Easing Restrictions on Minors' Abortion Rights

Parental notification and consent laws do not protect pregnant adolescents from harm. Rather, they often cause it.
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Forced parental involvement in adolescent pregnancy decisions is both counterproductive and harmful.

One of the strongest policy arguments for legal abortion is that the public health consequences of illegal abortion are too grave to ignore. The recent disclosure of public health statistics from Romania, where abortion has been illegal, reinforces this argument: They show a maternal mortality rate about 18 times higher than those of Western European countries, with approximately 86 percent of maternal deaths in 1984 attributed to abortion.

But although abortion is legal in the United States, parental notification and consent laws in many states make safe abortions effectively unavailable to a large number of minors. In 1988, Becky Bell, a 17-year-old girl in Indianapolis, died from an abortion obtained outside the health care system. Her parents are now actively lobbying against parental notification and consent laws, asserting that had there been no such law in Indiana, their daughter would be alive today. The fact that some young women would rather risk their lives than disappoint their parents by telling them that they are pregnant raises serious questions about the intent and effect of those statutes.

Parental notification laws require that either the minor herself or a health care provider notify one or both parents before an abortion can be performed. Some states also require a 24- to 48-hour waiting period after notification before the abortion can take place. Parental consent laws require that one or both parents give their permission for the minor to obtain an abortion.

However, in Bellotti v. Baird, the Supreme Court in 1979 ruled that states with parental consent laws must provide a confidential and expeditious alternative that allows minors to circumvent the consent requirement. Commonly known as the "judicial bypass," this alternative permits minors to seek judicial recognition of their competence to make the abortion decision or a judicial determination that the abortion is in their best interests. In City of Akron v. Akron Center for Reproductive Health (1983), the Supreme Court implied that parental notice requirements must also

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provide for a judicial bypass and has also affirmed a lower court ruling (Zbaraz v. Hartigan, 1987) that a parental notice statute must include a confidential and expeditious bypass procedure.

In June of this year, the Supreme Court upheld an Ohio one-parent notification law with a bypass (Ohio v. Akron), and in Hodgson v. Minnesota it ruled that a state could require that both parents be notified of a minor's intended abortion. In a 5-to-4 decision, the Court ruled that two-parent notification was not unduly burdensome to a minor as long as a judicial bypass was available as an alternative.

A judicial bypass is no panacea, however. As we will discuss later, it can delay and thereby increase the health risks of an abortion, it can be as inhibiting to adolescents as parental involvement itself, and the judge simply replaces the parent as the giver or withhold of consent.

Proliferating state laws
Parental notification and consent requirements are considered the least difficult to pass of all anti-abortion laws because they are viewed as compromise measures, supported by people on both sides of the abortion debate, particularly parents. This is because many parents view the enactment of such laws not as an abortion rights issue but as a parental rights issue. Since they believe that parental notification and consent laws affect them—their right to guide, protect, and control their children—parents often support such laws even though they may oppose all other abortion restrictions.

Yet it is understandable that many adolescents are reluctant and in some instances afraid to inform one or both parents that they are pregnant. An admission of pregnancy, in most cases, will likely be the first disclosure of a minor's sexual activity. Because most parents do not approve of such activity, it is not surprising that a study of initial parental reactions to a daughter's pregnancy found that the typical response was anger and disappointment, and that the disclosure often triggered a family crisis.

Whether a minor has a right to have an abortion free from parental involvement is thus a complex and emotionally charged issue. Policy regarding minors' access to abortion must balance several potentially conflicting concerns: the primacy of parental rights and responsibilities in areas related to the health and well-being of their minor children, the obligation of the state to protect children from their parents when such protection is warranted, and constitutionally protected minors' rights.

Thirty-two states have some form of parental notification or consent law, though they are currently enforced in only 11 states. In the wake of last year's Supreme Court decision in Webster v. Reproductive Health Services, which gave states increased latitude to restrict access to abortion, the National Right to Life Committee announced that parental notification and consent laws are one of the types of legislation it will seek to enact to restrict abortion rights. This year's Akron and Hodgson decisions are also likely to encourage many more states to enact such laws or to enforce existing ones. Since Webster, 16 state legislatures have considered such bills, and anti-abortion activists have undertaken voter initiatives on the issue in Colorado, Michigan, and Oregon.

In these circumstances, it is essential that policymakers have accurate information about adolescents' ability to make competent decisions regarding abortion, the effects of abortion on minors, and the effects of notification and consent laws on the physical and psychological health of adolescent women.

