



Mandatory Parental-Involvement Laws Threaten Young Women's Safety

There are two types of parental-involvement laws; those that require parental *notice* and those that require parental *consent* before a minor can seek abortion services. Parental-notice laws require prior written notification of parents before an abortion can be performed, with limited exceptions, such as in cases of physical abuse, incest, or medical emergency. These laws also may prescribe other preconditions including a mandatory waiting period following the parents' receipt of notification, and/or judicial intervention if there are compelling reasons to avoid parental notification.

Parental-consent laws require that minors obtain the consent of one or both parents before they can receive abortion services. As is the case with parental notice, a judicial-bypass process is also included in parental-consent laws. The penalties for violating parental-consent laws range from civil liability and fines to imprisonment. The Supreme Court has ruled that parental-consent requirements are constitutional so long as they include a judicial-bypass procedure to accommodate those young women who cannot involve their parents.

Ideally, a teen facing a crisis will seek the advice and counsel of those who care for her most and know her best. In fact, even in the absence of laws mandating parental involvement, many young women do turn to their parents when they are considering abortion. Unfortunately, some young women cannot involve their parents because physical violence or emotional abuse is present in their homes, because their pregnancies are the result of incest, or because they fear parental anger and disappointment. Mandatory parental-involvement (consent and notice) laws do not solve the problem of inadequate family communication; they only exacerbate a potentially dangerous situation.

In some circumstances, teens facing an unintended pregnancy feel compelled to travel to another state where there is a less stringent parental-involvement law or no such law at all to avoid involving their parents and maintain their privacy. In the most dire of circumstances, some pregnant young women who fear telling their parents may resort to illegal or self-induced abortions that may result in death. Yet, despite these severe consequences, 39 states currently enforce laws that require a minor to obtain the consent of, or notify, an adult— typically a parent— prior to an abortion.¹ And five other states have minors' access laws that are either enjoined or not enforced.²

In recent years, anti-choice legislators in Congress have attempted to pass two pieces of federal

legislation that would impose draconian criminal parental-involvement laws on every state in the country. The first, called the “Child Custody Protection Act,” criminalizes caring and loving adults—including grandparents, adult siblings, and religious counselors—who accompany a teen out of state for abortion care if the home state parental-involvement law has not been met.³ The second, called the “Child Interstate Abortion Notification Act,” in addition to the restrictive provisions in the CCPA, also would impose a convoluted patchwork of parental-involvement laws on women and doctors across the country, making it virtually impossible for young women to access abortion services in another state.⁴ Both measures would threaten young women’s health and deny them the support and guidance they need from responsible and caring adults.

Government Cannot Mandate Healthy and Open Communication in Families

Government cannot mandate healthy family communication. Laws requiring parental notice or consent actually may endanger the young women they purport to protect by increasing the possibility of illegal and self-induced abortion, family violence, suicide, later abortions, and unwanted childbirth.⁵

- A majority of young adults who are pregnant and seek abortion care indicate that their parents are aware that they are doing so.⁶ Furthermore, in states without parental-involvement laws, 61 percent of parents knew of their daughter’s decision to terminate a pregnancy.⁷
- Even before reaching the point of having to discuss abortion, research indicates that a majority of teens talk to their parents about sex, STDs, and birth control.⁸
- The American Medical Association takes the position that: “Physicians should not feel or be compelled to require minors to involve their parents before deciding whether to undergo an abortion. . . . [M]inors should ultimately be allowed to decide whether parental involvement is appropriate.”⁹
- The American Academy of Pediatrics also opposes parental-involvement laws: “Legislation mandating parental involvement does not achieve the intended benefit of promoting family communication but it does increase the risk of harm to the adolescent by delaying access to appropriate medical care. . . . [M]inors should not be compelled or required to involve their parents in their decisions to obtain abortions, although they should be encouraged to discuss their pregnancies with their parents and other responsible adults.”¹⁰
- Parental-involvement laws appear to have had little effect on reducing abortion rates among teens.¹¹

