



NARAL
Pro-Choice America Foundation

The “Child Interstate Abortion Notification Act”: Cruel, Hopelessly Complex, and Unconstitutional

In 1998, anti-choice lawmakers introduced the “Child Custody Protection Act.” The bill proposed to make it a federal crime for an adult other than a parent to accompany a young woman across state lines for abortion. The House passed the bill three times, and the Senate passed it once in 2006, but the measure has never been signed into law. In early 2005, anti-choice lawmakers reintroduced the bill in the House, but expanded it significantly. The new legislation, now called the “Child Interstate Abortion Notification Act” (CIANA) – includes all the provisions of the old “Child Custody Protection Act,” but also contains new and even more restrictive provisions and would impose the most draconian of parental-involvement laws on every state in the country.

Overview

CIANA imposes a complex patchwork of parental-involvement requirements on young women and doctors across the country. The bill also proposes a variety of new mandates on women, families, and doctors. Among other things, CIANA holds doctors responsible for compliance with 49 other states’ laws, under the threat of fines and prison sentences, and in many cases, the bill forces young women to comply with two states’ parental-involvement mandates. Furthermore, under CIANA, a doctor must give parental notification and wait 24 hours before providing the care. This requirement acts as a mandatory delay that makes it more difficult logistically, expensive, more burdensome to obtain abortion services and may even endanger the young woman’s health.

Among the various complicated requirements CIANA proposes are the following:

- (1) If a young woman comes from a state with a strict parental-involvement law, and goes to another state with a strict parental-involvement law, she must comply with BOTH states’ laws. If she chooses to use a bypass option, she must navigate the bypass systems in BOTH states. (Example: Missouri to Kansas.)
- (2) If a young woman comes from a state with a strict parental-involvement law, and goes to a state with a parental-involvement law that has reasonable alternatives (for example, allows another responsible adult to be notified in place of a parent), she must comply with BOTH states’ laws. If she chooses to use a bypass option, she must navigate the bypass systems in BOTH states. If she chooses not to use a bypass option in her home state – in other words, if her parent has already been notified – the doctor must, paradoxically, still give notice to the parent in another state. (Example: Kentucky to Ohio.)

- (3) If a young woman comes from a state with a strict parental-involvement law, and goes to a state with no parental-involvement law, she must comply with her home state's law. If she chooses not to use a bypass option in her home state – in other words, if her parent has already been notified – the doctor must, paradoxically, still give notice to the parent in another state. (Example: Pennsylvania to New York.)
- (4) If a young woman comes from a state with a parental-involvement law that has reasonable alternatives (for example, allows another responsible adult to be notified in place of a parent), and goes to a state with a strict parental-involvement law, she must comply with the destination state's stricter law. Note: This is the case currently. (Example: Wisconsin to Minnesota.)
- (5) If a young woman comes from a state with a parental-involvement law that has reasonable alternatives (for example, allows another responsible adult to be notified in place of a parent), and travels to a state with a similar law, she must comply with the destination state's law AND have either a bypass from her home state or the doctor must give notice to the parent in another state. (Example: North Carolina to South Carolina.)
- (6) If a young woman comes from a state with a parental-involvement law that has reasonable alternatives (for example, allows another responsible adult to be notified in place of a parent), and travels to a state with no parental-involvement law, she must either have a bypass from her home state or the doctor must give notice to the parent in another state. (Example: Maine to New Hampshire.)
- (7) If a young woman comes from a state that has no parental-involvement law and travels to a state with a strict parental-involvement law, she must comply with the destination state's law. Note: This is the case currently. (Example: New Hampshire to Massachusetts.)
- (8) If a young woman comes from a state that has no parental-involvement law and travels to a state with a parental-involvement law that has reasonable alternatives (for example, allows another responsible adult to be notified in place of a parent), she must comply with the destination state's law, AND the doctor must give notice to the parent in another state. (Example: New Mexico to Colorado.)
- (9) If a young woman comes from a state that has no parental-involvement law and travels to a similar state, the doctor must give notice to the parent in another state. (Example: Nevada to California.)