Harmful consequences
Advocates of parental notification and consent laws claim that parents have a "right to know" about their minor daughter's pregnancy and abortion, and a right to make decisions about her health care. They claim that such laws will foster intrafamily communication. And they insist that the laws will protect minors, who are said to be too immature to make fully informed, competent choices concerning abortion as well as more psychologically vulnerable than adults to its allegedly negative physical and mental health consequences. If these assertions are true, then parental notification and consent laws are apparently both necessary and reasonable. However, research does not support the validity of these claims and, in fact, indicates that the consequences of parental notification and consent laws are not only counter to their stated intent, but in many cases are harmful to the minors affected by them.

A constitutional parental "right to know" (the principle underlying notification statutes) has so far not been specifically recognized in any of the six Supreme
Court cases dealing with minors’ abortion. With regard to parental consent, there is generally no reasonable objection to laws that require health professionals to obtain parental consent before treating a minor. These laws are intended for the protection of immature minors who lack the mental capacity to provide informed consent. However, there are several exceptions to such laws, most notably as they relate to adolescents.

The majority of states have “emancipated” or “mature minor” statutes that allow married minors and those living independently of their parents to be treated legally as adults. Additionally, the deterrent effect of parental involvement on adolescents’ willingness to seek certain types of health care, and the importance of confidentiality in assuring minors’ access to necessary health services, have long been recognized by public health authorities and the medical profession. For this reason, most states allow minors to consent to their own treatment for sexually transmitted diseases and alcohol and substance abuse.

Virtually all states also allow minors to consent to their reproductive health care, including the use of prescription contraceptives, pregnancy-related care, and surgical procedures for childbirth. Once parents themselves, minors are typically deemed competent to make health care decisions for themselves and their children. Thus, it is clear that states have not recognized an absolute parental right to make treatment decisions for their adolescent children.

It would be logically inconsistent to allow a 17-year-old with a child the right to consent to all of her health care except abortion. Such deliberate asymmetry in reproductive health care policy reveals the ideological and political motivations frequently underlying parental notification and consent laws. These motivations are also apparent in the ease with which anti-abortion groups dismiss parental rights when they conflict with their religious views. In one anti-abortion publication, the author states that adolescents who think their parents will encourage them to have an abortion should conceal their pregnancies until it is too late to have one. The author goes on to assert that “we must respect our parents even if they are wrong. However, we can respectfully decline to follow their authority when they are leading us against God’s word.”

But even when parents are duly consulted, research indicates that compelled involvement in a minor’s abortion decision will not necessarily result in more competent decisionmaking. Studies of communication between parents and adolescents suggest that sexual behavior is an issue of conflict that is rarely discussed openly and honestly, and that a general lack of rapport between parents and adolescents contributes to their difficulty in communicating about sexual matters. Supportive and productive communication patterns are based on mutual trust and a voluntary sharing of information. Obviously, compelled communication lacks these qualities.

In dysfunctional families (those with an alcoholic parent or a history of violence) or in families where there is already considerable stress (such as unemployment or a major illness), mandatory parental involvement is not only unlikely to result in more reasoned decisionmaking, it may lead instead to emotional and physical abuse as a result of the pregnancy disclosure. During the five years when Minnesota’s two-parent notification law was in effect, approximately 25 percent of the minors who used judicial bypass were accompanied to court by one of their parents. Many of these parents were fearful that notification would bring an abusive absent parent back into the family, and they expressed anger that their consent to the abortion was not deemed by the state to be sufficient as it would be for any other medical procedure.

Neither incompetent nor vulnerable

A rationale often used to justify parental notification and consent laws is that adolescents lack the necessary cognitive skills to make informed decisions and that communication with parents will increase the likelihood that a minor’s abortion decision is a competent one. In the case of consent laws, competency is pre-
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...sumably assured because the parent in effect makes the decision.

But it is important to stress that the ability to make a legally competent decision is not synonymous with making an “intelligent,” “mature,” or “right” decision. Adults, like minors, can make decisions that are not in their best interests, as viewed by others or themselves at a later time. Therefore, questions regarding adolescents’ legal competence to give informed consent are not related to the choice they make but rather to their cognitive capacities.

Competent decisionmaking is dependent in part on the ability to think rationally about complex concepts and situations, and to reason abstractly about hypothetical situations that have several possible outcomes. Psychological theory and research on cognitive, social, and moral development, as well as a substantial body of empirical research on adolescent capability in making decisions on medical treatment, support the conclusion that by age 14 most adolescents have developed the intellectual capacities necessary to understand treatment alternatives, compare risks and benefits, and give legally competent consent.