Many Young Women Who Do Not Involve a Parent Have Good Reasons

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

- An estimated 772,000 children were found to be victims of abuse or neglect in 2008.¹² Young women considering abortion are particularly vulnerable because research shows that family violence is often at its worst during a family member's pregnancy.¹³
- Nearly half of pregnant teens who have a history of abuse report being assaulted during their pregnancy, most often by a family member.¹⁴ As the Supreme Court has recognized, "Mere notification of pregnancy is frequently a flashpoint for battering and violence within the family. The number of battering incidents is high during the pregnancy and often the worst abuse can be associated with pregnancy."¹⁵
- 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.¹⁶ "My older sister got pregnant when she was seventeen. My mother pushed her against the wall, slapped her across the face and then grabbed her by the hair, pulled her through the living room out the front door and threw her off the porch. We don't know where she is now."¹⁷
- In Idaho, a 13-year-old student named Spring Adams was shot to death by her father after he learned she was to terminate a pregnancy caused by his acts of incest.¹⁸

Mandatory Parental-Consent and Notice Laws Endanger Young Women's Health

Parental-consent and notice laws endanger young women's health by forcing some women—even some from healthy, loving families—to turn to illegal or self-induced abortion, delay the procedure and increase the medical risk, or bear a child against their will.

- In Indiana, Rebecca Bell, a young woman who had a very close relationship with her parents, died from an illegal abortion that she sought because she did not want her parents to know about her pregnancy. Indiana law required parental consent before she could have a legal abortion.¹⁹

- 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.”²⁰
- Recognizing that maintaining confidentiality is essential to minors’ willingness to obtain necessary health care related to sexual activity, all 50 states and the District of Columbia authorize minors to consent to the diagnosis and treatment of sexually transmitted infections without parental consent.²¹ Many states explicitly include testing and treatment of HIV, with only one state requiring parental notification if a minor tests positive for HIV.²² In addition, the Supreme Court has recognized that confidential access to contraceptives is essential for minors to exercise their constitutional right to privacy,²³ and federal law requires confidentiality for minors receiving family-planning services through publicly funded programs, such as Title X and Medicaid.²⁴
- According to Leslie Tarr Laurie, president of Tapestry Health Systems, a Massachusetts-based health services provider: “Confidentiality is the cornerstone of our services We help teenagers avoid not only the costly and often tragic consequences of unintended pregnancy and childbearing, but also an early death from AIDS. The bottom line is, if we don’t assure access to confidential health care, teenagers simply will stop seeking the care they desire and need.”²⁵

Judicial-Bypass Provisions Fail to Protect Young Women

In challenges to two different parental-involvement laws, the Supreme Court has ruled that a state statute requiring parental involvement must have some sort of bypass procedure, such as a judicial bypass, in order to be constitutional²⁶ And that no one person may have an absolute veto over a minor’s decision to have an abortion.²⁷ Thus, most states that require parental consent or notice provide—at least as a matter of law—a judicial bypass through which a young woman can seek a court order allowing an abortion without parental involvement.

But bypass procedures are often an inadequate alternative for young women, especially when courts are either not equipped or resistant to granting judicial bypasses. Even for adults, going to court for a judicial order is difficult. For young women without a lawyer, it is overwhelming and at times impossible. Some young women cannot maneuver the legal procedures required or cannot attend hearings scheduled during school hours. Others do not go or delay going because they fear that the proceedings are not confidential or that they will be recognized by

people at the courthouse. Many experience fear and distress and do not want to reveal intimate details of their personal lives to strangers.²⁸ 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.²⁹ And in many instances, courts are not equipped to handle bypass proceedings in accord with constitutional regulations.³⁰ Worse yet, some young women who do manage to arrange a hearing face judges who are vehemently anti-choice and who routinely deny petitions of minors who show that they are mature or that the bypass is in their best interest, despite rulings by the U.S. Supreme Court that the bypass must be granted in those circumstances.³¹

