



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

The Human Rights Consequences of Parental Notice of Abortion in Illinois

HUMAN
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WATCH

ACLU

Illinois



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Parental Notice of Abortion in Illinois

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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.

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.

Methodology

This report is a collaboration between Human Rights Watch and the American Civil Liberties Union (ACLU) of Illinois. The report's findings are based on in-depth interviews and research conducted by Human Rights Watch in 2020, as well as analysis of data and other information collected by the ACLU of Illinois between 2017 and 2020.

Human Rights Watch conducted in-depth interviews for this report between February and December 2020. We interviewed 12 healthcare providers and social workers who provide reproductive health care to young people under the age of 18; nine attorneys with experience representing young people seeking a waiver of parental notice of abortion (“judicial bypass”); one retired judge who previously presided over judicial bypass hearings in Illinois; four volunteers who provide young people with information regarding Illinois’ parental notice of abortion law; and 11 advocates, including 10 young people ages 18 to 27 involved in reproductive justice advocacy in Illinois. In total, we spoke with 37 people for this report.

A few interviews were carried out in person in Chicago, Illinois in February 2020. After February 2020, Human Rights Watch did not conduct any in-person interviews for this report given travel restrictions and our duty of care to prevent the spread of Covid-19. Human Rights Watch identified interviewees with the assistance of the ACLU of Illinois, other nongovernmental organizations (NGOs), advocates, and service providers.

All interviews were conducted in English. In nearly all cases, Human Rights Watch held interviews individually and in private, though in a few instances, Human Rights Watch spoke to interviewees in pairs or in a small group.

Human Rights Watch informed all interviewees of the purpose of the interview, its voluntary nature, and the ways in which the information would be collected and used. Human Rights Watch assured participants that they could end the interview at any time or decline to answer any questions, without any negative consequences. All interviewees provided verbal informed consent to participate.

Interviews were semi-structured and covered topics related to sexual and reproductive health and rights, as well as access to information and services, centered on the experiences of young people under 18 seeking abortion care in Illinois. Most interviews lasted between 30 and 60 minutes. Care was taken with all interviewees to minimize the risk that recounting difficult or traumatic experiences could lead to distress or further trauma. Human Rights Watch did not provide anyone with compensation or other incentives for participating. Some of Human Rights Watch's organizational partners offered participants small stipends, consistent with their organizations' policies related to research participation.

The names of some interviewees have been changed to protect their privacy and safety; real names were used only in cases where the interviewees preferred it and believed there was no risk to having their names published.

The report also incorporates information collected by the ACLU of Illinois from and about young people seeking judicial bypass. 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 in judicial bypass proceedings. Beginning in January 2017, attorneys working with the JBCP began asking each client represented at a judicial bypass hearing for their permission to use de-identified (anonymized) information about their experiences for public education and/or research.¹ Some clients gave permission to the ACLU of Illinois to use their information for both purposes. Some gave permission to have their information used for only one of the two purposes. Others declined to participate.

Between January 2017 and August 2020, 182 clients gave the ACLU of Illinois permission to use de-identified versions of their stories for public education. ACLU of Illinois staff attorneys wrote short summaries of those 182 cases in narrative form and shared them with Human Rights Watch. Some of the narratives are included in this report.

In parallel, the ACLU of Illinois partnered with researchers at the University of California San Francisco (UCSF) to develop a process for systematic data collection related to the

¹ Before using client information in these ways, the ACLU of Illinois removes any potentially identifying information such as names, addresses, or highly specific details about young people's experiences to protect their privacy and safety.

experiences of young people seeking judicial bypass in Illinois. The ACLU of Illinois and UCSF researchers developed a standardized set of questions related to young people's characteristics and experiences with judicial bypass, including age, race, stage of pregnancy, distance traveled to get to court and to an abortion clinic, reasons for seeking abortion without parental involvement, and other information. Attorneys working with the young people who consented to participate collected data through phone or in-person conversations.² Between January 2017 and June 2020, 192 young people in total gave the ACLU of Illinois permission to use de-identified data about them for research purposes, while 47 young people declined to share their information for research purposes. The ACLU of Illinois compiled the data and shared it with Human Rights Watch, and Human Rights Watch analyzed the data to produce statistics presented in this report.

Despite our strong interest in hearing from young people about the impacts of Illinois' parental notification law, Human Rights Watch did not seek to speak directly with young people who went through judicial bypass. The ACLU of Illinois and Human Rights Watch determined we could not adequately mitigate the risks to young people's privacy and safety that would be generated by asking young people to participate in interviews. Instead, the ACLU of Illinois shared with several young people the JBCP assisted in the judicial bypass process a short, anonymous online survey with two open-ended questions about their experiences (referred to throughout the report as "an anonymous survey").³ Attorneys working on the JBCP determined on a case-by-case basis whether it would be safe and appropriate to ask clients if they would like to receive the survey. Attorneys reached out to those clients within a few days of them receiving abortion care, explained the purpose of the survey and how the information could be used, and if the young people consented, sent them a link to the survey. Eleven young people chose to respond to the anonymous survey before final updates were made to this report, and the ACLU of Illinois shared the responses with Human Rights Watch.

² Researchers with Advancing New Standards in Reproductive Health (ANSIRH), a program within the UCSF Bixby Center for Global Reproductive Health, published an analysis of data collected in 2017-2018 by the ACLU of Illinois in a 2020 article in the *Journal of Adolescent Health*. Lauren J. Ralph, Lorie Chaiten, Emily Werth, et al., "Reasons for and Logistical Burdens of Judicial Bypass for Abortion in Illinois," *Journal of Adolescent Health* (2020), doi: <https://doi.org/10.1016/j.jadohealth.2020.08.025> (accessed December 1, 2020).

³ The survey included the following two questions: 1) Tell us about your experience getting a judicial bypass; and 2) What was the most difficult part of this process?

Terminology

In this report, Human Rights Watch and the ACLU of Illinois use the terms “youth” and “young people” to refer to anyone under the age of 18. We use these terms for two reasons: 1) to affirm the autonomy and maturity of people under 18 to make the best decisions for themselves regarding their sexual and reproductive health care, and 2) to be inclusive of everyone who can become pregnant, including those who identify as cisgender females as well as those who are transgender or gender non-binary. However, where quoting interviewees, research studies, international law, or other sources directly, we have not changed the terminology used.

Throughout this report, we use the gender-neutral and inclusive pronouns “they” and “them” to describe young people. When referring to a specific person, we use that person’s individual pronouns.

We use “Black, Indigenous and other young people of color” to describe individuals and communities who may identify as Black or African-American; Hispanic, Latina, or Latinx of any race; Asian or Pacific Islander; North African or Middle Eastern; Indigenous; or multiracial. We use this terminology to be inclusive of a range of racial and ethnic identities and to bring visibility to the differential impacts of systemic racism and the criminal legal system on Black and Indigenous communities in the United States. Again, where quoting interviewees or other sources directly, we have not changed the terminology used.

In this report, we describe two methods of abortion: medical abortion and procedural abortion. Medical abortion—also known as medication abortion—is a way to end a pregnancy by taking medication, typically a combination of mifepristone (which stops a pregnancy from growing) and misoprostol (which induces abortion by softening and opening the cervix and causing uterine contractions to expel pregnancy tissue). Procedural abortion refers to various methods performed in a clinical setting to end a pregnancy and

remove tissue from the uterus.⁴ Both methods are highly safe and effective, though medical abortion is only available in Illinois until the tenth week of pregnancy.

⁴ See, for example, Planned Parenthood, “The Abortion Pill,” 2021, <https://www.plannedparenthood.org/learn/abortion/the-abortion-pill> (accessed January 15, 2021); “The Safety and Quality of Abortion Care in the United States,” *National Academies of Sciences, Engineering, and Medicine*, 2018, doi: <https://doi.org/10.17226/24950> (accessed February 25, 2021).

I. Background

According to the Illinois Department of Public Health, about 1,000 young people under 18 who reside in Illinois have abortions in the state each year.⁵ Illinois is one of 37 US states mandating parental involvement for young people under 18 seeking abortion care.⁶ Abortion is the only type of pregnancy-related health care for which young people in Illinois are required to involve their parents, even though it is safer than continuing a pregnancy or childbirth.⁷ 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, or consent to a caesarean section without involving a parent.⁸ In Illinois, youth under 18 with children of their own can make autonomous decisions about their children's health care, or can choose to place a child for adoption without any requirement of parental involvement.⁹

The Parental Notice of Abortion Act

Illinois' Parental Notice of Abortion Act (PNA) of 1995 states that in order to provide an abortion for a young person under 18, a healthcare provider must notify an "adult family member" of the patient at least 48 hours in advance.¹⁰ Under the law, only a parent, grandparent, step-parent living in the home, or other legal guardian over the age of 21 qualifies as one of the adult family members who may be notified.¹¹

⁵ Illinois Department of Public Health, "Illinois Abortion Statistics 2018," January 17, 2020, <http://dph.illinois.gov/sites/default/files/publications/illinois-abortion-statistics-2018.pdf> (accessed December 9, 2020).

⁶ Guttmacher Institute, "Parental Involvement in Minors' Abortions," updated February 1, 2021 <https://www.guttmacher.org/state-policy/explore/parental-involvement-minors-abortion> (accessed December 9, 2020).

⁷ Elizabeth Raymond and David Grimes, "The Comparative Safety of Legal Induced Abortion and Childbirth in the United States," *Obstetrics & Gynecology*, vol. 119, no. 2 (2012), <http://unmfamilyplanning.pbworks.com/w/file/119312553/Raymond%20et%20al-Comparative%20Safety.pdf> (accessed February 25, 2021), pp. 215-219.

⁸ Consent by Minors to Health Care Services Act, 410 Illinois Compiled Statutes (ILCS) 210, sec. 1; Birth Control Services to Minors Act, 325 ILCS 10.

⁹ *Ibid.*; 750 ILCS 50, sec. 11(a).

¹⁰ Parental Notice of Abortion Act of 1995, 750 ILCS 70, secs. 1-99.

¹¹ 750 ILCS 70, sec. 10.

The law applies to anyone under 18 who has not been married or emancipated under the Emancipation of Minors Act, though there are certain exceptions.¹² Notice is not required in the event of a medical emergency or if the young person declares in writing that they are a victim of sexual abuse, neglect, or physical abuse by an adult family member.¹³ If a young person utilizes the exception for survivors of abuse or neglect, the healthcare provider is mandated to report the abuse or neglect to the Illinois Department of Children and Families (DCFS).¹⁴

There is no exception in the law for youth who have already been pregnant or given birth: young people who are already parenting are still required to notify a qualifying adult of their abortion decision, unless they are married or meet one of the other narrow exceptions.

Under the law, the 48 hours advance notice is not required if the patient under 18 is accompanied by a qualifying adult family member at the point of care, or if the qualifying family member has waived notice in writing.¹⁵ Otherwise, providers must give notice by telephone to the qualifying adult family member 48 hours before an abortion. If the adult family member cannot be reached in person or by telephone after “a reasonable effort,” the law specifies that providers may give notice by certified mail to a last known address.¹⁶

The Judicial Bypass Process

Young people under 18 who do not want to involve one of these specific adult family members in their abortion decision may seek permission from a judge to obtain an abortion without notification through a “judicial bypass” process. To grant a waiver of notice, a judge must find either 1) that the young person is sufficiently mature and well enough informed to decide intelligently whether to have an abortion, or 2) that notification to a qualifying adult family member under the law is not in their best interests.¹⁷

¹² 750 ILCS 70, secs. 10, 20. See, Emancipation of Minors Act, 750 ILCS, sec. 30.

¹³ 750 ILCS 70, sec. 20 (3-4).

¹⁴ 750 ILCS 70, sec. 20 (4). In these cases, providers must comply with their reporting obligations under the Abused and Neglected Child Reporting Act (325 ILCS 5, sec. 4). State law specifies, however, that the reporting of abuse to public authorities “need not be made by the person performing the abortion until after the minor receives an abortion.”

¹⁵ 750 ILCS 70, sec. 10.

¹⁶ 750 ILCS 70, secs. 10, 15.

¹⁷ 750 ILCS 70, sec. 25(d).

