey*, "the essential holding of *Roe* forbids a State from interfering with a woman's choice to undergo an abortion procedure if continuing her pregnancy would constitute a threat to her health."²⁷ The centrality of protecting women's health was made clear by the Supreme Court in *Stenberg v. Carhart*, which struck down Nebraska's law that could have outlawed abortion care as early as the 12th week in pregnancy with no exception to protect a woman's health.²⁸ In 2006, the Supreme Court reiterated: "[O]ur precedents hold, that a State may not restrict access to abortions that are 'necessary, in appropriate medical judgment, for preservation of the life or health of the mother.'"²⁹

BECAUSE JUDICIAL BYPASS PROCEDURES ARE OFTEN UNWORKABLE, SOME YOUNG WOMEN SEEK ABORTION CARE IN NEIGHBORING STATES

All 36 states that enforce parental-consent or notice laws provide a judicial or other bypass provision through which a young woman can obtain an abortion without parental involvement.³⁰ **For young women, it can be overwhelming and, at times, impossible to manage the judicial bypass procedure.** Some young women simply are intimidated by the required legal procedures, or cannot attend hearings scheduled during school hours, especially while attempting to maintain confidentiality.³¹ Others do not seek, or delay seeking, judicial review because they fear that the proceedings are not confidential or that they will be recognized by people at the courthouse. Many young women simply do not want to reveal intimate details of their personal lives to strangers.³² The time required to schedule the court proceeding may result in a delay of a week or more, thereby increasing the health risks of the abortion.³³

Some young women who manage to arrange a hearing face judges who are vehemently anti-choice and who routinely deny petitions, regardless of the evidence presented, despite rulings by the Supreme Court that a minor must be granted a bypass if she is mature or if an abortion care is in her best interests.³⁴ As a result, teens in states with parental-involvement laws may go to a neighboring state to obtain abortion care instead of seeking a judicial bypass.³⁵

- Young women's concern about confidentiality is especially acute in rural areas. For instance, a teenager living in a rural county near Knoxville, TN, discovered that her bypass hearing would be conducted by her former Sunday school teacher.³⁶
- A North Carolina court denied the bypass petition of a mature 16-year-old girl who did well in school, participated in extracurricular activities, and had a part-time job. Despite the judge's findings that she was mature, had given informed consent, and was aware of the risks of the abortion procedure, he concluded that the petitioner was not "well-informed enough" to make the decision on her own. The appellate court eventually reversed the lower court decision, but this delay increased the medical risks of the procedure.³⁷
- A recent study found that nearly half of Alabama's 67 counties are unprepared or unwilling to handle judicial bypass proceedings. In at least six counties, court officers routinely referred the researcher to another court.³⁸ One juvenile probation officer said, "I can 100 percent guarantee you that they will not grant it. The family court judge does not believe it is an issue that should be decided by the court She'll need to find a county that performs the abortion."³⁹

CONGRESS SHOULD FOCUS ON PREVENTING TEEN PREGNANCIES

Making abortion less necessary among teenagers requires a comprehensive effort to reduce teen pregnancy. Abortion should be made less necessary, not more difficult and dangerous. A comprehensive approach to promoting adolescent reproductive health and awareness, and reducing teen pregnancy will require an array of components, including:

- age-appropriate health and sex education;
- life options programs that offer teens practical life skills and the motivation to delay sexual activity;
- programs for pregnant and parenting teens that teach parenting skills and help ensure that teens finish school, and offer needed job counseling;
- increased information about, and access to, emergency contraception; and
- access to confidential health services, including family planning.

December 1, 2007

Notes:

- ¹ H.R. 1755 & S. 851, 108th Cong. (2003).
- ² H.R. 3682, 105th Cong. (1998); H.R. 1218, 106th Cong. (1999); 145 Cong. Rec. H5122-23 (1999); 148 Cong. Rec. H (2002); S.661, 106th Cong. (1999); H.R. 476, 107th Cong (2002); S. 403, 109th Cong. (2006).
- ³ H.R. 748, 109th Cong. (2005); S. 403, 109th Cong. (2006).
- ⁴ Office of Management and Budget, "H.R. 476 – Child Custody Protection Act," April 17, 2002, at www.whitehouse.gov/omb/legislative/sap/107-2/HR476-h.html (last visited Jan. 3, 2008).
- ⁵ In addition to states that have not enacted a mandatory parental involvement law, this reference includes states that have such a law but do not enforce it. Stanley K. Henshaw & Kathryn Kost, *Parental Involvement in Minors' Abortion Decisions*, 24 FAM. PLAN. PERSP. 196 (1992).
- ⁶ Stanley K. Henshaw & Kathryn Kost, *Parental Involvement in Minors' Abortion Decisions*, 24 FAM. PLAN. PERSP. 196, 207 (1992).
- ⁷ Margie Boule, *An American Tragedy*, THE OREGONIAN, Aug. 27, 1989.
- ⁸ U.S. Department of Health and Human Services, Administration of Children, Youth and Families, Children's Bureau, *Child Maltreatment 2005* (2007).
- ⁹ Hortensia Amaro, et al., *Violence During Pregnancy and Substance Abuse*, 80 AM. J. PUB. HEALTH 575 (1990).
- ¹⁰ Stanley K. Henshaw & Kathryn Kost, *Parental Involvement in Minors' Abortion Decisions*, 24 FAM. PLAN. PERSP. 196, 207 (1992).
- ¹¹ American Academy of Pediatrics, Committee on Adolescence, *The Adolescent's Right to Confidential Care When Considering Abortion*, 97 PEDIATRICS 746, 748 (1996); Helena Silverstein, *GIRLS ON THE STAND: HOW COURTS FAIL PREGNANT MINORS* (2007).
- ¹² Rochelle Sharpe, *Abortion Law: Fatal Effect?*, GANNETT NEWS SERVICE, Dec. 1, 1989; *60 Minutes* (CBS television broadcast, Feb. 24 1991).
- ¹³ Stanley K. Henshaw & Kathryn Kost, *Parental Involvement in Minors' Abortion Decisions*, 24 FAM. PLAN. PERSP. 196, 207 (1992).
- ¹⁴ Lawrence B. Finer & Stanley K. Henshaw, *Abortion Incidence and Services in the United States in 2000*, 35 PERSP. ON SEXUAL & REPROD. HEALTH 6 (2003).
- ¹⁵ *Hodgson v. Minnesota*, 648 F. Supp. 756, 761 (D. Minn. 1986).
- ¹⁶ Council on Ethical and Judicial Affairs, American Medical Association, *Mandatory Parental Consent to Abortion*, 269 JAMA 82, 83 (1993).
- ¹⁷ Council on Scientific Affairs, American Medical Association, *Induced Termination of Pregnancy Before and After Roe v. Wade, Trends in the Mortality and Morbidity of Women*, 268 JAMA 3231, 3238 (1992).
- ¹⁸ Willard Cates, Jr. & David Grimes, *Morbidity and Mortality of Abortion in the United States*, in ABORTION AND STERILIZATION 158 (Jane Hodgson ed., 1981); Rachel Benson Gold, *ABORTION AND WOMEN'S HEALTH: A TURNING POINT FOR AMERICA?* 28-30 (1990).
- ¹⁹ Under *Planned Parenthood of Southeastern Pennsylvania v. Casey*, a restriction that has the purpose or effect of placing a substantial obstacle in the path of a woman seeking a pre-viability abortion is an unconstitutional undue burden. 505 U.S. 833 (1992). The Court has not considered whether a two-