- In denying the petition of one young woman, a Missouri judge stated: “Depending upon what ruling I make I hold in my hands the power to kill an unborn child. In our society it’s a lot easier to kill an unborn child than the most vicious murderer. . . . I don’t believe that this particular juvenile has sufficient intellectual capacity to make a determination that she is willing to kill her own child.”³²
- A Toledo, Ohio judge denied a bypass for a 17-year-old, an “A” student who planned to attend college and who testified she was not financially or emotionally prepared for college and motherhood at the same time, stating that the girl had “not had enough hard knocks in her life.”³³
- In Louisiana, a judge denied a 15-year-old a bypass petition after asking her a series of inappropriate questions, including what the minor would say to the fetus about her decision. Her request was granted only after a rehearing by six appellate court judges.³⁴
- A Pennsylvania study found that of the 60 judicial districts in the state, only eight were able to provide complete information about Pennsylvania’s judicial-bypass procedure. Some county courts referred minors to anti-choice crisis pregnancy centers that typically provide false and misleading information about abortion and pressure women to carry their pregnancies to term.³⁵
- The Alabama Supreme Court upheld a trial court’s denial of a petition for a 17-year-old because the minor’s testimony appeared “rehearsed” and she did not show “any emotion.” The trial court refused to find that the minor was mature and well-informed enough to make her own decision or that an abortion was in her best interests—despite the fact that the 17-year-old high school senior had a 3.0 grade point average, had been accepted to college, had discussed her options with the father of the fetus, had spoken to a doctor, a counselor, her godmother, and her 20-year-old sister, was able to describe the abortion procedure, was informed about

its risks, and had testified that her legal guardian had thrown a teenage relative out of the house when she became pregnant.³⁶

The Effects of Teenage Childbearing Can Be Devastating

The forced childbearing among teenagers that can result from parental-consent and notice laws can have devastating effects on the health and life chances of young women and their children.

- Approximately one-third of American women become pregnant before the age of 20.³⁷
- Fewer than 60 percent of teen mothers graduate from high school by age 25—compared to 90 percent of those who postpone childbearing.³⁸ Furthermore, more than half of Hispanic teen mothers do not complete high school.³⁹
- Teens that give birth spend a greater length of time receiving public assistance— an average of three years longer than older mothers through age 35.⁴⁰
- Approximately one-quarter of teen mothers go on welfare within three years of the child’s birth.⁴¹ Teen mothers are also more likely to have lower family incomes later in life.⁴²
- Infants of teen mothers are one-third more likely to suffer from low birthweight (less than 5.5 pounds) than those born to older mothers.⁴³ The children of teenage parents have an increased risk of abuse and neglect and are more likely to become teenage parents themselves, thus perpetuating the cycle of poverty.⁴⁴
- Teen mothers are likely to have a second child relatively soon after their first – about a quarter of teen mothers have a second child within 24 months of the first. This can further inhibit their ability to finish school, keep a job, and escape poverty.⁴⁵

Making Abortion Less Necessary Among Teenagers Requires A Comprehensive Effort to Prevent Teen Pregnancy

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

- age-appropriate, comprehensive sex education with medically accurate information;

- access to confidential health services, including family planning;
- life-options programs that offer young people practical life skills and the motivation to delay sexual activity; and
- programs for pregnant and parenting teens that teach parenting skills and help ensure that teens finish school.
- Access to pre natal care and comprehensive health-care coverage.

Such an approach has never been implemented on a significant scale in the United States, and several studies of specific HIV-prevention and sex education programs demonstrate positive outcomes such as increased knowledge, delay in onset of sex, reduction in the frequency of sex, or increased contraceptive use.⁴⁶ The wisest policy gives teenagers the tools they need to avoid pregnancy and forsakes misguided efforts to insert the government into delicate family situations.

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¹ The 39 states with enforceable mandatory consent and notice laws are: AK, AL, AZ, AR, CO, DE, FL, GA, ID, IN, IL, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, NE, NC, ND, NH, OH, OK, PA, RI, SC, SD, TN, TX, UT, VA, WV, WI, WY. NARAL Pro-Choice America Foundation, *Who Decides? The Status of Women's Reproductive Rights in the United States* (21th ed. 2012), available at www.WhoDecides.org.

² The five states with laws that are either enjoined or not enforced are: CA, MT, NV, NJ, NM. NARAL Pro-Choice America & NARAL Pro-Choice America Foundation, *Who Decides? The Status of Women's Reproductive Rights in the United States* (21th ed. 2011), available at www.WhoDecides.org.