Under state law, any young person, whether or not they reside in Illinois, may petition any circuit court in the state for a waiver of the notice requirement.¹⁸ Young people have the right to be represented by a court-appointed attorney and to have a guardian ad litem.¹⁹ To protect the privacy of young people, all court proceedings must be confidential and all documents related to court proceedings must be sealed.²⁰ The court is required to rule on petitions for waiver of notice within 48 hours of filing, unless the young person or their attorney requests additional time. The court does not charge any fees for the process.²¹

The bypass process in Illinois is governed by federal constitutional standards established by the US Supreme Court in its 1979 *Bellotti v. Baird* decision. In *Bellotti*, the Supreme Court reviewed a Massachusetts parental consent law and affirmed that young people under 18 have a constitutional right to seek abortion. The Court held that a state may require parental involvement for abortion for those under 18, but that “it also must provide an alternative procedure whereby authorization for the abortion [without parental involvement] can be obtained.” The Court articulated a set of minimum standards for this alternative process, including that young people must have an opportunity to demonstrate that they are mature and well enough informed to make an abortion decision without parental involvement or that an abortion without parental involvement is in their best interests, and that the process should be confidential and expedited.²²

Parental Consent vs. Parental Notification

Illinois state law mandates only parental notification, not parental consent, meaning a parent does not need to provide explicit permission for a young person to access care. However, experts interviewed for this report explained that in practice, for many young people, there is no distinction between parental notification and parental consent. When parents are in a position to withhold financial support, restrict young people’s

¹⁸ 750 ILCS 70, sec. 25(a-b).

¹⁹ 750 ILCS 70, sec. 25(b). Typically, a guardian ad litem is an attorney appointed by a court in some cases involving people under 18 to safeguard their best interests.

²⁰ 750 ILCS 70, sec. 25(c).

²¹ 750 ILCS 70, sec. 25(h).

²² *Bellotti v. Baird*, 443 U.S. 622 (1979)

movement or access to communication or transportation, or threaten life-altering consequences, they can effectively block young people's access to abortion care even if the law requires only notice and not consent.

History of Forced Parental Involvement in Illinois

Before the Parental Notice of Abortion Act of 1995 passed, Illinois had previously enacted three other parental involvement laws. The ACLU of Illinois challenged those laws in federal court, and they were never enforced.²³ The ACLU of Illinois also challenged the 1995 law in federal court. The court issued an injunction to prevent the 1995 law from taking effect because there was no appeals process, as required under *Bellotti v. Baird*, for the law to pass constitutional muster. That injunction remained in force for over a decade.

When the Illinois Supreme Court finally issued the necessary rules to provide for an appeals process in 2006, the state went back to federal court to get the injunction removed. The federal court ultimately ruled in favor of the state in 2009 and dissolved the injunction.²⁴ However, the ACLU of Illinois once again filed litigation, this time in Illinois state court, arguing that the law was unconstitutional under the state constitution's due process and privacy clauses. Between 2009 and 2013, the law remained enjoined due to the state constitutional challenge. In 2013, the Illinois Supreme Court upheld the law, and for the first time, mandatory parental involvement for abortion went into effect for young people in the state.²⁵

The ACLU of Illinois' Judicial Bypass Coordination Project

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 in judicial bypass proceedings.²⁶

²³ Human Rights Watch interview with Emily Werth, staff attorney, ACLU of Illinois, November 10, 2020. The Parental Notice of Abortion Act of 1983 was enjoined by *Zbaraz v. Hartigan*, 763 F.2d 1532 (7th Cir. 1985), *aff'd*, 484 U.S. 171 (1987), and the Illinois Abortion Parental Consent Act of 1977 was voided and enjoined by *Wynn v. Carey*, 599 F.2d 193 (7th Cir. 1979). A parental consent provision was also part of the Illinois Abortion Law of 1975 and was declared unconstitutional in *Wynn v. Scott*, 449 F.Supp. 1302 (1978).

²⁴ *Zbaraz v. Madigan*, 572 F.3d 370 (7th Cir. 2009).

²⁵ *Hope Clinic for Women, Ltd. v. Flores*, 991 N.E.2d 745 (Ill. 2013)

²⁶ Illinois Judicial Bypass Coordination Project, <http://www.ilbypass.org/> (accessed December 9, 2020).

The JBCP was designed to be a comprehensive resource for young people navigating the PNA law and is largely staffed by trained volunteers. It has a public website; a free, confidential hotline that young people can call, text, or email for information; and a network of pro bono attorneys prepared to represent young people in judicial bypass proceedings across the state.

More than 1,000 people have contacted the JBCP for help since it launched in 2013, and the project's network of attorneys has represented more than 500 young people who went through the judicial bypass process between August 2013 and December 2020. The petition for waiver of notice has been granted in nearly every case the JBCP handled in that time.

Abortion Access in the Midwestern United States

Illinois is surrounded by states with harsh abortion restrictions. "All the states around Illinois have restricted access," explained Terry Cosgrove, a longtime reproductive rights advocate with Personal PAC, a nonpartisan political action committee. "We're the donut hole in the middle."²⁷ For example, all the surrounding states (Indiana, Iowa, Kentucky, Michigan, Missouri, and Wisconsin) mandate parental involvement for a young person under 18 to have an abortion.²⁸ Indiana, Kentucky, Michigan, Missouri and Wisconsin also mandate that patients must wait between 18 and 72 hours after receiving counseling before getting an abortion.²⁹ Indiana, Kentucky, Missouri, and Wisconsin require the

²⁷ Human Rights Watch phone interview with Terry Cosgrove, president and chief executive office, Personal PAC, December 4, 2019.

²⁸ Guttmacher Institute, "State Facts About Abortion: Indiana," September 2020, <https://www.guttmacher.org/fact-sheet/state-facts-about-abortion-indiana> (accessed December 8, 2020); Guttmacher Institute, "State Facts About Abortion: Kentucky," September 2020, <https://www.guttmacher.org/fact-sheet/state-facts-about-abortion-Kentucky> (accessed December 8, 2020); Guttmacher Institute, "State Facts About Abortion: Missouri," September 2020, <https://www.guttmacher.org/fact-sheet/state-facts-about-abortion-missouri> (accessed December 8, 2020); Guttmacher Institute, "State Facts About Abortion: Wisconsin," September 2020, <https://www.guttmacher.org/fact-sheet/state-facts-about-abortion-wisconsin> (accessed December 8, 2020); Guttmacher Institute, "State Facts About Abortion: Michigan," September 2020, <https://www.guttmacher.org/fact-sheet/state-facts-about-abortion-michigan> (accessed December 8, 2020).

²⁹ Guttmacher Institute, "State Facts About Abortion: Indiana," September 2020, <https://www.guttmacher.org/fact-sheet/state-facts-about-abortion-indiana> (accessed December 8, 2020); Guttmacher Institute, "State Facts About Abortion: Kentucky," September 2020, <https://www.guttmacher.org/fact-sheet/state-facts-about-abortion-Kentucky> (accessed December 8, 2020); Guttmacher Institute, "State Facts About Abortion: Missouri," September 2020, <https://www.guttmacher.org/fact-sheet/state-facts-about-abortion-missouri> (accessed December 8, 2020); Guttmacher Institute, "State Facts About Abortion: Wisconsin," September 2020, <https://www.guttmacher.org/fact-sheet/state-facts-about-abortion-wisconsin> (accessed December 8, 2020); Guttmacher Institute, "State Facts About Abortion: Michigan,"

counseling to happen in person, forcing people to make at least two trips to a clinic to access abortion care.³⁰ In Iowa, Indiana, and Wisconsin, a patient must undergo a state-mandated ultrasound before an abortion.³¹ Missouri currently has only one abortion clinic in the entire state, which has seen a dramatic decrease in patients seeking abortion care due to very restrictive and burdensome state laws.³²

Advocates in Illinois have fought for years to reform state laws to safeguard sexual and reproductive health and rights. The Reproductive Health Act, signed into law in June 2019, affirmed that every person has the right to choose abortion, among other reproductive health care, and repealed several outdated restrictions on abortion access.³³ On the day he signed the bill into law, Illinois Governor J.B. Pritzker said, “I promised that Illinois would become a national leader in protecting reproductive rights. Illinois is demonstrating what it means to affirm the rights of individuals to make the most personal and fundamental decisions of their lives no matter their income level, no matter their race, ethnicity or religion.”³⁴

However, the state’s parental notice of abortion law remains one of the main barriers to reproductive health care access in the state. As Dr. Erin King, an obstetrician-gynecologist and executive director of Hope Clinic for Women, explained:

Any law that puts additional barriers in front of a patient getting to a provider for abortion care is detrimental to them. Patients have a lot of barriers that they face to access abortion, regardless of where they’re

September 2020, <https://www.guttmacher.org/fact-sheet/state-facts-about-abortion-michigan> (accessed December 8, 2020).

³⁰ Ibid.

³¹ Ibid.; Guttmacher Institute, “State Facts About Abortion: Iowa,” September 2020, <https://www.guttmacher.org/fact-sheet/state-facts-about-abortion-iowa> (accessed December 8, 2020).

³² Reis Thebault and Emily Wax-Thibodeaux, “Missouri’s last abortion clinic will stay open after ruling ends contentious year-long legal battle,” *The Washington Post*, May 29, 2020, <https://www.washingtonpost.com/nation/2020/05/29/ruling-saves-missouri-abortion-clinic/> (accessed December 10, 2020); Sarah McCammon, “As Missouri Clinic Awaits Its Legal Fate, Abortions In State Have Virtually Halted,” *NPR*, March 12, 2020, <https://www.npr.org/2020/03/12/814768754/as-missouri-clinic-awaits-its-legal-fate-abortion-in-state-have-virtually-halte> (accessed February 11, 2021).

³³ Reproductive Health Act of 2019, 775 ILCS 55; ACLU of Illinois, “SB 25: Illinois Reproductive Health Act,” 2019, <https://www.aclu-il.org/en/legislation/sb-25-illinois-reproductive-health-act> (accessed December 10, 2020).

³⁴ Lolly Bowean, “Gov. J.B. Pritzker signs abortion rights law making procedure a 'fundamental right' for women in Illinois,” *Chicago Tribune*, June 12, 2019, <https://www.chicagotribune.com/politics/ct-met-illinois-abortion-rights-law-governor-jb-pritzker-20190612-story.html> (accessed December 10, 2020).

coming from. Illinois tends to have less barriers, which makes it a place where patients can come and access care without having to worry about waiting periods, counseling mandates, ultrasound... The one thing people in Illinois still face is [parental notice of abortion] if they are a minor.³⁵

³⁵ Human Rights Watch phone interview with Dr. Erin King, obstetrician-gynecologist and executive director, Hope Clinic for Women, September 10, 2020.

II. Why Some Young People Do Not Involve Parents in Abortion Decisions

Most adolescents... are wise enough to make these decisions for themselves. There are a great deal of people who are lucky enough to have a parent or guardian whom they're comfortable discussing this with, but there is a large portion of these patients who are not, and it really does pose a barrier to those patients to accessing care in a timely manner. It's one more hurdle for them to overcome.³⁶

—Hillary McLaren, obstetrician-gynecologist, December 3, 2020

Decades of public health research has shown that most young people under 18 voluntarily involve a parent or another trusted adult in their abortion decision, even if the law does not require it.³⁷ 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."³⁸ Research in Illinois and other states has shown that young people who do not involve a parent in their abortion decision often seek support from other trusted adults in their lives.³⁹

³⁶ Human Rights Watch phone interview with Dr. Hillary McLaren, obstetrician-gynecologist, University of Chicago, December 3, 2020.

³⁷ See, for example, Stanley K. Henshaw and Kathryn Kost, "Parental Involvement in Minors' Abortion Decisions," *Family Planning Perspectives*, vol. 24, no. 5 (1992), pp. 196-207; Lauren Ralph, Heather Gould, Anne Baker, Diana Greene Foster, "The Role of Parents and Partners in Minors' Decisions to Have an Abortion and Anticipated Coping After Abortion," *Journal of Adolescent Health*, vol. 54 (2014), pp. 428-434; Robert W. Blum, Michael D. Resnick, and Trisha A. Stark, "The Impact of a Parental Notification Law on Adolescent Abortion Decision-Making," *American Journal of Public Health*, vol. 77, no. 5 (1987), pp. 619-620.

³⁸ Human Rights Watch phone interview with Dr. Erin King, obstetrician-gynecologist and executive director, Hope Clinic for Women, September 10, 2020.