Nearly 90 percent of the minors who use judicial bypass procedures are ages 16 and 17, and in virtually all cases are judged mature and able to give competent consent to an abortion. For those few considered immature, the courts have in almost all cases decided that the abortion is in the minor’s best interests. This is not surprising, since it is difficult to imagine how it could be in the best interests of an immature minor to bear a child.

Similarly, there is no scientific evidence to support the assertion that abortion has serious negative psychological consequences. Several major reviews of the relevant psychological and psychiatric research literature confirm that for most women the greatest stress is experienced prior to the abortion, and that the most common post-abortion response is relief.

Any consideration of the negative health effects of abortion—physical and psychological—must be weighed against the alternatives. Pregnancy and childbirth entail much greater health risks than does abortion, particularly for adolescents. Research shows that for adolescents aged 15 to 19, the risk of mortality attributable to pregnancy and childbirth is over 20 times that of legal abortion.

The negative effects of premature parenthood on mother and child are also well documented. In a recent report, the National Academy of Sciences concluded that women who become parents in their teen years are at greater risk for social and economic disadvantage throughout their lives than are those who delay childbearing until their twenties or older. The children of adolescent mothers are also at increased risk for physical, cognitive, and emotional problems. Finally, clinical reports of the emotional distress associated with relinquishing a child for adoption suggest that it is not a psychologically benign alternative—reflected in
the fact that over 90 percent of all unmarried mothers age 15 to 19 keep and raise their children. In addition, while there may be a large demand by infertile couples for white newborns, there is no such demand for black or other minority newborns. Therefore, unless they are willing to place their child in an orphanage, adoption is not a viable option for many minority women.

Effects of the laws: Increased risk and stress
The most serious consequence of notification and consent laws is their negative effect on adolescents’ timely access to medical care. Any delay in having an abortion increases the risk to a woman’s health, but most significantly after the eighth week of pregnancy. Adolescents already tend to have later abortions for a variety of reasons: taking longer to recognize the signs of pregnancy, inexperience in seeking health care services, difficulty in raising money for the procedure, and difficulty in scheduling an abortion because of the need to explain absences from school or home. Although only 10 percent of abortions in the United States are performed in the second trimester, adolescents account for a disproportionately large share of them: 23 percent of adolescents under the age of 15 have second-trimester abortions compared to only 8 percent of women aged 20 to 24.

The delays caused by the need to go through the judicial bypass system or to go out of state to avoid notification and consent laws can often push an adolescent into the second trimester of pregnancy. And each delay increases the probability of a further delay, because the cost of an abortion increases each week after the first trimester, necessitating additional time to raise more money and to find a provider who will perform later abortions. In Minnesota, there are counties where judges refuse to hear bypass petitions, forcing minors to travel as much as 250 miles to obtain a hearing. Fifty percent of Minnesota minors utilizing the bypass procedure were not residents of the city in which the hearing was held. It is not surprising, given the obstacles imposed by the bypass, that following enactment of the Minnesota law, the proportion of minors having second-trimester abortions increased 12 percent.

In Massachusetts, a parental consent law forced approximately one-third of the state’s minors seeking an abortion to travel to a neighboring state without consent or notification requirements to have the procedure. For such individuals, and for those who must travel long distances in quest of a judicial bypass, the expense and burden of travel to unfamiliar surroundings at a time of personal crisis can only add to the stress of an unwanted pregnancy.

Another negative consequence of notification and consent laws is the stress caused by judicial bypass procedures themselves. Evidence presented to the federal district court in Minnesota in the Hodgson case demonstrated that the experience of going to court to obtain permission from a judge provokes a great deal of fear and anxiety. Additional stress is caused by the lack of confidentiality inherent in a court proceeding, particularly in small communities. The court found that “some minors are so upset by the bypass proceeding that they consider it more difficult than the medical procedure itself.”

Because of the numerous obstacles that consent and notification laws present, with the resulting delays in obtaining an abortion, some adolescents who would otherwise terminate an unwanted pregnancy are forced to carry to term. In the four-year period after Minnesota’s notification law was passed, statistics for Minneapolis showed that the birthrate for minors affected by the law (15- to 17-year-olds) increased by 38 percent, whereas the birthrate for those unaffected by the law (18- to 19-year-olds) increased only 0.3 percent. It is difficult to imagine what state interest is served by enacting laws that increase the psychological stress and health risks of adolescents who are seeking an abortion and that lead to increased—though unwanted—childbearing.