CIANA imposes new interstate reporting requirements on abortion providers.

- The legislation ostensibly provides an exception to the parental-involvement scheme if a young woman informs a doctor that she is the victim of abuse. Such a conversation then triggers a new mandate on the doctor: he or she must notify “the authorities” of the parent's abuse in another state. Each state has its own legal requirements in this area, and its own agencies to which the behavior must be reported – and in some cases, the report must be filed with the county. It is important to note that doctors are already

required to report cases of abuse, but CIANA imposes a new and possibly unique cross-jurisdictional mandate.

- The bill establishes no mechanism for cross-state reporting, and does not specify in what manner or with what level of detail the reporting must occur. CIANA gives doctors no guidance about to whom or with what detail the report must be made. Interestingly, under CIANA the cross-state reporting mandates are triggered only when the young woman seeks abortion care – and not, say, adoption counseling or prenatal care. This further supports the argument that the cross-state reporting mandate is designed to make the provision of abortion services as difficult and cumbersome as possible for all parties involved.

CIANA includes the original, flawed provisions of the “Child Custody Protection Act.”

Like the Child Custody Protection Act, CIANA 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 an abortion if the home state’s parental-involvement law has not been met.

The Legislation’s Major Flaws

CIANA will not improve family communication or help young women facing crisis pregnancies. NARAL Pro-Choice America believes that loving parents should be involved when their daughter faces a crisis pregnancy. In fact, many young women do turn to their parents when they are considering an abortion. One study found that 61 percent of parents in states without mandatory parental consent or notice laws knew of their daughter’s pregnancy.¹

But if a young woman cannot, for whatever reason, turn to her parents, society’s first priority should be to ensure that she is safe. For this reason, major medical associations - including the American Medical Association, the American College of Obstetricians and Gynecologists, the American College of Physicians, and the American Public Health Association - all have longstanding policies opposing mandatory parental-involvement laws because of the dangers they pose to young women and the need for confidential access to physicians.² Additionally, the American Academy of Pediatrics and Society for Adolescent Medicine oppose the “Child Interstate Abortion Notification Act” and say it may increase the risk of harm to adolescents by delaying access to appropriate medical care.³

Furthermore, many young women who obtain abortion care from doctors outside their home states do so for reasons that have nothing to do with avoiding their home states’ laws. The most prevalent and compelling of these reasons is the lack of abortion providers. Only 13 percent of U.S. counties have an abortion provider.⁴ Several states, in fact, have only a single provider or a provider who may be located many hours away from a young woman’s home.⁵ It is also perfectly reasonable for a young woman attending college or boarding school in another state to

seek medical care locally. For these reasons and others, it is not at all unusual for a young woman's provider to be outside of her state of residence.

In sum, CIANA is just the latest in a long line of perhaps well-intentioned, but ultimately deeply flawed, proposals that attempt to curb young women's access to private, confidential health services under the guise of protecting parental rights.

CIANA's new legal scheme is impossibly complex. CIANA requires a doctor to have a near-encyclopedic knowledge of the mandatory parental-involvement laws in each of the 50 states, their specific requirements, their judicial-bypass procedures, and their interaction with CIANA. If sponsors are interested in imposing a national parental-involvement mandate for abortion services, they should make this proposal directly. Rather, they offer a hopelessly Byzantine – in some cases even nonsensical – patchwork of mandates. One can only speculate that the anti-choice movement hopes the scheme will be so difficult to understand that women and doctors will either: (1) give up in exasperation or; (2) with the best of intentions, make a mistake in complying with one of the many provisions and become subject to federal prosecution, fines, and prison sentences. Either way, anti-choice lawmakers come closer to their ultimate goal of making abortion illegal – or, failing that, unavailable altogether.

