

Published by the Katharine Dexter McCormick Library  
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Current as of August 2004

## Teenagers, Abortion, and Government Intrusion Laws

Of all the abortion-related policy issues facing decision-makers in this country today, parental consent or notification before a minor may obtain an abortion is one of the most difficult. Few would deny that most teenagers, especially younger ones, would benefit from adult guidance when faced with an unwanted pregnancy. Few would deny that such guidance ideally should come from the teenager's parents. Unfortunately, we do not live in an ideal world. For a variety of reasons, including fear of parental maltreatment or abuse, teenagers frequently cannot tell their parents about their pregnancies or planned abortions.

In the 34 states with laws in effect that mandate the involvement of at least one parent in the abortion decision, teenagers who cannot tell their parents must either travel out of state or obtain approval from a judge — known as a “judicial bypass” procedure — to obtain an abortion. The result is almost always a delay that can increase both the cost of the abortion and the physical and emotional health risk to the teenager, since an earlier abortion is a safer one (Paul et al., 1999).

Currently, anti-choice members of Congress are seeking to make it even more difficult for minors living in states with mandatory parental involvement laws to obtain an abortion with the so-called “Child Custody Protection Act” (CCPA). The bill would make it a federal crime to transport a minor across state lines for an abortion unless the parental involvement requirements of her home state had been met. If the bill were enacted, persons convicted would be subject to imprisonment, fines, and civil suits (H. R. 1755, 2003; S. 851, 2003).

### **Requiring Parental Consent for Abortion Is Not Consistent with State Laws Regulating a Range of Medical Services for Minors**

Proponents of mandated parental involvement contend that parents have a right to decide what medical services their minor children receive. However, states have long recognized that many minors have the capacity to consent to their own medical care and that, in certain critical areas such as mental health, drug and/or alcohol addiction, treatment for sexually transmitted infections (STIs), and pregnancy, entitlement to confidential care is a public health necessity (Donovan, 1998).

- Twenty-one states and the District of Columbia grant all minors the authority to consent to contraceptive services. Approximately eleven other states grant most minors this authority (AGI, 2004a).
- Thirty-four states and the District of Columbia authorize a pregnant minor to obtain prenatal care and delivery services without parental consent or notification (AGI, 2004b).
- All 50 states and the District of Columbia give minors the authority to consent to the diagnosis and treatment of sexually transmitted infections (AGI, 2004c).

Many of these laws allow minors to give consent to treatments that involve greater medical risk than a first-trimester abortion, such as surgical interventions during pregnancy and cesarean sections. Nevertheless, many of these same states require parental consent for abortion.

### **Most Teens Have a Parent Involved in Their Decision to Have an Abortion, Even When Not Required To Do So By Law. Many Have Compelling Reasons to Seek Confidential Services**

A minority of teenagers do not have a parent involved. Overwhelmingly, they make this decision for compelling reasons. A 1991 study of unmarried minors having abortions in states without parental involvement laws found that

- Sixty-one percent of the respondents reported that at least one of their parents knew about their abortion.
- Of those minors who did not inform their parents of their abortions, 30 percent had histories of violence in their families, feared the occurrence of violence, or were afraid of being forced to leave their homes.
- Minors who did not tell their parents were also disproportionately older (aged 16 or 17) and employed.
- Among the respondents who did not inform their parents of their pregnancies, all consulted someone in addition to clinic staff about their abortions, such as their boyfriend (89 percent), an adult (52 percent), or a professional (22 percent). (Henshaw & Kost, 1992)

### **Lack of Confidential Reproductive Health Care Harms Teenagers**

Evidence suggests that lack of confidentiality in accessing sexual health care services severely delays or even curtails minors' use of those services. A survey of abortion patients around the U.S., conducted by the Alan Guttmacher Institute (AGI), found that 63% of minors who were having later abortions (after 16 weeks' gestation) cited fear of telling their parents as reason for the delay (Torres & Forrest, 1988). In August 2002, the *Journal of the American Medical Association* published a study of minors seeking sexual health care services at Planned Parenthood health centers in Wisconsin. Nearly half (47%) of the respondents reported that they would discontinue use of all Planned Parenthood services if their parents were notified that they were seeking prescription contraceptives. An additional 12% would delay or discontinue using specific sexual health care services if parental notification were required. But only one percent said they would stop having vaginal intercourse (Reddy et al., 2002).

Experience shows that teenagers who cannot involve their parents in their abortion services suffer harm in states with mandatory parental consent and notice laws. Whether they travel to other states or obtain judicial approval, the results are the same: delays that can greatly increase both the physical and emotional health risks as well as the costs.

