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# “The Only People It Really Affects Are the People It Hurts”

The Human Rights Consequences of Parental Notice of Abortion in Illinois

## SUMMARY AND RECOMMENDATIONS



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Parental Notice of Abortion in Illinois

*Summary and Recommendations*

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## Summary

When “Elena” (not her real name) discovered she was pregnant at age 16, she carefully considered her options and decided she was not ready to parent. She knew she wanted an abortion, but she wasn’t able to discuss her decision with her mother. “My mother is very strict with me,” she told her doctor. “If she knows I’m pregnant, she’ll definitely throw me out of the house.... I talked to my boyfriend about moving in with him, but he lives with his mother and several younger siblings, and he sleeps on the couch. He already sleeps on the couch, where am I going to sleep? On the floor?”

Illinois, where Elena lives, is among the 37 US states that mandate parental involvement for young people under 18 seeking abortion care. Illinois’ Parental Notice of Abortion Act (PNA), in effect since 2013, requires a healthcare provider to notify an “adult family member” of any patient under 18 at least 48 hours in advance of providing an abortion. Under the law, only a parent, grandparent, step-parent living in the home, or other legal guardian over the age of 21 qualifies as an adult family member who may be notified. Young people who wish to obtain an abortion without notifying one of these qualifying adult family members can go through an alternative “judicial bypass” process to demonstrate to a judge that they are 1) sufficiently mature and well enough informed to make an abortion decision without parental involvement, and/or that 2) parental involvement is not in their best interests.

Roughly 1,000 Illinois residents under 18 have abortions in the state each year. The majority of them voluntarily involve a parent or other qualifying adult family member in their decision. Dr. Erin King, an obstetrician-gynecologist and executive director of Hope Clinic for Women, analyzed data on young people seeking abortion care at her clinic before and after Illinois’ parental notification law went into effect: “We know that prior to this law going into effect, over 85 percent of minors were involving a parent anyway. Patients who feel like involving a parent is helpful in their decision-making were already doing that without the law.”

However, a subset of young people like Elena do not want to involve a parent in their decision. They often fear physical or emotional abuse, being kicked out of the home,

alienation from their families or other deterioration of family relationships, or being forced to continue a pregnancy against their will. In some cases, young people in these circumstances are able to navigate the judicial bypass system, as Elena did. Others opt to notify a parent, even when it is not in their best interests, and suffer whatever consequences that may bring. Others simply do not access abortion care and continue unwanted pregnancies against their wishes.

This report, a collaboration between Human Rights Watch and the American Civil Liberties Union (ACLU) of Illinois, examines the harmful consequences of Illinois' parental notification law. Based on in-depth interviews conducted with 37 people, as well as analysis of data and other information collected by the ACLU of Illinois between 2017 and 2020 about young people pursuing the judicial bypass process, the report shows that PNA undermines the safety, health, and dignity of young people under 18, whether they elect to notify a qualifying adult family member or to go through judicial bypass. Human rights experts have consistently called for the removal of barriers that deny access to safe and legal abortion and have commented specifically on parental involvement requirements posing a barrier to abortion care. This report includes a detailed analysis of international human rights law and concludes that PNA violates a range of human rights, including young people's rights to health, to be heard, to privacy and confidentiality of health services and information, to nondiscrimination and equality, to decide the number and spacing of children, and to be free from cruel, inhuman or degrading treatment.

Young people who are unable to pursue judicial bypass or find the process too daunting may be compelled to continue unwanted pregnancies or pushed to involve unsupportive or even abusive parents who threaten their safety, interfere in their decision-making, or humiliate them. Even when young people are able to navigate the judicial bypass process, it is burdensome and delays their access to abortion care. Appearing before a judge to request permission to see through an abortion decision is highly stressful for young people, and even traumatizing for some. Participating in the process also risks violating their privacy and confidentiality.

The overwhelming majority of requests for judicial bypass have been granted since the PNA law went into effect, demonstrating the futility and unfairness of forcing young people to jump through so many hoops to exercise their right to access abortion, which is constitutionally and statutorily protected and internationally recognized.

A bill before the Illinois General Assembly, House Bill 1797/Senate Bill 2190, would repeal parental notice of abortion and ensure young people under 18 can access safe, timely abortion care. Illinois legislators should affirm the human rights and dignity of young people under 18 by supporting the bill and voting to repeal parental notice as a matter of urgency.

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Abortion is the only type of pregnancy-related health care for which Illinois law requires young people to involve their parents. Young people under 18 can access contraceptive methods to prevent pregnancy, decide to continue a pregnancy, access prenatal care, make decisions around labor and delivery, and consent to a caesarean section without involving a parent. Young people can also choose to place a child for adoption without any requirement of parental involvement.