³⁹ See, for example, Laurie S. Zabin, Marilyn B. Hirsch, Mark R. Emerson and Elizabeth Raymond, "To Whom do Inner-City Minors Talk About Their Pregnancies? Adolescents' Communication with Parents and Parent Surrogates," *Family Planning Perspectives*, vol. 24, no. 4 (1992), pp. 148-154; Lauren J. Ralph, Lorie Chaiten, Emily Werth, et al., "Reasons for and Logistical Burdens of Judicial Bypass for Abortion in Illinois," *Journal of Adolescent Health* (2020), doi: <https://doi.org/10.1016/j.jadohealth.2020.08.025> (accessed December 1, 2020).

Young people who do not involve a parent in their abortion decisions have many reasons. According to healthcare providers, attorneys, and others interviewed by Human Rights Watch, some pregnant young people believe notifying a parent or adult family member of their abortion decision would lead to 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 wishes. These fears are often based on observing the lived experience of a sibling or other family member, or explicit statements or threats from parents.

A volunteer attorney who has represented at least 20 young people in judicial bypass cases said, “In almost every case I’ve experienced, the young person had some concern that a parent will cut them off financially, emotionally, or [notifying the parent would cause] major disruption to the relationship.” He said his clients had carefully and critically weighed the risks they would face by involving a parent: “For many of them they’ve literally been told by their parent this is what will happen. ‘You better not get pregnant or this will happen.’ A couple clients had seen it happen to a sibling.”⁴⁰

In some cases, young people in these circumstances are able to navigate the judicial bypass system. 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.

The ACLU of Illinois collected data on the reasons why young people pursued judicial bypass with the assistance of the JBCP between January 2017 and June 2020, summarized in Table 1 below.⁴¹ Most young people cited multiple reasons for not involving a parent. Among 192 participants who agreed to share their data, 40 percent said they were concerned about being forced to continue the pregnancy, 40 percent had concerns about being kicked out of their house or cut off financially, and 30 percent feared harming the relationship with their families. Seventeen percent had minimal or no contact with one or both of their parents, for example because of parental death or ambiguous legal

⁴⁰ Human Rights Watch phone interview with attorney, September 2, 2020.

⁴¹ The ACLU of Illinois asked all 239 young people assisted by the Judicial Bypass Coordination Project (JBCP) between January 2017 and June 2020 for permission to use de-identified (anonymized) information about their experiences for research. 192 young people gave the ACLU of Illinois permission to use de-identified data about them for research purposes, while 47 young people declined to share their information for research purposes.

guardianship situations. A smaller subset of participants had fears of physical or emotional abuse (9 percent) or had concerns due to difficult or unstable family situations (11 percent), such as a family member’s illness or incarceration. Below, we present examples of such cases.

Table 1. Reasons Youth Seek Judicial Bypass		
	Number of participants who cited reason	Percentage of participants who cited reason
Fear of being forced to continue the pregnancy	77	40%
Fear of being kicked out of the house or cut off financially	76	40%
Fear of straining or ruining family relationships	57	30%
No or minimal relationship with one or both parents	32	17%
Unstable or difficult family circumstances	22	11%
Fear of physical or emotional abuse	17	9%
Data collected by the ACLU of Illinois, January 2017-June 2020		

Fear of Abuse

Some young people do not involve a parent or other qualifying adult in their abortion decision because they fear emotional or physical abuse, often where there has been a history of abuse in the family. Stephanie Kraft Sheley, a volunteer attorney with the JBCP who represents young people outside of the Chicago area, estimated that she had handled about nine bypass cases since 2017. “I’ve definitely had clients express fear that they would be physically harmed because they had been hit in the past, and they felt like [a pregnancy and abortion decision] would also be grounds for that in their household.”⁴²

⁴² Human Rights Watch phone interview with Stephanie Kraft Sheley, attorney, September 1, 2020.

The ACLU of Illinois represented “Sarah” (not her real name), a young person in a judicial bypass hearing whose parents were “very religious and strict” and whose father had hit her after he found out that she had a boyfriend. Sarah “feared for her physical safety if her parents learned that she was pregnant and planning to have an abortion.”⁴³

Katy Phipps, director of business operations at Family Planning Associates, regularly provides options counseling and emotional support to pregnant youth under age 18. In an interview, she fought back tears as she described assisting a young person from an immigrant family who obtained a judicial bypass because she was certain that if her family members learned of her pregnancy and abortion decision, “they’d send her back to her home country and she would face an honor killing.”⁴⁴ Phipps was not sure what ultimately happened to the young person after her abortion, but said it was “one of the cases that will probably always stay with us.” Dr. Allison Cowett, an obstetrician-gynecologist and co-medical director at Family Planning Associates who was also involved in this young person’s care, described the case as “heart-wrenching”: “She felt strongly that if her [family] knew she was having sex, she’d be seriously harmed. She was worried for her personal safety.”⁴⁵ Phipps added, “I’ll never forget that situation. I’ll never forget her. She just was so hopeful. ‘I know these are my goals. This is what I want. This is not the right time for me.’”⁴⁶

For young people who have faced abuse, the judicial bypass process does not offer any additional pathway to support. Emily Werth, a staff attorney with the ACLU of Illinois, explained that healthcare providers are trained to identify abuse and offer support—whether their patients under 18 involve an adult family member in their abortion decision or pursue judicial bypass. “Abortion providers have procedures to identify patients of any age who may be in unsafe situations and to offer resources and support,” Werth said. “They are mandated to report suspected abuse or neglect [of those under 18] to [the Department of Children and Family Services]. The judges who preside over judicial bypass

⁴³ ACLU of Illinois, Client Stories, January 2017-August 2020. On file with Human Rights Watch and the ACLU of Illinois.

⁴⁴ Human Rights Watch phone interview with Katy Phipps, director of business operations, Family Planning Associates, September 10, 2020.

⁴⁵ Human Rights Watch interview with Dr. Allison Cowett, obstetrician-gynecologist and co-medical director, Family Planning Associates, Chicago, Illinois, February 13, 2020.

⁴⁶ Human Rights Watch phone interview with Katy Phipps, director of business operations, Family Planning Associates, September 10, 2020.

hearings, on the other hand, have no such expertise or training to assist youth in unsafe home situations.”⁴⁷

Fear of Being Kicked Out

Many young people do not involve a parent in their abortion decision because they fear they will be kicked out of the home and/or isolated financially. For example, Dr. Rebecca Commito, an obstetrician-gynecologist in Chicago, described counseling a young person whose mother was not part of her life, and who lived with her father but “didn’t have a supportive or affirming relationship with him.” Dr. Commito explained that the young person’s father had threatened to throw her out of the house if she became pregnant: “It wasn’t safe for her to share [her abortion decision] with her dad. She said if she did, she wouldn’t have a place to live.... It wouldn’t be a safe environment to be in if she disclosed a pregnancy, let alone abortion.”⁴⁸

Dr. Allison Cowett provided abortion care to a 16-year-old who chose to go through the judicial bypass process. The young person told her:

My mother is very strict with me. 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?⁴⁹

Trisha Rich, a volunteer attorney with the JBCP who estimated that she had represented about 20 youth seeking judicial bypass since 2013, assisted a young person who was born in the United States but whose parents were immigrants. “Her parents had told her and her sister both that if they ever got pregnant, they’d send them [away to the parents’ country of origin]. When her older sister did get pregnant, they sent her [away] and told her she couldn’t come back until she was married. The sister didn’t return for years and years and

⁴⁷ Email from Emily Werth, staff attorney, ACLU of Illinois, to Human Rights Watch, February 10, 2021.

⁴⁸ Human Rights Watch phone interview with Dr. Rebecca Commito, obstetrician-gynecologist, October 15, 2020.

⁴⁹ Human Rights Watch interview with Dr. Allison Cowett, obstetrician-gynecologist and co-medical director, Family Planning Associates, Chicago, Illinois, February 13, 2020.

years.” Rich said that when her client became pregnant, she explained clearly, “My parents said they’ll send me [away], and they’re serious. ... I don’t even know anyone there.”⁵⁰

Another attorney said he had a client who had been kicked out of her home because of a prior pregnancy scare. When his client actually became pregnant, the attorney said, “She had [already] experienced the harm that she now knew was going to come [if she notified her parents].”⁵¹

Ashley Olson, another volunteer attorney with the JBCP, represented a young person with a similar story: “She had an older sibling who had gotten pregnant as a teenager. When her parents found out about her older sibling being pregnant, that sibling was kicked out of the house.... That was the big reason ... [my client] did not want to tell her parents.”⁵²

Fear of Being Forced to Continue an Unwanted Pregnancy

Many people interviewed for this report said young people under 18 expressed fears that their parents would force them to continue an unwanted pregnancy against their wishes if notified of the young person’s abortion decision.

One social worker who regularly counsels pregnant young people, including those who pursue judicial bypass, said the reason most young people she encountered chose judicial bypass was because “their parents are religious and would never accept them getting an abortion.”⁵³ “They’re afraid that the choice will be taken away by their parent,” another social worker explained.⁵⁴

The ACLU of Illinois represented “Avery” (not her real name), a 16-year-old client who worked three days a week as a cashier and was responsible for caring for six younger siblings: “[She] had an older sister who had gotten pregnant as a teenager, and [her] parents had forced her to continue the pregnancy but then kicked her out of their home.”

⁵⁰ Human Rights Watch phone interview with Trisha Rich, attorney, December 3, 2020.

⁵¹ Human Rights Watch phone interview with attorney, September 2, 2020.

⁵² Human Rights Watch phone interview with Ashley Olson, attorney and volunteer, Illinois Judicial Bypass Coordination Project Hotline, September 8, 2020.

⁵³ Human Rights Watch phone interview with social worker, September 9, 2020.

⁵⁴ Human Rights Watch phone interview with social worker, October 9, 2020.

When Avery learned she was pregnant, “she feared that the same thing would happen to her.”⁵⁵

“Julia,” another ACLU of Illinois client, had a similar experience. She was a 16-year-old sophomore in high school with plans to attend college after graduation. When Julia learned she was pregnant, “she knew she could not tell her parents about the pregnancy. In the past, Julia’s parents had told her that if she became pregnant, they would force her to continue the pregnancy and drop out of school to get a job and care for the baby.”⁵⁶

Fear of Harming Family Relationships

Another common fear articulated by pregnant youth, according to the people interviewed for this report, is that involving a parent in their abortion decision will strain, deteriorate, or ruin familial relationships. Leah Bruno, an attorney who has represented around 50 youth in bypass hearings since 2013, said young people with these kinds of concerns generally “fall into two camps”: 1) those who hope to maintain largely positive relationships with their parents; and 2) those who have “challenging relationships already” and do not want to risk destabilizing those relationships further.⁵⁷

For example, Dr. Allison Cowett provided abortion care for a young person who was being raised by a single father and strongly felt that involving him in her abortion decision would “be very straining” on their otherwise good relationship. “She did not feel like she could tell her father about this.” Dr. Cowett’s patient had ample support in her abortion decision from other adults in her life, but she had to pursue judicial bypass because none of them met the definition of a qualifying adult family member under Illinois’ PNA law.⁵⁸

In contrast, Leah Bruno described working with a young person who had “a very tumultuous relationship” with her only living parent. The client “was trying to preserve what small amount of harmony there could be by terminating the pregnancy without involving her [parent].... It was clear she was responsible for herself while still living in her

⁵⁵ ACLU of Illinois, Client Stories, January 2017-August 2020. On file with Human Rights Watch and the ACLU of Illinois.

⁵⁶ ACLU of Illinois, Client Stories, January 2017-August 2020. On file with Human Rights Watch and the ACLU of Illinois.

⁵⁷ Human Rights Watch phone interview with Leah Bruno, attorney, September 14, 2020.

⁵⁸ Human Rights Watch phone interview with Dr. Allison Cowett, obstetrician-gynecologist and co-medical director, Family Planning Associates, October 6, 2020.

[parent's] home.... Financially she was taking care of herself. She was 16. And it was clear that she had been taking care of herself for a long period of time already.”⁵⁹

Unstable Family Situations

In some circumstances, young people do not involve parents because their families are experiencing unstable or difficult situations, and they fear burdening already-struggling parents.