Giving good counsel
The American Psychological Association’s Interdivisional Committee on Adolescent Abortion has stated that there is little evidence to support age-graded
policies on abortion and that the abolition of "mature minor" standards in the context of the abortion decision should be seriously considered. However, given the concern about young adolescents (those under 15) and the political reality of support for such laws, state legislators may have to look for compromise measures.

Recognizing that mandatory parental notification and consent laws do not take into account adolescents' differing family circumstances, some states have passed laws allowing adolescents to choose another adult to take their parent's place as counselor and adviser. The intent of such laws is to ensure that minors who believe they cannot consult their parents are assisted in making a competent decision.

In South Carolina, a grandparent is allowed to give consent in place of a parent. Given that many adolescents may not have close and open relationships with their grandparents, a more realistic compromise is found in Maine and Wisconsin, where adolescents may seek counsel and consent from other adult family members, health care providers, social workers, clergy, or other trained counselors. In the Hodgson case, Justice Thurgood Marshall wrote, "if the State were truly concerned about ensuring that all minors consult with a knowledgeable and caring adult, it would provide for some form of counseling rather than for a judicial procedure in which a judge merely gives or withholds his consent."

In accord with this thinking, a recently enacted Connecticut statute allows adolescents 15 and under to opt for an abortion provided they receive counseling from a trained counselor, a category that includes physicians, nurses, psychologists, social workers, and the clergy. The Connecticut law also specifies the content of the counseling, including a requirement that the counselor inform the minor that the information provided is not intended to coerce, persuade, or induce her to choose a particular option. The statute also requires the counselor to discuss the possibility of involving the minor's parents or other adult family member in her decisionmaking.

Addressing the problem at its source

In the United States today, adolescent childbearing is an individual and social problem of considerable magnitude. Every year, over 1 million adolescents become pregnant; 84 percent of these pregnancies are unintended. Despite numerous barriers, about half are terminated by a legal abortion and half are carried to term, resulting in tremendous public costs. In 1985, federal and state government spent nearly $17 billion to support families that began with a teenage birth.

As with all public health problems, the most appropriate policy response to adolescent pregnancy and childbearing is prevention. Research has indicated that for every dollar spent on family planning and pregnancy prevention programs, the United States would save $4.40 in the short-term public costs of supporting unintended births. Yet, irrational as it may seem, the groups opposed to abortion also oppose research to develop more effective contraceptive methods as well as the provision of contraceptive services to those who need them, particularly minors.

The opposition of these groups to family planning programs is also based on their belief that the availability of contraceptives leads to increased adolescent sexual activity. In fact, data from the 1982 National Survey of Family Growth indicate that only 17 percent of young women visit a family planning clinic before they become sexually active. For the remaining 73 percent, the median delay between onset of sexual activity and their first visit to a family planning provider is 23 months. A suspected pregnancy is the most frequent reason given for visiting a family planning clinic. Clearly—and unfortunately—for the overwhelming majority of young women, sexual activity precedes contraceptive use and not the reverse.

If we are to decrease unintended pregnancies, abortion, and childbearing among adolescents, we need to ensure that they have confidential access to contraceptive services and that they receive appropriate sex education. Once pregnant, if an adolescent chooses to terminate her pregnancy, we should not put obstacles in her way, but should offer her counseling and support in a manner that respects her right to confidential treatment should she desire it. If we allow our discomfort and ambivalence about adolescent sexual activity to interfere with sound policy to address the problems it engenders, we can only expect an increase in the negative public health and social consequences of adolescent childbearing.

Those concerned about the health and well-being of pregnant adolescents can work actively to educate lawmakers regarding the harmful effects of parental consent and notification laws. In those states that have
not yet enacted restrictive statutes, all restrictions should be strongly opposed. In states that already have such laws, liberalization of the laws should be sought, such as the addition of provisions to allow another adult to stand in loco parentis.

Despite rhetoric to the contrary, parental notification and consent laws are not intended to protect adolescents from harm. Their real intent is to make abortion more difficult to obtain. At best, they are moot for those adolescents who voluntarily consult their parents about their pregnancy and abortion decision. At worst, they materially harm the minors they are purporting to help. The negative impact of these laws is particularly severe for the poor and minorities, who are disproportionately affected because they lack the resources to circumvent them.

The lack of real concern for the health and well-being of pregnant adolescents by those opposed to abortion is clear in the statement of Dr. John C. Willke, president of the National Right to Life Committee, in response to the Hodgson decision: “This is an important victory for both parents and unborn children.”

Becky Bell’s parents would be the first to state that such a “victory” is surely a pyrrhic one.

**Recommended reading**