CIANA may be unconstitutional:

1. Some scenarios under the CIANA patchwork will offer young women no option of a judicial bypass whatsoever. This aspect of CIANA alone may result in a court striking it down. The U.S. Supreme Court has stated that, in order to be constitutional, a state statute requiring parental involvement must offer an alternative, such as a judicial bypass.⁶ Under CIANA, young women in a variety of circumstances would be denied this constitutional right:

- Take, for example, a young woman from a state without a parental-involvement law who travels to a state with a parental-involvement law that has reasonable alternatives (for example, allows another responsible adult to be notified in place of a parent). In this case, even though she has complied with all the provisions of the destination state's law, her doctor will still have to notify her parents in another state, and she will have no option for a judicial bypass. (Example: New Mexico to Colorado.)
- Consider another example: A young woman from a state without a parental-involvement law travels to a state that also has no parental-involvement law. Although neither state mandates parental involvement, under CIANA, now her doctor will have to notify her parents in another state. Moreover, she will not even have the option of a judicial bypass, a provision that would be required if CIANA were a state law. (Example: Nevada to California.) It defies logic and common sense to impose even more severe restrictions (lack of judicial bypass)

on young women who are from, or going to, states without parental-involvement laws than those who are from, or going to, states with parental-involvement laws.

2. CIANA contains no health exception and its life exception is inadequate.

Although CIANA allows an exception to its mandates when the life of a pregnant woman is in jeopardy, this “medical emergency” exception is dangerously narrow. Moreover, the legislation may be unconstitutional, in that it contains no exception whatsoever to protect a woman'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.”⁷

3. CIANA compromises states’ rights. The sponsors present CIANA as an initiative that protects the “rights” of certain states to enforce their laws. The legislation, however, infringes on fundamental principles of federalism in at least two ways:

- **CIANA imposes new mandates on states that have chosen not to enact them.** 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.⁸ CIANA would impose parental-involvement mandates not only for women who travel from those states to other states, but for women who travel to those states for abortion care. Even more troubling, in the case of young women who travel from a state without a parental-involvement mandate to either a similar state or to a state whose parental-involvement law has reasonable alternatives (for example, allows another responsible adult to be notified in place of a parent), the young woman would be subject to mandatory parental notification without any opportunity to obtain a judicial bypass. CIANA will usurp the state’s right not to enact a parental-involvement law and impose a mandate that her parents be notified, without providing her even with the right given young women in the states with the strictest parental-involvement mandates on the books. CIANA is a clear attempt by anti-choice members of Congress to override states that have chosen not to enact such laws.
- **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.⁷ *The same principle allows citizens from states that outlaw gambling to gamble in states where it is permitted. Would Congress consider forcing, say, Californians to carry their home state’s gun laws with them when they travel to other states?* By saddling a young woman with the laws of her home state wherever she may go, CIANA denies her the right to enjoy the laws of another state and thus 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.⁸ 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 . . ."⁹ 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 CIANA.¹⁰

CIANA requires doctors to give parental notice in another state. One major provision of CIANA requires a doctor, in many cases, to notify a young woman's parents before he or she can provide abortion care – but since CIANA applies only to cases in which the patient is from another state, this requirement requires physicians to track down parents in another state before providing a safe and legal medical procedure.

CIANA imposes a new mandatory delay on abortion care. In some of CIANA's scenarios, the doctor must give "notice" to the parent and wait 24 hours before providing the care. In such cases, this requirement acts as a built-in mandatory delay – which makes it more difficult logistically, more expensive, and more burdensome all around for the young woman.

CIANA has inadequate exceptions for cases of rape or incest. The legislation could lead to caring and trusted adults – including a grandparent, adult sibling, or clergy member – being prosecuted and possibly jailed for accompanying a rape or incest survivor across state lines for abortion care.