Dr. Amber Truehart, an obstetrician-gynecologist at the University of Chicago, provided abortion care to a young person who sought judicial bypass because her father was “not in the picture” and her mother lived in another state and was confronting health, legal, and socio-economic challenges:

Her mom had coronavirus at the time and didn't have stable housing. [My patient] was not even sure where [her mom] was.... Her mom was already dealing with a lot of other stuff. ... She didn't want to add one more thing to what her mom was already dealing with. She thought her mom would view her differently afterwards when she returned home.⁶⁰

Jill Adams, an attorney who has represented young people in bypass hearings outside of the Chicago area, described a case in which her client's mother had died months earlier and the client had moved around to different family members' homes since her mother's death. “[At some point after] her mother died, she went to live with her father, but things weren't going so well. She didn't have that strong of a relationship with her dad.... He gave her a place to stay, but there was no closeness.”⁶¹

⁵⁹ Human Rights Watch phone interview with Leah Bruno, attorney, September 14, 2020.

⁶⁰ Human Rights Watch phone interview with Dr. Amber Truehart, obstetrician-gynecologist, University of Chicago, December 2, 2020.

⁶¹ Human Rights Watch phone interview with Jill Adams, attorney, September 14, 2020.

No or Minimal Contact with a Parent

Among the young people harmed by PNA are those without any parent or other qualifying adult family member in their lives, or those who have only minimal contact with their parents.

A social worker recalled counseling an undocumented young person who had been separated from her family in an immigration detention facility when they entered the United States: “She didn’t speak any English. She was terrified. The pregnancy was a result of a very violent sexual assault.” The young person wanted an abortion, but providers were unable to reach her parents because they had been separated. The social worker explained: “It was a real mess. Ultimately, ... she got a judicial bypass, [but] it was a heartbreaking one. There were so many complications and barriers.”⁶²

Dr. Rebecca Commito, an obstetrician-gynecologist in Chicago who provides abortion care for young people, explained:

The vast majority of young people have an adult figure they feel safe disclosing their abortion decision to and [making] part of that process. But there is a significant and important handful of people who live outside of a traditional family unit for survival or because of whatever happened in their family. They may not logistically be able to get in touch with a family member that follows the legislative criteria. The law doesn’t mirror their family.

Dr. Commito noted that young people who are not able to involve a parent in their abortion decision often “seek out other mature adults for support. An older sister, a partner’s family members, an aunt, a cousin. Families look different. Young people find a support person in another way.”⁶³

The ACLU of Illinois represented “Stella” (not her real name), a 17-year-old client who lived with her aunt because her father had died, and “she had a volatile relationship with her mother, who had sometimes been violent toward [her].” When Stella found out she was

⁶² Human Rights Watch phone interview with social worker, September 9, 2020.

⁶³ Human Rights Watch phone interview with Dr. Rebecca Commito, obstetrician-gynecologist, October 15, 2020.

pregnant, she talked with her aunt about her options, but she “was scared that her mother would become violent if she found out about the pregnancy.” However, Stella’s aunt could not be the one to receive official notice of the abortion under Illinois’ law because the aunt did not have legal guardianship, so Stella had to go through the judicial bypass process.⁶⁴

Gail Eisenberg, a volunteer attorney with the JBCP, described the situation of a young person she represented in a judicial bypass hearing: “I had one client whose mother was in jail. Her father wasn’t in the picture. There were no other adult family members [that qualify] under the [Parental Notice of Abortion] Act that she could notify. She didn’t want to create any more stress on her mother in jail than she needed to.”⁶⁵

⁶⁴ ACLU of Illinois, Client Stories, January 2017-August 2020. On file with Human Rights Watch and the ACLU of Illinois.

⁶⁵ Human Rights Watch interview with Gail Eisenberg, attorney, Chicago, Illinois, February 11, 2020.

III. Barriers to Accessing Judicial Bypass

Under state law, young people who wish to obtain an abortion without notifying one of the qualifying adult family members can go through a judicial bypass process, as described above, to demonstrate to a judge that 1) they are 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.⁶⁶ Despite the strenuous efforts of a compassionate and dedicated network of care providers, attorneys, and volunteers, young people face formidable logistical hurdles throughout the process, particularly around accessing information, communicating safely, scheduling hearings, and securing transportation. Many young people are understandably overwhelmed by the process, and some are unable to navigate it.

A volunteer with the Judicial Bypass Coordination Project's free, confidential hotline for young people seeking information and assistance regarding PNA summarized some of the challenges: "The bulk of the calls I get are young women who are completely resolute in their decisions. They have taken home pregnancy tests, they have gone to a clinic, received options counseling, are clear that they are terminating their pregnancy. This is just the next box they have to check. But they are freaked out because it's a bizarre process to have to go through. The judicial bypass process is so strange. When in your life would you think, 'I went to the doctor, and they told me I have to get a lawyer.' It's a bizarre process to have to go through to get medical care. ... Then you need to figure out logistics, what day you'll miss school, [how to establish] plausible deniability with parents about where you are."⁶⁷

Challenges Accessing Information and Confusion about PNA

Accessing the judicial bypass process requires young people to find safe ways to obtain information about the availability of this option in the first place. "It takes knowing who to ask, what to ask, knowing where to go to get access to resources," said Hannah Dismer, the education and research coordinator at Hope Clinic for Women. "For very low-income

⁶⁶ 750 ILCS 70, sec. 25(d)

⁶⁷ Human Rights Watch phone interview with volunteer, Illinois Judicial Bypass Coordination Project Hotline, September 15, 2020.

young people, for young people under the age of 16, ... there are significant barriers to even having the resources or knowing where to turn for these kinds of things. We've heard from people who wanted to pursue judicial bypass, and then we never heard from them again. We don't know what happens to them [in those situations].”⁶⁸

Valentina, an 18-year-old activist with the Illinois Caucus for Adolescent Health (ICAH), said many young people she knew had no idea what judicial bypass was: “Not everyone has that information. It's not widely known.” Valentina said her high school sex education class was “abstinence-based” and did not even mention abortion, much less judicial bypass. She wondered, “Who knows how many young people ... actually know that the ACLU is there for them for judicial bypass?”⁶⁹

Yasmine Ramachandra, a 23-year-old organizer with the National Asian Pacific American Women's Forum (NAPAWF) Chicago Chapter, supported a friend who was worried she might be pregnant during her senior year of high school. “That's when I first heard about PNA,” she said. Yasmine and her friend are both Asian American Pacific Islander (AAPI) and Yasmine explained that even though her friend knew she wanted an abortion, she could not involve her parents. They learned judicial bypass was an option but could not find resources about navigating the process. “We were trying to pull together money to see if we could pay someone to help my friend go to court [for a judicial bypass]. We were thinking, ‘What are the chances we'd even be able to get to court? How do we talk to a judge about this? Why do I have to explain to someone else that I want this to happen? They're going to hear such a personal thing.’ As we were reaching out to clinics and trying to talk it through, as we were panicking, she got a negative pregnancy test [but] it really scared her.”⁷⁰

When young people do learn that judicial bypass is even an option, many are very intimidated. One young person who was granted a judicial waiver wrote in response to an

⁶⁸ Human Rights Watch phone interview with Hannah Dimer, education and research coordinator, Hope Clinic for Women, September 2, 2020.

⁶⁹ Human Rights Watch phone interview with Valentina, organizer, Illinois Caucus for Adolescent Health (ICAH), November 13, 2020.

⁷⁰ Human Rights Watch phone interview with Yasmine Ramachandra, organizer, National Asian Pacific American Women's Forum (NAPAWF), December 2, 2020.

anonymous survey, “It was scary at first not knowing what to expect.” Another wrote, “The process seemed really overwhelming at first.”⁷¹

Dr. Amber Truehart, an obstetrician-gynecologist at the University of Chicago, counseled a young person in the foster system about the PNA law, and said her patient was deeply distressed about navigating the process:

She didn’t even know who she was supposed to [notify] because of how complicated her social situation was.... She was very overwhelmed by the process. She was crying on the phone, saying ‘It’s never going to happen if I have to do all these things. It’s never going to happen.’ She had irregular periods, so she wasn’t sure how far along she was. As she thought of having to do these things [the bypass process entailed], [when] she knew she had limited alone time, limited phone time. ... It was really hard to get her to trust that if we got her the right resources, we’d figure out her situation.⁷²

Volunteers with the JBCP’s confidential hotline said young people often expressed confusion around the process.⁷³ One volunteer explained, “It’s a lot to juggle mentally... The mental gymnastics of the timeline and figuring out ‘If I’m this many weeks along [in a pregnancy], my procedure is scheduled for this day, I need a bypass ruling by this day.’ They are under a lot of stress, and they definitely convey that stress and anxiety, not about the procedure or the decision itself, but about the process.”⁷⁴

“One of the biggest things we see is confusion with what the law means,” said Dr. Erin King, an obstetrician-gynecologist and executive director of Hope Clinic for Women. Dr. King said her patients sometimes thought the law required parental consent, rather than parental notification, or that two parents had to be involved. She also recounted a

⁷¹ Responses to anonymous online survey; for more information, see methodology.

⁷² Human Rights Watch phone interview with Dr. Amber Truehart, obstetrician-gynecologist, University of Chicago, December 2, 2020.

⁷³ Human Rights Watch phone interviews with volunteers, Illinois Judicial Bypass Coordination Project Hotline, September 8, 10, 11, 15, and 21 2020.

⁷⁴ Human Rights Watch phone interview with volunteer, Judicial Bypass Coordination Project confidential hotline, September 15, 2020.

situation where a young person struggled to understand how to comply with the law for several weeks:

This patient was 15 and living with an aunt who wasn't her legal guardian. Her mom was still her legal guardian but not a trusted adult in her life and was hard to notify because she often didn't know where her mom was. [The young person] was living in a state nearby, a five- or six-hour drive away.... It took a good four to six weeks of her trying to manage this herself, when she finally did get in touch with someone at the clinic who had more information to help her comply with the law without having direct contact with her mom.... We were able to see her for an abortion, but it was a good six weeks after she had started trying to [pursue an abortion].⁷⁵

Gail Eisenberg, a volunteer attorney with the JBCP, worked with a young person who was under the impression she needed a parent's involvement *and* a judicial waiver in order to get abortion care. Eisenberg was preparing the young person for the court hearing when her client disclosed that her mother was involved and supported her abortion decision. "She was under the impression that it was an absolute requirement [for all young people] to get a judicial bypass," even if they had a parent involved. "She was going through this whole process for no reason."⁷⁶

Safe Communication Challenges

Once young people know judicial bypass is an option and understand the steps involved, they have to connect with an attorney, speak with the attorney over the phone to prepare for a judicial hearing, and receive counseling on options from a trained provider. Young people living with their parents must go through each of these steps without their parents finding out and triggering the harmful response(s) they are seeking to avoid, and each of these conversations or points of connection risks exposing them to a loss of confidentiality.

⁷⁵ Human Rights Watch phone interview with Dr. Erin King, obstetrician-gynecologist and executive director, Hope Clinic for Women, September 10, 2020.

⁷⁶ Human Rights Watch phone interview with Gail Eisenberg, attorney, September 3, 2020.

One young person who went through judicial bypass shared this reflection on the process in response to an anonymous survey: “The most difficult part was trying to find moments alone to talk to each person.”⁷⁷ Volunteers and attorneys with the ACLU’s Judicial Bypass Coordination Project described talking with young people who spoke to them in hushed tones from inside a closet, hastily hung up the phone, or rushed through a conversation when a parent returned home unexpectedly for fear of being exposed.⁷⁸ “I’ve had calls drop in the middle of a conversation because parents walked in,” said one social worker with Planned Parenthood of Illinois.⁷⁹

Retired Judge Susan Fox Gillis represented a young person seeking a judicial bypass, and said her client had to leave the house to talk on the phone in order to prepare for her court hearing: “During our second phone call, she was walking around the block. It was nighttime and dark. I was concerned about her safety.”⁸⁰

“It’s a lot of logistics for a young person to be dealing with,” said Dr. Rebecca Commito, an obstetrician-gynecologist in Chicago. “It weighs on them having to get on the phone, talk to someone in a private place, worry about their own safety. I have young people calling me from school in between [class] periods, trying to figure out when they can leave school safely to talk to me.... It’s a heaviness to have to go through so many hoops in an already tumultuous environment.”⁸¹

Some parents closely monitor young people’s phones and other communications. Attorney Leah Bruno, for example, represented a client in a judicial bypass hearing who could only communicate with her when she went to her brother’s house: “Even though she had her own phone, she was concerned that her parents would look at her phone or see her talking on the phone and overhear her conversation. ... She said her parents could see any texts that she was receiving or sending.”⁸²

⁷⁷ Response to anonymous online survey; for more information, see methodology.