In an analysis of the reasons given for seeking judicial bypass by young people who went through the process between 2017 and 2020, about 40 percent said they were concerned about being forced to continue the pregnancy. Forty percent had concerns about being kicked out of their house or cut off financially. Young people also cited fear of deterioration of family relationships (30 percent), fear of physical or emotional abuse (9 percent), or concerns due to fragile or unstable family situations (11 percent) (many young people identified multiple reasons for pursuing judicial bypass). These fears are often based on observing the lived experience of an older sibling or other family member, or their parents' explicit statements or threats. Some young people have minimal or no contact with one or both of their parents, for example because of parental death or incarceration, or have ambiguous legal guardianship situations.

Young people who do not involve a parent in their abortion decision often have support from other trusted adults in their lives, but who may not meet the definition of a qualifying adult family member under Illinois' PNA law. Young people may turn to "an older sister, a partner's family members, an aunt, a cousin," explained Dr. Rebecca Commito, an obstetrician-gynecologist in Chicago. "Families look different. Young people find a support person in another way."

Since 2013, the ACLU of Illinois has operated a Judicial Bypass Coordination Project (JBCP) that provides information about the state's parental notice of abortion law and the judicial bypass process and offers free legal assistance to young people in judicial bypass proceedings. Despite the strenuous efforts of a compassionate and dedicated network of care providers, attorneys, and volunteers, young people in Illinois still face formidable logistical hurdles throughout the judicial bypass process, particularly around accessing information, communicating safely, scheduling hearings, and securing transportation. Many young people are understandably overwhelmed by the process, and some are simply unable to navigate it.

This report presents cases in which young people were compelled to continue a pregnancy against their wishes because they were unable to comply with the PNA law or navigate judicial bypass, or because their parents interfered in their decision and prevented them from accessing abortion care. For example, Dr. Amber Truehart, an obstetrician-gynecologist at the University of Chicago, shared the story of a 14-year-old she treated during labor and delivery who became pregnant after she was raped by her sister's boyfriend. Her patient considered abortion but was so daunted by parental notification and the judicial bypass process that she ultimately continued an unwanted pregnancy resulting from rape and gave birth, at great risk to her own health. "She had preeclampsia. She had all the things that very young mothers are at risk for. She was in the hospital for a prolonged period of time, and her baby was in the NICU [neonatal intensive care unit]."

The report also includes cases of young people who felt compelled to involve unsupportive parents or adult family members in their abortion decisions because of the PNA law. Providers said they saw parents insult young people, refuse to pay the extra cost for a young person to have sedation during a procedural abortion, or leave them at the clinic without a ride home. In the most devastating cases, parental notification can place young people in physical danger. Dr. Erin King explained, "I see it in cases where a patient has come to us and said, 'I notified my parents,' or another adult living in the house that complies with the law, 'and now because of that, I am scared about going home after this procedure.'"

Even with extraordinary legal and healthcare professionals available to offer support at a moment's notice, forced parental involvement and the judicial bypass process can delay abortion care, sometimes quite significantly. A 2020 research study published in the

*Journal of Adolescent Health* based on analysis of data collected by the ACLU of Illinois in 2017 and 2018 found that the judicial bypass process added, on average, nearly a week to young people's abortion-seeking timeline in Illinois. The time elapsed between first contact with the ACLU's Judicial Bypass Coordination Project and the young person's court hearing ranged from 0 to 27 days.

In some cases, the delays caused by going through the judicial bypass process left young people ineligible for medication abortion, a noninvasive method available only up to the tenth week of pregnancy. Delays also required some patients to have multiple appointments over consecutive days to complete their abortion care.

Several providers said they had treated patients who delayed abortion care until they turned 18 to avoid notifying a parent or going through judicial bypass. A social worker with Planned Parenthood of Illinois shared that she counseled an 18-year-old patient who had traveled more than two hours to the clinic to receive a medication abortion. When she arrived at the clinic, she learned she was four days beyond the gestational cutoff for medical abortion. "She waited until that point because she was waiting until she was 18 years old to not have to tell her parents. She didn't know judicial bypass was an option. She then had to travel 2 hours home and will in turn have to travel [another] 2 hours one way to an in-clinic procedure appointment."

Nearly everyone interviewed for this report said young people expressed or demonstrated fear, anxiety, and stress around having to appear before a judge in order to be able to obtain abortion care. One young person who went through judicial bypass wrote in an anonymous survey that the hearing was "very stressful and nerve-wracking." Attorney Stephanie Kraft Sheley said, "I had a client who was sitting there basically holding her breath waiting to see what the judge would say. ... Her family situation was difficult." When her request for a judicial waiver was granted, "She just broke down crying while the judge was still writing the order," the attorney said.

