

Abortion and Parental Involvement Laws

A Threat to Young People's Health and Safety

POLICY BRIEF

The majority of states – thirty-six as of June 2019 – currently enforce laws that require a young person to notify or obtain consent from one or both parents before they can receive abortion care. Most young people faced with an unintended pregnancy choose to involve their parents.¹ But for those who can't, those who do not have access to their parents, those afraid to anger or disappoint, or who face the threat of violence in their homes—it is best for them to seek the advice of a trained medical professional than to face the situation alone and afraid. Young people are the experts of their own lives and are most equipped to decide whom they involve in their care. Research has shown that these laws, which disproportionately impact young women of color and immigrant youth, often delay or prevent young people's access, endangering their health and safety.² A majority of Americans support young people's self-autonomy and right to make decisions about their sexual and reproductive health without their parent's involvement.³

MOST STATES REQUIRE PARENTAL INVOLVEMENT IN MINORS' ABORTIONS

Parental involvement laws fall into two categories: those that require parental notification and those that require parental consent before a young person seeks abortion services. Parental notification laws require written notification to parents, typically 24 to 48 hours prior, by a medical provider, before a young person can receive abortion services. Parental consent laws require that a young person obtain consent by one or both parents before an abortion can be performed. The Supreme Court has ruled that states may not give parents absolute veto over their child's decision to have an abortion. Most state parental involvement requirements include a judicial bypass procedure that requires a minor to receive court approval for an abortion without their parents' knowledge or consent.

- Twenty-one states require parental

consent for a minor's abortion. Three of these (Kansas, Mississippi, and North Dakota) require both parents to consent. Eight states require that the consent document be notarized.⁴

- Eleven states require parental notification only. Five states require both consent and notification.⁵
- Twenty-one states require parental involvement even if the minor is a victim of incest.⁶
- The only way for minors to access abortion without involving their parents in 36 states is via judicial bypass, where they must petition the courts for permission. (Alaska's parental involvement law has been put on hold by the courts.)⁷

JUDICIAL BYPASS: AN UNREASONABLE ALTERNATIVE

While judicial bypass is technically available in states which mandate parental involvement, there are powerful obstacles to young people attaining it. Many minors do not know judicial bypass is available or do not know how to get it; do not have access to transportation to travel to the necessary courts; or simply are denied bypass by resistant or biased judges.⁸ For instance, in 2013, the Nebraska Supreme Court denied an abortion to a 16-year-old young woman, ruling that she was not "mature" enough to have an abortion. The young woman had already had to navigate the court system, retain an attorney, and face delay while the courts decided her fate - and she still was told she must go through with the pregnancy.⁹

REQUIRING PARENTAL INVOLVEMENT LEAVES MANY YOUNG PEOPLE ALONE AND AT RISK

- Most minors do consult their parents before seeking abortion care.¹⁰ Nonetheless, many teens live in dysfunctional family environments, and parental involvement laws cannot transform these families into stable

POLICY BRIEF

homes nor facilitate productive communications. Forcing teens to involve parents in these circumstances puts them at particular risk of violence.

- One in five pregnant minors have experienced physical abuse by a parent or other caretaker; thirty percent of teens who do not tell their parents about their abortions feared violence or being forced to leave home.¹¹
- One in ten pregnant minors have experienced sexual violence and ^{10,29} percent experienced physical abuse in intimate relationships; just ¹⁵ of the ³⁷ states with parental involvement laws provide exceptions for minors who are victims of sexual and physical assault, incest or neglect.¹² Parental involvement laws also disproportionately affect young women of color, who are more likely to experience unintended pregnancy as minors and are disproportionately living in states where parental involvement laws are in effect.¹³

REQUIRING MINOR AND PARENT IDENTIFICATION TARGETS IMMIGRANTS

Parental involvement laws also disproportionately affect immigrant youth, especially youth who are undocumented, have unclear documentation, are from mixed-status households, and/or whose parents or legal guardians have been detained or deported. Ten states require parents and youth to provide government issued identification either at the provider or to obtain notarized consent documentation.¹⁴ This poses a barrier to immigrant youth with undocumented parents who fear immigration enforcement as well as to youth who are unaccompanied or whose parents have been detained or deported.¹⁵ Four states require proof of parenthood in the form of a birth certificate to prove parental consent,¹⁶ posing another barrier to access to immigrant youth. A judicial bypass also poses a barrier to undocumented youth who fear immigration enforcement and to youth from mixed status households who fear attracting attention to their undocumented parents.¹⁷ All young people including immigrant youth deserve the right to access confidential reproductive healthcare.

MANY NEGATIVE OUTCOMES, FEW POSITIVE ONES

- Parental involvement laws often delay young people's abortion care, leading to costlier, later-term abortion procedures.¹⁸
- Parental notification laws do not guarantee that a minor will talk to their parents before they have an abortion. Research shows parental notification laws have almost no effect on a young person's decision to talk with their parent or guardian about their decision prior to an abortion; teens may choose not to involve their parents out of fear of abuse, fear of disappointing their parent, or a feeling of disconnection from their parent. The chief factor determining whether a teen consulted their parent was, not legislation, but the quality of the teen's relationship with their parent.¹⁹
- Parental involvement laws have no clear impact on birth rates or abortion rates.²⁰ Parental involvement laws have led to an increase of minors travelling to states that do not mandate parental involvement or are less restrictive to seek abortion care.²¹ However, this is also an inaccessible option for many young people as the cost and distance of travel as well as some state requirements of multiple appointments before receiving abortion care can be prohibitive.

MEDICAL EXPERTS OPPOSE PARENTAL CONSENT AND NOTIFICATION LAWS

- Parental involvement laws place access to abortion care in a special category. In many states, minors may independently consent to a range of sensitive health care services, including access to contraceptives, prenatal care, and STI care. Minors can consent to most other pregnancy-related medical procedures, including pre-natal care, labor and delivery procedures, and can even give the baby up for adoption without parental consent or notification.
- The federal government requires confidentiality for minors' contraception and STI services at federally funded Title X clinics. These regulations are based

on research that young people are less likely to seek reproductive and sexual health care if they fear their privacy will be violated.²² Confidentiality in medical treatment, especially related to sexual and reproductive health, is a protected constitutional right to privacy for young people.²³

- The American Medical Association, the Society for Adolescent Medicine, the American Public Health Association, the American College of Obstetricians and Gynecologists, the American Academy of Pediatrics, and other health professional organizations are in agreement against mandatory parental involvement in abortion decision making.²⁴

CONCLUSION

Young people deserve the right to access the full range of reproductive and sexual health services they need, which includes abortion care. And right now, young people are at the forefront of the reproductive health, rights, and justice movements. Activists must be in solidarity with them against the harmful parental involvement restrictions that can put their health and well-being at risk. Yet few are fighting to abolish parental involvement laws; and even when pro-active abortion rights legislation is introduced, it rarely, if ever, addresses minors' needs. Legislation which seeks to protect people's access to abortion must include young people and protect their access to safe, legal, and affordable abortion care.

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