⁷⁸ Human Rights Watch phone interviews with Leah Bruno, attorney, September 14, 2020; volunteer, Illinois Judicial Bypass Coordination Project Hotline, September 15, 2020.

⁷⁹ Human Rights Watch phone interview with, licensed clinical social worker, November 5, 2020.

⁸⁰ Human Rights Watch interview with Judge Susan Fox Gillis, retired associate judge, County Division, Circuit Court of Cook County, Chicago, Illinois, February 12, 2020.

⁸¹ Human Rights Watch phone interview with Dr. Rebecca Commito, obstetrician-gynecologist, October 15, 2020.

⁸² Human Rights Watch phone interview with Leah Bruno, attorney, September 14, 2020.

Scheduling and Transportation Challenges

Another highly challenging part of the judicial bypass process for many young people is scheduling a hearing at court and travelling to and from the hearing. Before the Covid-19 pandemic, hearings were held exclusively in person during regular business hours, and young people had to secure transportation to the courthouse and arrange time away from school, work, or other obligations without their parents being alerted. Many young people under 18 do not drive or do not have access to a car and have to find safe and reliable transportation both to court and to a clinic for their abortion care.

“It’s really difficult and complicated,” explained attorney Trisha Rich, who has represented about 20 young people in judicial bypass hearings. “They have to skip school without anyone noticing, get all the way to the courthouse, and get around court without being noticed.”⁸³

Stephanie Kraft Sheley, also an attorney, said that it was an enormous challenge for some of her clients “just getting to court when the court is open and available to hear the case, and getting to the clinic at times when the clinic is open and providing service,” hours which often coincide with the times young people are expected to be in school. “Certain schools if you don’t show up, they have an automated message that goes out to the parents that the child isn’t in school, so [it is a challenge] trying to get around that, and make sure the parents are not alerted. Some [parents] have trackers on [young people’s] cell phones, so they have to turn off their cell phones when they are traveling, which makes connecting at court difficult.”⁸⁴

The challenges can be especially formidable for young people traveling long distances to access the judicial bypass process and abortion care. A 2020 research study published in the *Journal of Adolescent Health* based on the experiences of those who went through judicial bypass in Illinois in 2017 and 2018 found that young people sometimes traveled a considerable distance to the courthouse for their hearing. The authors explained:

Distances traveled varied significantly by state and region of residence.
Although minors living in the City of Chicago traveled an average of 9.0

⁸³ Human Rights Watch phone interview with Trisha Rich, attorney, December 3, 2020.

⁸⁴ Human Rights Watch phone interview with Stephanie Kraft Sheley, attorney, September 1, 2020.

miles, those from Illinois, but outside the Chicago region, traveled an average of 33.3 miles, and those from out-of-state traveled 130.8 miles.⁸⁵

Katherine Davis, a volunteer with the Judicial Bypass Coordination Project’s confidential hotline, said young people often expressed a range of concerns as they learned about the process: “One of the biggest concerns is how quickly it can be done. The concerns of trying to find a way to get transportation to a courthouse. Potentially missing school. Fears of parents being notified of that [missing school]. Attendance. Because court closes, the latest you can go is 4 p.m., and it’s not open on the weekends. You really have to strategize.” She said a lot of callers “are really terrified of a parent finding out” as a result.⁸⁶

Challenges during the Covid-19 Pandemic

To avoid the spread of Covid-19, Illinois courts have held judicial bypass hearings remotely, using an online platform, since mid-March 2020. Experts said these online hearings have eased logistical barriers for some young people but heightened risks around confidentiality and safety for others, since many young people can only rarely leave the home due to Covid-19 restrictions and precautions.

Emily Werth, a staff attorney with the ACLU of Illinois, said initially there were challenges scheduling virtual hearings and ensuring court orders reached clinics in a timely fashion. Once a system for online hearings was in place, transportation became less of a barrier for clients, but new concerns emerged around confidentiality. Werth commented:

[In the past], once we got [our clients] to court, the only people allowed in were the attorney, the client, a court reporter, and a judge. Once they got themselves to court—which was really tricky—we knew how the process would go, we could guarantee confidentiality. 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

⁸⁵ Lauren J. Ralph, Lorie Chaiten, Emily Werth, et al., “Reasons for and Logistical Burdens of Judicial Bypass for Abortion in Illinois,” *Journal of Adolescent Health* (2020), doi: <https://doi.org/10.1016/j.jadohealth.2020.08.025> (accessed December 1, 2020).

⁸⁶ Human Rights Watch phone interview with Katherine Davis, volunteer, Illinois Judicial Bypass Coordination Project Hotline, September 10, 2020.

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].⁸⁷

Attorneys and healthcare providers said some young people lacked access to reliable internet for online hearings. “Not every minor has a laptop with Wi-Fi that they can use to get on Zoom for a call with a judge,” said Dr. Erin King.⁸⁸ Sarah Bazzetta, a licensed clinical social worker at Planned Parenthood of Illinois, said they worked with a young person who didn’t have access to the internet and had to go to another location for her online hearing.⁸⁹ Attorney Stephanie Kraft Sheley represented a client who only had internet access on a cell phone, and her data usage was closely monitored by her parents, so she could not participate in an online video hearing without a spike in data usage being noticed by her parents.⁹⁰

Another attorney, Gail Eisenberg, expressed concern with online hearings requiring log-in information or appearing in browser histories and potentially exposing her clients to loss of confidentiality in that way. Eisenberg also said she feared technical difficulties or other aspects of online hearings complicating young people’s ability to demonstrate their maturity and credibility to a judge. “Eye contact is a big part for some of these judges in their assessment of a young woman’s maturity, and they often will put that in their orders, ‘She made eye contact.’ And eye contact on [video platforms] is difficult. Even the most studied person can be confused when looking at a judge versus looking at the camera.”⁹¹

Young People Who Fall Through the Cracks

The people I think who are most affected by this law are the ones who never make it through our doors.

—Amy Whitaker, medical director, Planned Parenthood of Illinois, February 13, 2020

⁸⁷ Human Rights Watch interview with Emily Werth, staff attorney, ACLU of Illinois, November 10, 2020.

⁸⁸ Human Rights Watch phone interview with Dr. Erin King, obstetrician-gynecologist and executive director, Hope Clinic for Women, September 10, 2020.

⁸⁹ Human Rights Watch phone interview with Sarah Bazzetta, licensed clinical social worker, Planned Parenthood of Illinois, September 9, 2020.

⁹⁰ Human Rights Watch phone interview with Stephanie Kraft Sheley, attorney, September 1, 2020.

⁹¹ Human Rights Watch phone interview with Gail Eisenberg, attorney, September 3, 2020.

Nearly everyone interviewed for this report expressed concern about young people who never learn judicial bypass is an option or are ultimately unable to follow through with the process. A social worker described how difficult it is to capture the experiences of those who do not pursue or complete the process:

The people that go through judicial bypass, they're the most resourceful minors there are. ... What we don't know is how many people never get that far. Who are pregnant and end up telling parents anyway, and we then don't know what those consequences might be. They may continue their pregnancy, may come in for abortion and have told their parents but are dealing with a lot of crap from the parent, things like that.⁹²

Leah Bruno, an attorney who estimated she had represented about 50 young people in judicial bypass proceedings in recent years, said:

I have had clients that decided they didn't want to proceed with the bypass. They would prefer to deal with the fallout of telling their parents as opposed to coming downtown and going to court.... [We don't know] if that meant they decided to see the pregnancy through until term, or decided to tell their parents and still got an abortion. It's impossible to say what ultimately happened. I have clients that I talk to [once or twice] and never hear from again.⁹³

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 told Human Rights Watch. This young person did not experience any harm from taking the herbal remedy, but it also did not induce abortion.⁹⁴ Human Rights Watch has extensively documented how laws and policies that restrict

⁹² Human Rights Watch phone interview with social worker, October 9, 2020.

⁹³ Human Rights Watch phone interview with Leah Bruno, attorney, September 14, 2020.

⁹⁴ Human Rights Watch interview attorney. Name and date withheld for security.

access to abortion threaten the health and lives of pregnant people, delay and obstruct access to health care, and drive abortion underground, making it less safe.⁹⁵

Dr. Erin King emphasized how difficult it was for anyone to access abortion care, even without the obstacles forced parental involvement and judicial bypass create:

It's hard for anyone to get online, make an appointment, get money together, come into the clinic, take time off from school or work.... [Parental notification] is just one more step. It's one more thing. When you have ten barriers to overcome, it can ultimately break the system and you can't get to where you're going. ...You get everything in line and then you have to get past that last hurdle.⁹⁶

⁹⁵ See, for example: Human Rights Watch, *A Case for Legal Abortion: The Human Cost of Barriers to Sexual and Reproductive Rights in Argentina*, August 2020, https://www.hrw.org/sites/default/files/media_2020/09/argentinao820_web.pdf; Human Rights Watch, *Life or Death Choices for Women Living Under Honduras' Abortion Ban*, June 2019, <https://www.hrw.org/news/2019/06/06/life-or-death-choices-women-living-under-honduras-abortion-ban>; Human Rights Watch, *"It's Your Decision, It's Your Life": The Total Criminalization of Abortion in the Dominican Republic*, November 2018, <https://www.hrw.org/report/2018/11/19/its-your-decision-its-your-life/total-criminalization-abortion-dominican-republic>; Human Rights Watch, *World Report 2020* (New York: Human Rights Watch, 2020), El Salvador chapter, <https://www.hrw.org/world-report/2020/country-chapters/el-salvador>; Margaret Wurth, "No Woman Should Need to Beg for An Abortion," December 1, 2017, Human Rights Watch op-ed, <https://www.hrw.org/news/2017/12/01/no-woman-should-need-beg-abortion>; "Brazil: Revoke Regulation Curtailing Abortion Access," September 21, 2020, Human Rights Watch news release, <https://www.hrw.org/news/2020/09/21/brazil-revoke-regulation-curtailling-abortion-access>; Human Rights Watch, *Amicus Curiae Regarding Access to Abortion in Colombia*, January 30, 2020, <https://www.hrw.org/news/2020/01/30/amicus-curiae-regarding-access-abortion-colombia>.

⁹⁶ Human Rights Watch phone interview with Dr. Erin King, obstetrician-gynecologist and executive director, Hope Clinic for Women, September 10, 2020.

IV. The Harmful Consequences of the Parental Notice of Abortion Act and the Judicial Bypass Process

Research by Human Rights Watch and the ACLU of Illinois showed that the Illinois Parental Notice of Abortion Act (PNA) harms young people in numerous ways, whether they choose to notify a qualifying adult family member or to go through judicial bypass. 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 punish or humiliate them.

And even when young people are able to navigate the judicial bypass process, it delays their access to abortion care. Appearing before a judge to justify an abortion decision is stressful and emotionally taxing for many young people, and even traumatizing for some. Participating in the process risks violating their confidentiality. Though the overwhelming majority of petitions for judicial waivers have been granted since the PNA law went into effect, the process still has devastating effects on many young people who must go through it.

Forced Continuation of Unwanted Pregnancy

Human Rights Watch received reports of 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.