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bypass requirement would constitute an undue burden.

²⁰ *Saenz v. Roe*, 526 U.S. 489, 501 (1999).

²¹ *Doe v. Bolton*, 410 U.S. 179, 200 (1973).

²² *Saenz*, 526 U.S. at 502 (emphasis added).

²³ *Shapiro v. Thompson*, 394 U.S. 618, 634 (1969), *overruled in part on other grounds by Edelman v. Jordan*, 415 U.S. 651 (1974).

²⁴ See generally NARAL Pro-Choice America & NARAL Pro-Choice America Foundation, *Who Decides? The Status of Women's Reproductive Rights in the United States* (17th ed. 2008), available at www.prochoiceamerica.org/choice-action-center/in_your_state/who-decides/.

²⁵ See *Colautti v. Franklin*, 439 U.S. 379, 394-97 (1979); see also *Liparota v. United States*, 471 U.S. 419, 423-428 (1985).

²⁶ *Casey*, 505 U.S. at 879.

²⁷ *Casey*, 505 U.S. at 880 (citations omitted).

²⁸ *Stenberg*, 530 U.S. 914.

²⁹ *Ayotte v. Planned Parenthood of Northern New England*, 126 S. Ct. 961, 967 (quoting *Casey*, 505 U.S. at 879, quoting *Roe v. Wade*, 410 U.S. 113, 164-5 (1973).)

³⁰ NARAL PRO-CHOICE AMERICA & NARAL PRO-CHOICE AMERICA FOUNDATION, *Who Decides? The Status of Women's Reproductive Rights in the United States* (17th ed. 2008), available at http://www.prochoiceamerica.org/choice-action-center/in_your_state/who-decides/.

³¹ Patricia Donovan, *Judging Teenagers: How Minors Fare When They Seek Court-Authorized Abortions*, 15 FAM. PLAN. PERSP. 259 (1983); Helena Silverstein, *GIRLS ON THE STAND: HOW COURTS FAIL PREGNANT MINORS* (2007).

³² *Hodgson v. Minnesota*, 648 F. Supp. 756, 763-64 (D. Minn. 1986).

³³ *Hodgson*, 648 F. Supp. at 763.

³⁴ *Hodgson v. Minnesota*, 497 U.S. 417 (1990).

³⁵ Charlotte Ellertson, *Mandatory Parental Involvement in Minors' Abortions: Effects of the Laws in Minnesota, Missouri, and Indiana*, 87 AM. J. PUB. HEALTH 1367, 1371-72 (1997); Virginia G. Cartoof & Lorraine V. Klerman, *Parental Consent for Abortion: Impact of the Massachusetts Law*, 76 AM. J. PUB. HEALTH 397, 398 (1986).

³⁶ *Memphis Planned Parenthood v. Sundquist*, 2 F. Supp. 2d 997, 1005 (M.D. Tenn. 1997), *rev'd*, 175 F.3d 456, 485 (6th Cir. 1999).

³⁷ *In re Doe*, 485 S.E.2d 354, 355-56 (N.C. Ct. App. 1997), *review denied*, 492 S.E.2d 21 (N.C. 1997).

³⁸ Helena Silverstein & Leanne Speitel, "Honey, I Have No Idea": *Court Readiness to Handle Petitions to Waive Parental Consent for Abortion*, 88 IOWA L. REV. 75, 90, 92 (2002).

³⁹ Helena Silverstein & Leanne Speitel, "Honey, I Have No Idea": *Court Readiness to Handle Petitions to Waive Parental Consent for Abortion*, 88 IOWA L. REV. 75, 104 (2002).