CIANA: first attempt to shut down the border? Sponsors of the legislation have also included new language to make clear that CIANA's provisions apply when state lines are crossed to enter into a foreign nation or tribal reservation. Before *Roe v. Wade*, many American women had no other choice but to travel to Canada and other countries for safe, legal abortion care. Extending CIANA's provisions to international travel may represent the anti-choice movement's intent to make sure this option is closed, should the Supreme Court overturn *Roe* or otherwise re-criminalize abortion care in this country.

The "Child Custody Protection Act" provisions in CIANA remain hopelessly flawed. The original "Child Custody Protection Act" remains part of the new CIANA legislation, and none of its deficiencies have been corrected. In particular, CIANA imposes criminal penalties on caring adults who attempt to assist young women facing crisis pregnancies. 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.¹¹ If CIANA becomes law, a person could be

prosecuted for accompanying a minor 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. .

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¹ 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 and Kathryn Kost, *Parental Involvement in Minors' Abortion Decisions*, 24 *Family Planning Perspectives* 199-200 (1992).

² See, e.g., Council on Ethical and Judicial Affairs, American Medical Association, *Mandatory Parental Consent to Abortion*, 269 *JAMA* 82, 83 (1993).

³ 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).

⁴ Lawrence B. Finer and Stanley K. Henshaw, "Abortion Incidence and Services in the United States in 2000," *Perspectives on Sexual and Reproductive Health*, vol. 35, no. 1 (Jan./Feb. 2003), available at <http://www.guttmacher.org/pubs/journals/3500603.pdf> (last visited 1/8/04).

⁵ At least three states, Mississippi, North Dakota and South Dakota, have only one abortion clinic. David Crary, "In Abortion Debate, Mississippi Shows How Far A State Can Go With Array Of Restrictions," *Assoc. Press*, Dec. 27, 2004; "Fargo Abortion Clinic To Comply With Subpoena Seeking Insurance Records," *Assoc. Press*, Aug. 25, 2004; Monica Davey, "Bans on Most Abortions Advances in South Dakota," *New York Times*, February 23, 2006. In addition, Kentucky, Nebraska, West Virginia, Utah and Wyoming each have five or fewer abortion providers. Lawrence B. Finer and Stanley K. Henshaw, "Abortion Incidence and Services in the United States in 2000," *Perspectives on Sexual and Reproductive Health*, vol. 35, no. 1 (Jan./Feb. 2003), available at <http://www.guttmacher.org/pubs/journals/3500603.pdf> (last visited 2/28/05); Lawrence B. Finer and Stanley K. Henshaw, "The Accessibility of Abortion Services in the United States, 2001," *Perspectives on Sexual and Reproductive Health*, vol. 35, no. 1 (Jan./Feb. 2003), available at <http://www.agi-usa.org/pubs/journals/3501603.html> (last visited 2/28/05).

⁶ *Hodgson v. Minnesota*, 497 U.S. 417, 420 (1990) (requiring a bypass procedure for a two-parent notification statute); *Ohio v. Akron Center for Reproductive Health*, 497 U.S. 502, 510 (1990) (requiring bypass procedures for parental-consent statutes).

⁷ *Casey*, 505 U.S. at 880 (citations omitted).

⁶ NARAL Pro-Choice America & NARAL Pro-Choice America Foundation, *Who Decides? The Status of Women's Reproductive Rights in the United States* (16th ed. 2007), available at www.prochoiceamerica.org/choice-action-center/in_your_state/who-decides/nationwide-trends/young-women.html

⁷ *Saenz v. Roe*, 526 U.S. 489, 501 (1999).

⁸ *Doe v. Bolton*, 410 U.S. 179, 200 (1973).

⁹ *Saenz*, 526 U.S. at 502 (*citing Doe*, 410 U.S. at 200) (emphasis added).

¹⁰ *Shapiro v. Thompson*, 395 U.S. 618, 634 (1969), *overruled in part on other grounds by* 415 U.S. 651 (1974).

¹¹ Stanley K. Henshaw and Kathryn Kost, *Parental Involvement in Minors' Abortion Decisions*, 24 *Family Planning Perspectives* 207 (1992).