One social worker told Human Rights Watch that she tried to help a young person access abortion care after PNA went into effect. Her parents were extremely anti-abortion, and they knew that she was pregnant, but when they received notice that she planned to have an abortion, they prevented her from leaving the home: “At that point, her parents took away her car keys. We were asking does she have anyone who could take her, a boyfriend or friend, but her parents threatened to report her as a runaway and that the police would bring her back home.... She said, ‘There’s no way I’m going to be able to come in,’ and that

was horrible. ‘My parents are going to make me place the child up for adoption. I don’t want to do that.’ ... [Her parents] weren’t letting her out of their sight. She couldn’t go anywhere. She was a prisoner in her own home.... This person was forced to continue her pregnancy... Her autonomy was completely removed, taken away from her.” The provider was unsure about the ultimate outcome of the young person’s pregnancy, but she was unable to access abortion care at their facility.⁹⁷

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 was so daunted by parental notification and the judicial bypass process that she 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].”⁹⁸

Ricardo, an 18-year-old organizer with the Illinois Caucus for Adolescent Health (ICAH), described the story of a young person he knows who became pregnant before turning 18: “She was scared and didn’t want to continue the pregnancy. She wanted to go off to college.” Ricardo was unsure about whether the young person knew judicial bypass was an option. When she told her parents she wanted an abortion, “her parents told her ‘you’re not welcome back in this family if you [end the pregnancy]. ... We don’t believe in abortion.’” Ultimately, the young person continued the pregnancy and chose to parent, but “if it was up to her, she wouldn’t have continued the pregnancy.”⁹⁹

Nearly everyone interviewed for this report expressed concern for the unknown number of young people who were unable to navigate or access judicial bypass and therefore continued unwanted pregnancies against their wishes. Dr. Erin King, an obstetrician-gynecologist and executive director of Hope Clinic for Women, said “I think of all the people who probably started down that path and never made it to the end and stayed pregnant when they don’t want to be.”

⁹⁷ Human Rights Watch phone interview with social worker, October 9, 2020.

⁹⁸ Human Rights Watch phone interview with Dr. Amber Truehart, obstetrician-gynecologist, University of Chicago, December 2, 2020.

⁹⁹ Human Rights Watch phone interview with Ricardo, 18, youth organizer, Illinois Caucus for Adolescent Health (ICAH), November 13, 2020.

Unsupportive or Abusive Parents

Several healthcare providers interviewed for this report said some of their patients felt compelled to involve unsupportive parents or adult family members in their abortion decisions because of the PNA law.¹⁰⁰ Providers saw parents belittle, humiliate, or punish their patients while they received abortion care, even if the parents did not ultimately interfere with the young person's abortion decision. Sarah Bazzetta, a licensed clinical social worker at Planned Parenthood of Illinois, said, "I've seen [angry] parents coming in. Being insulting. Saying 'She's just sleeping around.'"¹⁰¹ Another social worker said she'd seen parents refuse to pay the extra cost for a young person to have sedation during a procedural abortion.¹⁰²

Dr. Amber Truehart, an obstetrician-gynecologist at the University of Chicago, said she provided abortion care to a young person whose mother refused to give her a ride home afterward. "We had a mom who left her daughter there [at the hospital] She said, 'You can get yourself home. Figure it out.'"¹⁰³ The young person had agreed to notify her mother in order to comply with the law, even though her mother did not support her decision.¹⁰³

Dr. Hillary McLaren described seeing similar interactions between young people and their parents while providing abortion care for patients under 18: "All it does having an unsupportive family member [involved in a young person's abortion decision] is just layer on guilt and shame and judgement."¹⁰⁴

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

¹⁰⁰ Human Rights Watch phone interviews with Sarah Bazzetta, licensed clinical social worker, Planned Parenthood of Illinois, September 9, 2020; Hannah Dimer, education and research coordinator, Hope Clinic for Women, September 2, 2020; Dr. Erin King, obstetrician-gynecologist and executive director, Hope Clinic for Women, September 10, 2020; social worker, October 9, 2020.

¹⁰¹ Human Rights Watch phone interview with Sarah Bazzetta, licensed clinical social worker, Planned Parenthood of Illinois, September 9, 2020.

¹⁰² Human Rights Watch phone interview with social worker, October 9, 2020.

¹⁰³ Human Rights Watch phone interview with Dr. Amber Truehart, obstetrician-gynecologist, University of Chicago, December 2, 2020.

¹⁰⁴ Human Rights Watch phone interview with Dr. Hillary McLaren, obstetrician-gynecologist, University of Chicago, December 3, 2020.

now because of that, I am scared about going home after this procedure.”¹⁰⁵ Hannah Dimer, the education and research coordinator at Hope Clinic for Women who works with Dr. King, described one case along these lines, where a young person had “an extremely abusive father,” and although she was not currently living with him “he was her only qualifying relative.” Providers talked with her about judicial bypass, but she was traveling from another state and faced numerous challenges. “She didn’t have a lot of resources or support. I don’t know that she had reliable cellular service. It was a really difficult situation.... I don’t know that [judicial bypass] would have been feasible for her to do. She was having to rely on others for transportation.”¹⁰⁶ The young person felt that notifying her father was the best option since she no longer lived with him, but his response to the notification still left her fearing for her safety. Ultimately, Hope Clinic helped ensure the young person had a safe place to go after her procedure and reported the case to the state authorities, but the young person was “very sad” and “exhausted,” in Dimer’s view. “The trauma she had to put herself through just so we could check a box of talking to her dad was a nightmare for her.”¹⁰⁷

Delaying Abortion Care

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 (6.4 days) to young people’s abortion-seeking timeline in Illinois.¹⁰⁸ The authors explained that 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. On average, an additional 6.3 days passed between the court hearing and the scheduled abortion care.¹⁰⁹

¹⁰⁵ Human Rights Watch phone interview with Dr. Erin King, obstetrician-gynecologist and executive director, Hope Clinic for Women, September 10, 2020.

¹⁰⁶ Human Rights Watch phone interview with Hannah Dimer, education and research coordinator, Hope Clinic for Women, September 2, 2020.

¹⁰⁷ Ibid.

¹⁰⁸ Lauren J. Ralph, Lorie Chaiten, Emily Werth, et al., “Reasons for and Logistical Burdens of Judicial Bypass for Abortion in Illinois,” *Journal of Adolescent Health* (2020), doi: <https://doi.org/10.1016/j.jadohealth.2020.08.025> (accessed December 1, 2020).

¹⁰⁹ Lauren J. Ralph, Lorie Chaiten, Emily Werth, et al., “Reasons for and Logistical Burdens of Judicial Bypass for Abortion in Illinois,” *Journal of Adolescent Health* (2020), doi: <https://doi.org/10.1016/j.jadohealth.2020.08.025> (accessed December 1, 2020).

Human Rights Watch analyzed data collected by the ACLU over a longer period of time—between 2017 and 2020—and found a slightly higher average of 6.9 days elapsed between a young person’s initial contact with the Judicial Bypass Coordination Project and their hearing, with a range from 0 to 47 days.

In some cases, the delays caused by going through the judicial bypass process left young people ineligible for medication abortion, a method available only up to the tenth week of pregnancy.¹¹⁰ Delays also required some patients to have multiple appointments over consecutive days to complete their abortion care. Abortion procedures can carry greater risks as a patient gets further into pregnancy, although abortion is still safer than continuing a pregnancy and giving birth.¹¹¹

The American Academy of Pediatrics Committee on Adolescence, in a 2017 policy statement entitled, “The Adolescent’s Right to Confidential Care When Considering Abortion,” explained the significance of timely access to abortion care for pregnant youth:

Timely access to medical care is especially important for pregnant teenagers because of the significant medical, personal, and social consequences of adolescent childbearing.... Minors generally suspect pregnancy later in its course than do adults. Adolescents are often confused about their right to confidential care, and even a perceived lack of confidentiality in health care regarding sexual issues deters them from seeking services. Once the minor presents for pregnancy counseling, mandatory parental involvement laws can delay medical care further.... Later-trimester abortions (after 14 weeks’ gestation) increase both the medical risks and financial costs to the patient, and a prolonged delay can eliminate abortion as an accessible option.¹¹²

¹¹⁰ Human Rights Watch interview with Dr. Allison Cowett, obstetrician-gynecologist and co-medical director, Family Planning Associates, Chicago, Illinois, February 13, 2020.

¹¹¹ Elizabeth Raymond and David Grimes, “The Comparative Safety of Legal Induced Abortion and Childbirth in the United States,” *Obstetrics & Gynecology*, vol. 119, no. 2 (2012), pp. 215-219; “The Safety and Quality of Abortion Care in the United States,” *National Academies of Sciences, Engineering, and Medicine*, 2018, doi: <https://doi.org/10.17226/24950> (accessed February 25, 2021).

¹¹² American Academy of Pediatrics Committee on Adolescence, “Policy Statement: The Adolescent’s Right to Confidential Care When Considering Abortion,” *Pediatrics*, vol. 139, no. 2 (2017), <https://pediatrics.aappublications.org/content/pediatrics/139/2/e20163861.full.pdf> (accessed December 11, 2020), p. 4.

Dr. Hillary McLaren, an obstetrician-gynecologist at the University of Chicago, said she treated a young person who was admitted to the hospital “very early in pregnancy.” She wanted to end the pregnancy, and “could have easily had a quick... procedure or low-risk medication abortion, which was her preference,” when she first sought care. But the young person did not have a family member she felt comfortable notifying about her abortion decision. “It sounded like a very unstable home situation where she didn’t have a very positive relationship with her mother, and her father was not involved. She was under the care of a grandparent,” who she believed would not support her abortion decision.

The concept of judicial bypass “was really overwhelming to her,” according to Dr. McLaren. “Our conversations would get to a point where we began talking about [the bypass process], and she’d just shut down.” Dr. McLaren said the young person eventually was able to involve a grandparent in her decision in order to comply with PNA and scheduled an abortion two months after her first appointment. “Now she’s two months further along... the further along patients are, the higher risk they are. And now medication abortion is off the table for her because she’s too far along now.”¹¹³

Dr. Erin King, also an obstetrician-gynecologist, described how the process of understanding and navigating PNA left one young person she treated struggling to access care for six weeks:

She had a parent who she didn’t trust, and who was unreliable to notify. It was so complicated and got her so much farther along in her pregnancy than she wanted to be. She wanted to see us for a medication abortion, and by the time she got to us, she was too far along to be a candidate and had to have a procedure [which was] not what she wanted and also more expensive.¹¹⁴

Katherine Davis, a volunteer with the Judicial Bypass Coordination Project’s confidential hotline, recounted talking with a young person who had arrived at an abortion clinic accompanied by her older sister, a trusted adult in her life, only to learn that her sister did

¹¹³ Human Rights Watch phone interview with Dr. Hillary McLaren, obstetrician-gynecologist, University of Chicago, December 3, 2020.

¹¹⁴ Human Rights Watch phone interview with Dr. Erin King, obstetrician-gynecologist and executive director, Hope Clinic for Women, September 10, 2020.

not qualify as an adult family member under the definition in the state law, and she would need to find another adult who fit the legislative criteria or go through judicial bypass. Davis recalled, “I could just hear the sadness and exasperation that [they couldn’t access care] even though they’d taken steps to plan for the abortion, and go to the facility, and talk to the doctor. They were just crushed.”¹¹⁵

Dr. Erin King said it’s relatively rare for patients to be turned away at the point of care because they have not gone through the steps to comply with PNA, as most young people reach out to clinics by phone and are told about the state’s parental notification requirement before their appointment is scheduled. However, “Every once in a while, someone [under age 18] shows up and we have to tell them, ‘We can’t do your procedure today.... [It happens] when patients make an appointment online, or put their birthday in wrong, or we can’t get in touch with them ahead of their appointment.... If a parent isn’t with them, we have to notify a parent, and then 48 hours have to pass before the procedure.’”¹¹⁶

Dr. Amber Truehart, an obstetrician-gynecologist at the University of Chicago, counseled a young person in the foster care system about the PNA law, and said the judicial bypass process significantly delayed her abortion care, adding three and half weeks to her abortion timeline:

It took something that would have been a one-day procedure and made it a two-day procedure. She needed cervical preparation and had to be out of house for a prolonged period of time. The cervical preparation made her uncomfortable, but [she] couldn’t react to that discomfort, because didn’t want anyone to know [she was getting an abortion].¹¹⁷

The ACLU of Illinois represented “Olivia” (not her real name), a 17-year-old client who had just graduated high school and planned to attend college. When she learned she was

¹¹⁵ Human Rights Watch phone interview with Katherine Davis, volunteer, Illinois Judicial Bypass Coordination Project Hotline, September 10, 2020.

¹¹⁶ Human Rights Watch phone interview with Dr. Erin King, obstetrician-gynecologist and executive director, Hope Clinic for Women, September 10, 2020

¹¹⁷ Human Rights Watch phone interview with Dr. Amber Truehart, obstetrician-gynecologist, University of Chicago, December 2, 2020.

pregnant, Olivia wanted an abortion, but she “knew that she couldn’t tell her mother about the situation” because her mother had kicked her older brother and his girlfriend out of the house when they became pregnant as teenagers, and “they struggled to find alternative housing.” Olivia chose to pursue judicial bypass, but it took her two months from the time she discovered she was pregnant to complete the bypass and schedule an abortion. “By the time [she] was finally able to obtain the judicial bypass and abortion, she was just a week away from being too far along to even have a legal abortion in Illinois.”¹¹⁸

Waiting Until Turning 18

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. This option is only available for 17-year-olds who are early enough in their pregnancy, and close enough to their eighteenth birthday, to be able to postpone abortion care without exceeding gestational cutoffs.