- While nationwide most minors seeking judicial approval receive it, the process is unwieldy and, most importantly, time-consuming. Court proceedings in Minnesota routinely delayed abortions by more than one week, and sometimes up to three weeks (ACLU, 1986).
- In Minnesota, the proportion of second-trimester abortions among minors terminating their pregnancies increased by 18 percent following enactment of a parental notification law. Likewise, since Missouri's parental consent law went into effect in 1985, the proportion of second-trimester abortions among minors increased from 19 percent in 1985 to 23 percent in 1988 (Donovan, 1992).
- Studies conducted in Pennsylvania and Alabama found that the vast majority of courts in those states were unprepared to implement the judicial bypass. Some court officials had not even heard of the laws, despite the fact that they had been in effect for several years (Silverstein, 1999; Silverstein & Speitzel, 2002).
- The manner in which each state enforces its judicial bypass laws is erratic. In Minnesota, the federal district court found that the state courts "denied only an infinitesimal proportion of the petitions brought since 1981" (ACLU, 1986). A study in Massachusetts found that only nine of the 477 abortion requests studied had been denied (Yates & Pliner, 1988). However, an Ohio report found that the percentage of waivers denied ranged from 100 percent to 2 percent, depending on the county in which the petition was filed (Rollenhagen, 1992).

Some states go as far as to require the involvement of both parents. These statutes ignore the realities of teenagers' lives.

- In 2000, approximately 19 million children under the age of 18 lived with only one parent. Nearly three million more lived with neither parent (U.S. Census Bureau, 2001a).
- In 2000, 33 percent of all births occurred to unmarried women (CDC, 2003). One study found

that 20 percent of unmarried fathers had little to no contact with their children (Doherty et al., 1998).

- Millions of children live with a single parent subsequent to divorce. In 2000, 54 percent of single parents with children under the age of 18 were divorced or separated (U.S. Census Bureau, 2001b). A study found that one-third of divorced fathers had no contact with their children during the previous year (Doherty et al., 1998).
- In Minnesota, more than one-quarter of the teenagers who sought judicial bypass were accompanied by one parent, who was most often divorced or separated. According to the federal district court that reviewed Minnesota's law, many of the custodial parents feared that notification would "bring the absent parent back into the family in an intrusive and abusive way" (*Hodgson v. Minnesota*, 1986).

Moreover, even if a teenager is able and willing to involve one or both parents, the procedures required by some state parental consent or notification laws make compliance impossible or difficult.

- Requiring that teenagers either obtain notarized evidence that parents have been notified or present a death certificate for a deceased parent may present impossible logistical barriers, lead to breaches of confidentiality for parents and teenagers, or cause serious delay.
- A requirement that the physician personally locate and notify the parents could easily both delay the procedure and increase the cost.

### **The Child Custody Protection Act Harms Minors**

In April 2003, the CCPA was reintroduced in the House of Representatives and the Senate. The bill would make it a federal crime to transport a minor across state lines to obtain abortion services without fulfilling the parental consent or notice requirements of her home state. In 1998, the House of Representatives passed the bill by a vote of 276 to 150, but President Clinton threatened to veto it, and the Senate never took it up for consideration (Eilperin, 1999). In 1999, the House Judiciary Committee passed the CCPA, defeating five proposed amendments, including those that would create exceptions for grandparents, siblings, aunts and uncles, and clergy who assist minors in obtaining abortions (Superville, 1999). That year, the legislation passed in the full House of Representatives again, this time by a vote of 270 to 159. However, the Senate again failed to

take it up for consideration. Although, if passed, the Act would only affect a small percentage of women seeking abortion services — minors account for fewer than one in 10 abortions performed — the impact of the Act would be dramatic.

- The CCPA would subject to criminal penalties anyone — a grandparent, adult sibling, member of the clergy, or medical professional — who assists a minor in traveling across state lines to receive an abortion without the parental consent or notification required by her home state.
- CCPA makes such assistance a crime even if confidential abortions are legal in the state where the abortion is to be performed and even if that state allows the accompanying grandparent or adult sibling to give lawful consent for the minor's abortion.
- CCPA thus isolates young women from the trusted friends and relatives who can assist them in time of crisis.
- The CCPA makes criminals out of family members and friends even in emergency situations when the minor needs an immediate abortion to protect her health.
- The CCPA potentially requires a minor to satisfy differing legal requirements in two states: the state she comes from and the state where she is to have the abortion. If those two states both have parental consent or notice requirements, the minor may have to seek waivers from judges in two states, further delaying her abortion and raising its costs and health risks.
- Because 87% of U.S. counties lack an abortion provider (Finer & Henshaw, 2003), CCPA will increase the burdens on the many young women who must cross state lines simply to access the nearest abortion provider.
- The CCPA also raises a number of other constitutional and legal questions, particularly those related to issues of federalism. The legislation effectively nullifies the laws of those states that allow physicians to provide confidential services to minors who enter the states for abortion and deprives individuals of their right to cross state lines to obtain lawful services. Such intervention by the federal government would be unprecedented, and raises serious implications for states, and individuals' rights (Saul, 1998).

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