Several interviewees also commented on judicial bypass in the larger context of young people's impressions of and experiences with court as places where people go after wrongdoing or being accused of committing crimes. Attorney Leah Bruno explained, "These young women are required to go to court, appear before a judge, and be sworn in at the beginning of a hearing in the very same way they hear about [happening in a criminal



trial].... So many of these young women have to sneak out of school and classes to do this. It's all the wrong messaging. They are taking responsibility for their lives but being made to feel like they should be penalized for it." The majority of young people who have gone through judicial bypass in recent years are Black, Indigenous and other young people of color, according to data collected by the ACLU of Illinois, which may influence their perceptions of and reactions to the legal system.

Forcing young people who choose not to involve a parent in their abortion decision to go through the judicial bypass process risks exposing them to a loss of confidentiality. Though not a frequent occurrence, young people pursuing judicial bypass have been found out or exposed. Retired Judge Susan Fox Gillis explained, "Adding what I believe is an unnecessary step of coming to court just makes it that much more difficult for her [to get abortion care], and that much more likely she'll be found out [along the way]. If she has a fear of being found out and it's legitimate, we're putting her at risk."

To avoid the spread of Covid-19, since mid-March 2020 Illinois courts have held judicial bypass hearings remotely, using an online platform. Experts said online hearings have eased logistical barriers for some young people. For others, however, the virtual hearings and the circumstances caused by the pandemic heightened risks around their confidentiality and safety since many young people can only rarely leave their homes due to Covid-19 restrictions and precautions. Emily Werth, a staff attorney with the ACLU of Illinois, explained, "Now we don't have to get them to court. But a parent may be in the house, and could knock on the door, or come in at any moment. Some clients don't have confidentiality in their homes, and if they have to go somewhere else, how will they get there, especially now with people not going out as much [because of the risk of Covid-19]."

Many interviewees—including lawyers, healthcare providers, and others—expressed concern that young people without parental support, and overwhelmed by or unable to navigate judicial bypass, may turn to unsafe abortion methods. "One client told me before she found out about the bypass project, she first tried an herbal [abortion] remedy she got off the internet," one attorney said. This young person did not experience any harm from taking the herbal remedy, but it also did not induce abortion. "The people I think who are most affected by this law are the ones who never make it through our doors," said Amy Whitaker, medical director of Planned Parenthood of Illinois.

The text of the 1995 Parental Notice of Abortion Act stated that the Illinois General Assembly’s purpose in enacting the law was “to further and protect the best interests of an unemancipated minor.” This report confirms what decades of research in other states have already shown: forced parental involvement is not in a young person’s best interests and can carry deeply harmful and life-altering consequences. As Hannah, an 18-year-old organizer with the Illinois Caucus for Adolescent Health (ICAH), explained: “Forcing someone to tell their parents, it isn’t going to help. If someone can tell their parents, they will, because it’s so much simpler. The only people [PNA] really affects are the people it hurts.” Legislators should repeal PNA and enable young people in Illinois to make the best decisions for themselves regarding their sexual and reproductive health care.

## **Recommendations**

### **To the Illinois General Assembly**

- Repeal the Parental Notice of Abortion Act of 1995 as a matter of urgency and ensure that young people under 18 can access abortion care without being forced to involve a parent or other adult family member in their decision-making.

### **To the Illinois Department of Public Health**

- Implement public information and awareness-raising campaigns that address stigma around abortion and around adolescent sexuality. Ensure such campaigns make clear that young people under 18 have the right to access a range of sexual and reproductive health services without parental involvement, while ensuring such campaigns also seek to reduce the disproportionate impact lack of access to health care and information can have on Black, Indigenous, and other young people of color.

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## The Human Rights Consequences of Parental Notice of Abortion in Illinois

Illinois’ Parental Notice of Abortion Act (PNA), in effect since 2013, requires a healthcare provider to notify an adult family member of any patient under 18 at least 48 hours in advance of providing an abortion. Young people who do not want to involve a qualifying adult family member—often because they fear forced continuation of a pregnancy, abuse, or alienation from their families—can go through “judicial bypass” to demonstrate to a judge that 1) they are sufficiently mature and well enough informed to make the decision without parental involvement, or that 2) parental involvement is not in their best interests. This joint report by Human Rights Watch and the American Civil Liberties Union (ACLU) of Illinois documents the law’s devastating effects. The report urges state legislators to repeal PNA and affirm the human rights and dignity of young people under 18.



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