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.”¹¹⁹

Katy Phipps, who regularly counsels pregnant youth about their options, said she had counseled a 17-year-old who was two weeks away from turning 18:

It took her from a two-day procedure to a three-day procedure. Staff talked with her extensively about... getting a judicial bypass. She just felt that waiting two weeks was acceptable compared to going through that [court]

¹¹⁸ ACLU of Illinois, Client Stories, January 2017-August 2020. On file with Human Rights Watch and the ACLU of Illinois.

¹¹⁹ Email from social worker to Human Rights Watch, February 14, 2020.

process. She was in the second trimester of pregnancy, so she needed additional cervical dilation prior to the procedure.¹²⁰

Other providers recounted treating patients who made similar calculations to avoid involving unsupportive parents in their abortion decisions. Dr. Amber Truehart said she had provided abortions to two patients who waited until they turned 18 to avoid notifying a parent. One patient was two-and-a-half weeks away from her eighteenth birthday. “I noticed on our schedule that [her appointment] was far out, and it didn’t look like the clinic was full. I called her and said we can move this up, but she said her [eighteenth] birthday was two days before [her appointment]She didn’t know what her parents would think about the decision and was worried they would pressure her to continue the pregnancy,” Dr. Truehart explained.¹²¹

In the other case, Dr. Truehart said a patient arrived at her clinic for abortion care at 13 weeks gestation and having just turned 18 years old. She had made her abortion decision when she was only 10 weeks pregnant. “She waited to make the appointment so it would be after she was 18.... She was concerned that her mom would kick her out. She had an older sister who had gotten pregnant and had gotten kicked out [of the house],” and was fairly certain her mother would react the same way to her pregnancy. According to Dr. Truehart, the delay meant she had to get “cervical ripening that she wouldn’t have needed [otherwise],” which makes patients feel “crampy and nauseous.”¹²²

Psychological and Emotional Toll of Judicial Bypass

Nearly everyone interviewed for this report said young people expressed or demonstrated fear, anxiety, and/or stress around having to appear before a judge in order to be able to pursue their abortion decision. One young person who went through judicial bypass wrote in an anonymous survey that the hearing was “very stressful and nerve-wracking.”¹²³

¹²⁰ Human Rights Watch phone interview with Katy Phipps, director of business operations, Family Planning Associates, September 10, 2020

¹²¹ Human Rights Watch phone interview with Dr. Amber Truehart, obstetrician-gynecologist, University of Chicago, December 2, 2020.

¹²² Human Rights Watch phone interview with Dr. Amber Truehart, obstetrician-gynecologist, University of Chicago, December 2, 2020.

¹²³ Response to anonymous online survey; for more information, see methodology.

Social worker Sarah Bazzetta summarized what they had heard over and over from patients who were pursuing judicial bypass: “The fear. Fear of the whole process. What if a parent finds out? What’s going to happen to me? It’s just scary. And we have to probe about ‘what are you afraid of happening to you?’ It’s worrisome to hear people be so fearful of their parents.”¹²⁴

“This is the most stressful time in their life, and we’re making it more stressful,” said Gail Eisenberg, an attorney who has represented more than 20 youth in judicial bypass hearings. “It’s already at an emotional time in their development, and we’re telling them to march into a courthouse and defend their [abortion] decisions on threat of [being forced to continue an unwanted pregnancy]. I don’t think there’s a way that it could be nontraumatic. We try our best, but I’m sure this is something they’ll remember.”¹²⁵

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.¹²⁶

Though attorneys and providers reassure young people that petitions for judicial waivers are typically granted, “There’s always that fear of [them] saying the wrong thing and somehow messing up their chances,” one attorney explained.¹²⁷ “Every single one of them thinks their request is going to be denied,” another attorney added.¹²⁸

During bypass hearings, judges require young people to answer intimate and personal questions about their health and lives, including why they do not feel ready to parent, why they are not choosing adoption, their understanding of the potential complications from abortion, and plans for preventing unplanned pregnancy in the future. “It’s definitely intrusive,” said one attorney.¹²⁹ One young person who was granted a judicial waiver

¹²⁴ Human Rights Watch phone interview with social worker, September 9, 2020.

¹²⁵ Human Rights Watch interview with Gail Eisenberg, attorney, Chicago, Illinois, February 11, 2020.

¹²⁶ Human Rights Watch phone interview with Stephanie Kraft Sheley, attorney, September 1, 2020.

¹²⁷ Human Rights Watch phone interview with Ashley Olson, attorney and volunteer, Illinois Judicial Bypass Coordination Project Hotline, September 8, 2020.

¹²⁸ Human Rights Watch phone interview with Trisha Rich, attorney, December 3, 2020.

¹²⁹ Human Rights Watch phone interview with attorney, September 2, 2020.

reflected that: “Mentally it’s taxing to have to talk [about] abortion over and over again to different people.”¹³⁰

For young people with difficult or complicated situations at home, going through judicial bypass can force them to relive or retell painful histories of abuse, neglect, or estrangement. Leah Bruno, an attorney, represented a young person who had “a very tumultuous relationship” with her only living parent. She shared how her client had to describe the difficulties of her home life and the challenges, pain, and loss she had experienced over and over in the process of preparing for the hearing and then during the hearing before a judge.¹³¹

Some attorneys said judges had made stigmatizing comments or given their clients demeaning lectures before granting their petitions. One attorney said a judge repeated harmful misinformation about abortion that is unsupported by scientific evidence and often cited to discourage people from seeking abortion care. Another attorney said a judge repeatedly concluded bypass hearings by explaining why young people should involve their parents in their abortion decision—even while granting their petitions—and stating, “I would want my daughter to tell me.”¹³²

Dr. Hillary McLaren, an obstetrician-gynecologist at the University of Chicago, described the consequences of the process from a developmental perspective: “I think it [judicial bypass] really devalues their independence. It devalues their autonomy, and it undermines their own understanding of their health. And I think it keeps young people from getting the care that they know that they want and need.”¹³³

The Context of the Criminal Legal System and Systemic Racism

Several interviewees 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.

¹³⁰ Response to anonymous online survey; for more information, see methodology.

¹³¹ Human Rights Watch phone interview with Leah Bruno, attorney, September 14, 2020.

¹³² Human Rights Watch phone interviews with attorneys. Names and dates withheld for security.

¹³³ Human Rights Watch phone interview with Dr. Hillary McLaren, obstetrician-gynecologist, University of Chicago, December 3, 2020.

One attorney observed a “feeling of shame,” among some of his clients. “Like they’re there because they’ve done something wrong,” he said.¹³⁴ Another 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.¹³⁵

Hannah Dimer, who regularly counsels pregnant youth under age 18, said the prospect of going to court could be especially traumatizing for Black, Indigenous and other young people of color coming from communities heavily impacted by racism in the criminal justice system: “Especially for young people of color who the judicial system disproportionately impacts very negatively, the idea of interacting with the judicial system at any point is terrifying, justifiably so. We put people through that trauma of feeling unsafe or feeling like some stranger is going to decide the rest of my life.”¹³⁶

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. Among the subset of young people who agreed to share their information for research purposes, 82 percent identified as Black, Latinx, Asian, or multiracial.¹³⁷

¹³⁴ Human Rights Watch phone interview with attorney, September 2, 2020.

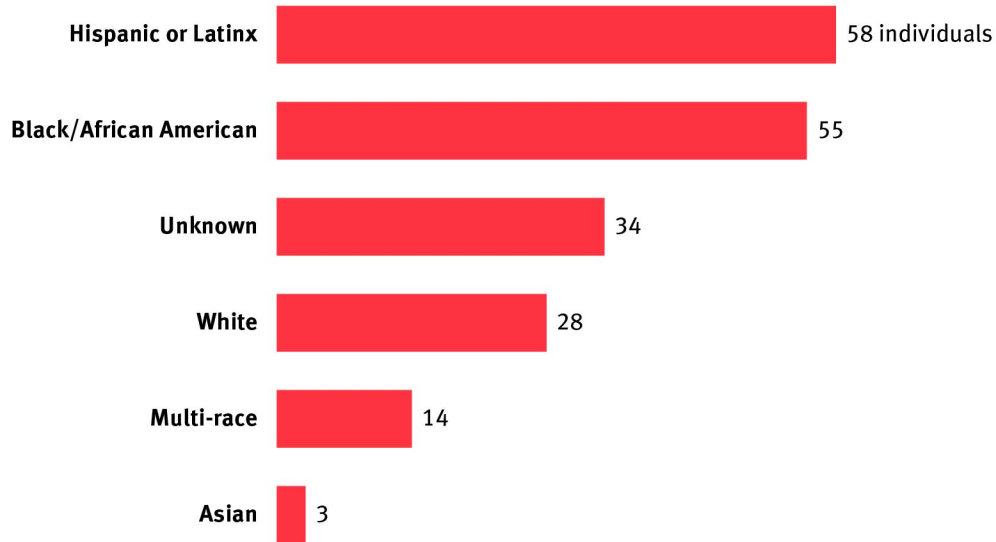
¹³⁵ Human Rights Watch phone interview with attorney, September 14, 2020.

¹³⁶ Human Rights Watch phone interview with Hannah Dimer, education and research coordinator, Hope Clinic for Women, September 2, 2020.

¹³⁷ 192 ACLU of Illinois clients agreed to share their information for research purposes. Race and/or ethnicity were reported for 158 of those clients.

Race/Ethnicity of Youth who Obtained Judicial Bypass in Illinois

Data collected by the ACLU of Illinois, January 2017 - June 2020



Structural Racism and Systemic Inequalities Impact Pregnancy and Birth Outcomes

As a result of systemic inequalities and structural racism, Black, Indigenous and other people of color in the US face complex challenges—including barriers to accessing health care, dismissive and inadequate care within the health care system, and other stresses related to racism—that lead to poor health outcomes, including from childbirth.¹³⁸ Black women in the US face significantly worse maternal health and birth outcomes, such as premature birth.¹³⁹ They are more than three times more likely to die of pregnancy-related complications than white women and the death rate for Black infants is more than twice the rate for babies born to white mothers.¹⁴⁰

¹³⁸ See, for example, Paola Scommegna, “High Premature Birth Rates Among U.S. Black Women May Reflect the Stress of Racism and Health and Economic Factors,” Population Reference Bureau (PRB) for the Population Dynamics Research Centers, January 2021, <https://popresearchcenters.org/research-highlights/high-premature-birth-rates-among-u-s-black-women/> (accessed January 28, 2021).

¹³⁹ Ibid.

¹⁴⁰ See, for example, Emily E. Petersen, Nicole L. Davis, David Goodman, et al., US Centers for Disease Control and Prevention, “Racial/Ethnic Disparities in Pregnancy-Related Deaths — United States, 2007-2016,” *Morbidity and Mortality*

Ricardo, an 18-year-old youth organizer with the Illinois Caucus for Adolescent Health (ICAH), described how many Black, Indigenous and other young people of color likely feel about going to court to get judicial waivers:

Being a person of color and going anywhere with law enforcement, [that's] nowhere I can feel at peace, or feel safe, knowing every single thing has to be perfect, and I have to be found worthy of their permission to go on with my life.... I'd be so scared of the process. I wouldn't go through it.¹⁴¹

Valentina, also an 18-year-old organizer with ICAH, echoed those fears, saying it would be “highly intimidating” and “anxiety-inducing” to appear before a judge in a judicial bypass hearing: “Being before a judge, it’s scary as a person of color, scary as a woman, scary as a young person, I can’t even imagine for a person who’s not cisgender. Honestly, I think it would be the most nerve-wracking experience.”¹⁴²

Dr. Rebecca Commito, an obstetrician-gynecologist in Chicago, explained:

The judicial system is coupled with the criminal justice system and police brutality.... When you start equating legal ramifications around healthcare decisions, it’s much more harmful to a young person than good. They have to go in front of a person of power, [often] a person who doesn’t look like them, doesn’t have experiences like them, and explain themselves... Asking a young person to have to defend a decision about their own body to a stranger may cause more emotional trauma than anything else.¹⁴³

Loss of Privacy and Confidentiality

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. Under

Weekly Report (MMWR), vol. 68, no. 25 (2019), <https://www.cdc.gov/mmwr/volumes/68/wr/mm6835a3.htm> (accessed January 28, 2021).