³ 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); S.2543, 110th Cong. (2008); S.1179, 111th Cong. (2009); S.167, 112th Cong. (2011).

⁴ H.R.748, 109th Cong. (2006); S.403, 109th Cong. (2006); H.R.1063, 110th Cong. (2007); H.R. 634, 111th Cong. (2009); H.R.2299, 112th Cong. (2011); S.1241, 112th Cong. (2011).

⁵ Center for Reproductive Rights, *Parental Involvement Laws* (Jan. 14, 2009) at <http://reproductiverights.org/en/project/parental-involvement-laws> (last visited Oct. 29, 2011).

⁶ Dennis, Amanda, Stanley K. Henshaw, Theodore J. Joyce, Lawrence B. Finer, & Kelly Blanchard. The Guttmacher Institute, *The Impact of Laws Requiring Parental Involvement for Abortion: A Literature Review* at page 3 (March 2009).

⁷ Martin Donohoe, *Parental Notification and Consent Laws for Teen Abortions: Overview and 2006 Ballot Measures* MEDSCAPE Ob/Gyn & Women's Health, February 9, 2007 at <http://www.medscape.com/viewarticle/549316> (last visited October 20, 2010).

⁸ Gladys Martinez, Ph.D, Joyce Abma, Ph.D., and Casey Copen, Ph.D. *Educating Teenagers About Sex in the United States*, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES; CENTER FOR DISEASE CONTROL AND PREVENTION; NATIONAL CENTER FOR HEALTH STATISTICS, Sept. 2010.

⁹ American Medical Association, Council on Ethical and Judicial Affairs, *Mandatory Parental Consent to Abortion*, CODE OF MEDICAL ETHICS 1996-1997 EDITION, § 2.015 (issued June 1994) (based on the report, *Mandatory Parental Consent to Abortion* (issued June 1992) 269 JAMA 82-86 (1993)).

¹⁰ American Academy of Pediatrics, Committee on Adolescence, *The Adolescent's Right to Confidential Care When Considering Abortion*, 97 Pediatrics 746 (1996).

¹¹ Dennis, Amanda, Stanley K. Henshaw, Theodore J. Joyce, Lawrence B. Finer, & Kelly Blanchard. The Guttmacher Institute, *The Impact of Laws Requiring Parental Involvement for Abortion: A Literature Review* at page 3 (March 2009); Virginia G. Cartoof & Lorraine V. Klerman, *Parental Consent for Abortion: Impact of the Massachusetts Law*, 76 AMERICAN J. OF PUB. HEALTH 397-400 (1986); Stanley K. Henshaw, *The Impact of Requirement of Parental Consent on Minors' Abortions in Mississippi*, 27 FAMILY PLANNING PERSPECTIVES 120-121 (1995). *But see* Theodore Joyce, Robert Kaestner, & Silvie Colman, *Changes in Abortions and Births and the Texas Parental Notification Law*, 354 New Eng. J. Med., 1031 (2006).

¹² U.S. Department of Health and Human Services, Administration of Children, Youth and Families, Children's Bureau, *Child Maltreatment 2008* (2010).

¹³ H. Amaro, et al., *Violence During Pregnancy and Substance Abuse*, 80 American J. of Pub. Health 575-579 (1990); University of Pittsburg Medical Center, *Information for Patients, Abuse During Pregnancy*, ED/JAW Rev. (March 2003).

¹⁴ American Psychological Association, *Parental Consent Laws for Adolescent Reproductive Health Care: What Does the Psychological Research Say?* (Feb. 2000), citing A.B. Berenson, et al., *Prevalence of Physical and Sexual Assault in Pregnant Adolescents*, 13 J. of Adolescent Health 466-69 (1992).

¹⁵ *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 889 (1992) (citing expert witness testimony).

¹⁶ Martin Donohoe, *Parental Notification and Consent Laws for Teen Abortions: Overview and 2006 Ballot Measures* MEDSCAPE Ob/Gyn & Women's Health, February 9, 2007 at <http://www.medscape.com/viewarticle/549316> (last visited October 20, 2010); Stanley K. Henshaw & Kathryn Kost, *Parental Involvement in Minors' Abortion Decisions*, 24 FAMILY PLANNING PERSPECTIVES 197, 199-200 (1992).

¹⁷ Helena Silverstein, *Girls on the Stand: How Courts Fail Pregnant Minors* (2007), quoting Melissa Jacobs, "Are Courts Prepared to Handle Judicial Bypass Proceedings?" *Human Rights* 32 (Winter 2005): 4.

¹⁸ Margie Boule, *An American Tragedy*, SUNDAY OREGONIAN, Aug. 27, 1989.

¹⁹ Rochelle Sharpe, *Abortion Law: Fatal Effect*, GANNETT NEWS SERVICE, Dec. 1, 1989; *60 Minutes*, (CBS television broadcast, Feb. 24, 1991) (videotape on file with NARAL Pro-Choice America).

- ²⁰ Council on Ethical and Judicial Affairs American Medical Association, *Mandatory Parental Consent to Abortion*, 269 JAMA 83 (1993).
- ²¹ The Alan Guttmacher Institute, *Minors' Access to STD Services*, STATE POLICIES IN BRIEF, Oct. 1, 2008.
- ²² The Alan Guttmacher Institute, *Minors' Access to STD Services*, STATE POLICIES IN BRIEF, Oct. 1, 2008.
- ²³ *Carey v. Population Services International*, 431 U.S. 678 (1977).
- ²⁴ *New York v. Heckler*, 719 F.2d 1191 (S.D.N.Y. 1983) (striking down regulation requiring parental notification within 10 days of a Title X-funded family planning center providing prescription drugs or devices to unemancipated minor because such law conflicted with the program requirements of Title X); *Planned Parenthood Association of Utah v. Dandoy*, 810 F.2d 984 (10th Cir. 1987) (holding state law requiring parental consent for Medicaid conflicted with federal law, which requires states participating in the Medicaid program to provide family planning assistance to eligible minors without parental involvement).
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- ²⁶ *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).
- ²⁷ *Planned Parenthood of Central Missouri v. Danforth*, 428 U.S. 52, 74 (1976).
- ²⁸ Fried, Marlene Gerber, *Abortion in the United States: Barriers to Access*, 4 Reproductive and Sexual Rights 174, 182 (2001) (discussing the impact of judicial bypass process on young women); *Hodgson v. Minnesota*, 648 F.Supp. 756, 763-64 (D. Minn. 1986).
- ²⁹ *Id.*, at 763; Dennis, Amanda, Stanley K. Henshaw, Theodore J. Joyce, Lawrence B. Finer, & Kelly Blanchard. The Guttmacher Institute, *The Impact of Laws Requiring Parental Involvement for Abortion: A Literature Review* at page 3 (March 2009).
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- ³³ Tamar Lewin, *Parental Consent to Abortion: How Enforcement Can Vary*, N.Y. TIMES, May 28, 1992, at A1.

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- ³⁵ Helena Silverstein, *Road Closed: Evaluating the Judicial Bypass Provision of the Pennsylvania Abortion Control Act*, 24 *Law and Social Inquiry* 80, 83-84 (1999); NARAL, *Deceptive Anti-Abortion Crisis Pregnancy Centers* (Apr. 19, 1999) available at http://www.naral.org/mediareources/fact/pdfs/crisis_pregnancy.pdf (last visited January 21, 2003).
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- ³⁷ Saul D. Hoffman, *The National Campaign to Prevent Teen Pregnancy, By the Numbers: The Public Costs of Teen Childbearing* (October 2006).
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- ⁴³ Annie E. Casey Foundation, *supra* note 42; Saul D. Hoffman, *The National Campaign to Prevent Teen Pregnancy By the Numbers: The Public Costs of Teen Childbearing* (October 2006).
- ⁴⁴ *The National Campaign to Prevent Teen Pregnancy, Teen Pregnancy and Overall Child Well-Being* at http://www.thenationalcampaign.org/why-it-matters/pdf/child_well-being.pdf (last visited Oct. 29, 2011).
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