¹⁴¹ Human Rights Watch phone interview with Ricardo, 18, youth organizer, Illinois Caucus for Adolescent Health (ICAH), November 13, 2020.

¹⁴² Human Rights Watch phone interview with Valentina, organizer, Illinois Caucus for Adolescent Health (ICAH), November 13, 2020.

¹⁴³ Human Rights Watch phone interview with Dr. Rebecca Commito, obstetrician-gynecologist, October 15, 2020.

state law, court hearings must be confidential, and all documents related to court proceedings must be sealed.¹⁴⁴ However, the steps leading up to the actual hearing create risks that a young person's pregnancy status and abortion decision will be revealed. When a young person has concerns about their parent learning of their abortion decision, going through the bypass process increases the opportunities for something to go wrong. 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."¹⁴⁵

Though not a frequent occurrence, young people pursuing judicial bypass have been found out or exposed. Emily Werth, a staff attorney, and Jillian Edmonds, a former legal fellow, with the ACLU of Illinois, said, "We've had schools call [parents] when young people are at the clinic for their appointment or at the courthouse [for their hearing]. We've had young people whose parents confiscated their phones, and [saw] text message reminders for appointments [that] came in. We've had young people who involved a family member they thought they could trust, and that family member went behind their back [and disclosed their pregnancy and desire to have an abortion to others]." The consequences for clients varied, but some were prevented from getting abortion care.¹⁴⁶

One of them was 17-year-old "Zoe" (not her real name) whose parents were staunchly opposed to abortion. Zoe managed to navigate the judicial bypass process and her petition was granted, but before she could schedule an abortion appointment, her parents learned she was pregnant through another family member and prevented her from accessing care: "They immediately took away her phone and began monitoring all her movements to ensure that she could not go through with her plan to have an abortion."¹⁴⁷ Though her parents might have learned of her decision and prevented her from accessing care even without Illinois' PNA law, the bypass process added to her abortion timeline,

¹⁴⁴ Parental Notice of Abortion Act of 1995, 750 ILCS 70, sec. 25(c).

¹⁴⁵ Human Rights Watch interview with Judge Susan Fox Gillis, retired associate judge, County Division, Circuit Court of Cook County, Chicago, Illinois, February 12, 2020.

¹⁴⁶ Human Rights Watch phone interview with Emily Werth, staff attorney, and Jillian Edmonds, former legal fellow, ACLU of Illinois, February 18, 2020.

¹⁴⁷ ACLU of Illinois, Client Stories, January 2017-August 2020. On file with Human Rights Watch and the ACLU of Illinois.

creating a longer window of time during which her decision could be revealed to and obstructed by her parents.

Another young person, “Arianna,” age 16, was pursuing judicial bypass, but her parents discovered she was pregnant a few days before her court hearing was scheduled to take place: “[Her] parents forced her to meet for several hours with the pastors from their church, and the pastors told [her] that she could not have an abortion and pressured her to marry her boyfriend.” Arianna still managed to navigate judicial bypass afterward but only after enduring pressure and shame from her parents and faith leaders.¹⁴⁸

Other young people had to travel long distances because family members or friends worked at the nearest local courthouse and they feared being recognized, so they attended a court hearing at a different courthouse much further away.¹⁴⁹

¹⁴⁸ ACLU of Illinois, Client Stories, January 2017-August 2020. On file with Human Rights Watch and the ACLU of Illinois.

¹⁴⁹ ACLU of Illinois, Client Stories, January 2017-August 2020. On file with Human Rights Watch and the ACLU of Illinois.

V. Young People Have the Ability to Make Autonomous Decisions about Their Health Care

It's wrong that we don't trust youth enough to give them the right to bodily autonomy.

—Victoria Torres Garcia, organizer, Advocates for Youth, September 3, 2020

Young people under 18 are capable of making the best decisions for themselves regarding their sexual and reproductive health care. In its policy opposing forced parental involvement in young people's abortion decisions, the American Academy of Pediatrics states:

There is a growing body of knowledge regarding adolescent cognitive development related to decision-making. The age of 18 years is a convenient legal dividing line, but there is no specific evidence to support its use as the point at which individuals become competent decision-makers. Existing research shows that most minors 14 to 17 years of age are as competent as adults to provide consent to abortion, are able to understand the risks and benefits of the options, and are able to make voluntary, rational, and independent decisions.¹⁵⁰

Of the young people who went through judicial bypass in recent years and consented to share their information for research purposes, all were 14 or older, and 85 percent were ages 16 or 17.¹⁵¹

According to data collected by the ACLU of Illinois on young people who went through the judicial bypass process between 2017 and 2020, the most cited reasons for having an abortion were that they knew they were not ready to parent (54 percent), they were concerned a pregnancy would interfere with their education or life goals (50 percent),

¹⁵⁰ American Academy of Pediatrics Committee on Adolescence, "Policy Statement: The Adolescent's Right to Confidential Care When Considering Abortion," *Pediatrics*, vol. 139, no. 2 (2017), <https://pediatrics.aappublications.org/content/pediatrics/139/2/e20163861.full.pdf> (accessed December 11, 2020), p. 3.

¹⁵¹ Of the 192 young people who agreed to share their information for research purposes, 110 of them (57 percent) were 17 years old, and 54 of them (28 percent) were 16 years old.

and/or they lacked financial stability (36 percent) (many young people identified multiple reasons for deciding to have an abortion).

Table 2. Frequent Reasons Youth Decide to Have Abortions		
	Number of participants who cited reason	Percentage of participants who cited reason
Not ready or old enough to be a parent	103	54%
Continuing pregnancy would interfere with education or other life goals	96	50%
Not financially stable enough to be a parent/have a child	69	36%
Don't want parents or others to know pregnant or having sex	34	18%
Not mature or responsible enough to be a parent	18	9%
Concerned about own health	11	6%
Already have own children to care for	9	5%
Continuing the pregnancy would have a negative impact on my family	8	4%
Home life is unstable or difficult	8	4%
Data collected by the ACLU of Illinois, January 2017-June 2020		

The young people who went through judicial bypass reported turning to a wide range of other individuals within their family and social networks for support and assistance regarding their abortion decision. Many of these were trusted adults including siblings, sibling's partners, aunts and uncles, cousins, partner's parents, friend's parents, teachers, counselors, coaches, and co-workers. For example, Katy Phipps, who regularly counsels pregnant youth under 18 through her work with Family Planning Associates, described how a young person she counseled, whose case is described in Section II above, feared for her safety if she involved a qualifying adult in her abortion decision, but had "amazing support

from a nurse at her school.” Phipps explained that the school nurse “was crucial in that she helped provide logistical help [around the young person’s abortion care].... I was so reassured knowing that this person would be continuing to look out for this patient.”¹⁵²

Those interviewed for this report consistently stressed that the pregnant youth they encountered had carefully considered their options and identified abortion as the best decision for themselves, whether or not a parent was involved in their decision.

Retired Judge Susan Fox Gillis presided over dozens of judicial bypass hearings in her time on the Circuit Court of Cook County, and said the young people who appeared before her in court consistently demonstrated maturity and capacity in their decision-making:

Everyone who ever came before me was well-informed, showed sufficient maturity, and knew the repercussions [of their decision]. They were able to tell me as the judge what the side effects [of abortion] were, what potential ramifications were [of involving a parent], what life would be like if they didn’t do this They always had hopes and dreams for the future.... They were always very aware of the fact that they needed to finish their education, but they also felt that they couldn’t take on the responsibility of raising a child. They didn’t have the emotional or financial wherewithal to handle it. They talked about older sisters who had babies, and friends and neighbors [with children]. They just realized it was a very hard thing to raise a child. And an even harder thing to raise a child with no money and no education. ... Education was such a key part for all of them. They would come into court and tell us as judges they wanted to go to medical school, go into the military, become lawyers, police officers, go to nursing school. They had all kinds of plans for what they wanted to do.¹⁵³

JBCP pro bono attorney and hotline volunteer Ashley Olson described her experience working with a young person she represented in a bypass hearing:

¹⁵² Email from Katy Phipps, director of business operations, Family Planning Associates, to Human Rights Watch, February 3, 2021.

¹⁵³ Human Rights Watch interview with Judge Susan Fox Gillis, retired associate judge, County Division, Circuit Court of Cook County, Chicago, Illinois, February 12, 2020.

The thing that stuck out the most to me about the young person I worked with was the amount of information she already knew when I was connected to her. The amount of information she had about various procedures and options. Another thing that stuck out was that she had very clear plans about what she wanted to do in terms of high school, post high school. She was very clear that having a child was not a part of those plans.¹⁵⁴

Attorney Stephanie Kraft Sheley said the young people she represented in bypass hearings consistently showed sound decision-making:

In no case that I've seen would it have been a better choice for the young person to notify their parent. Their judgement was good. They were making the same decision an adult would make about whether it was safe to involve a particular person in their healthcare decision.... Most have a clear idea of what having a child would mean for their life. ... And often there's an interest in protecting their future family. 'I want my family to not grow up in the same way I did. I want to have my feet under me, get my education. If I do this now, I won't be able to give my kids the life I want to give them.'¹⁵⁵

"I've had at least two clients [in bypass hearings] that already had kids," said attorney Trisha Rich. "They know exactly what it means to raise a child and are perfectly mature to understand they're not in the best position to take on a second."¹⁵⁶

Katy Phipps of Family Planning Associates, said, "These are mature young women who give so much thought to their decisions... It's just so disappointing that we can't trust them to be agents in their own decision-making."¹⁵⁷

¹⁵⁴ Human Rights Watch phone interview with Ashley Olson, attorney and volunteer, Illinois Judicial Bypass Coordination Project Hotline, September 8, 2020.

¹⁵⁵ Human Rights Watch phone interview with Stephanie Kraft Sheley, attorney, September 1, 2020.

¹⁵⁶ Human Rights Watch phone interview with Trisha Rich, attorney, December 3, 2020.

¹⁵⁷ Human Rights Watch phone interview with Katy Phipps, director of business operations, Family Planning Associates, September 10, 2020.

Hannah, an 18-year-old organizer with the Illinois Caucus for Adolescent Health (ICAH), explained why she was working to repeal PNA:

I don't think other people should get to tell someone what they can and can't do with their bodies... 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. I have a lot of younger sisters. I'd like them to come to me or my mom if they needed to access that kind of care, but I wouldn't want to make them. I wouldn't want them to feel forced. I don't like the interference in people's lives... We should trust young people to make their own decisions.¹⁵⁸

“On My Own Time”: A Young Person’s Story of Abortion Care Before PNA

When Kush found out she was pregnant at age 16, she took time to consider her options, but ultimately she knew she wanted an abortion. “This is not how I want my first experience with children to be,” she recalled thinking when sharing her story with the Illinois Caucus for Adolescent Health (ICAH) several years later in 2018.

Illinois’s Parental Notice of Abortion Act was not yet in effect at that time, so Kush was not required to notify an adult family member fitting the strict definition of the law. She thought her mother would not support her decision to have an abortion, so she spoke with her older sister. “My sister supported me a lot through it,” Kush said, adding that the two “got a lot closer.” Her sister accompanied her for the pregnancy test and the abortion procedure. Afterward, she told her mom she had had an abortion, and, as she suspected, her mom did not support her decision: “I told her, and she was just devastated about me having the abortion. I remember this so vividly.... I kept saying in defense, like, I’m not ready, I’m not ready [to be a parent] She was just like, ‘You get ready. Like, that’s what happens. You’re never gonna be ready, you get ready.’ I think about that all the time now, but I know I made the right choice.”

¹⁵⁸ Human Rights Watch phone interview with Hannah, 18, youth organizer, Illinois Caucus for Adolescent Health (ICAH), November 20, 2020.

Reflecting on what it would have been like if she had been required by law to notify her mom before her abortion, she said, “I would have just been under a whole lot more stress. I was already stressed out as it was... Imagining if I had to tell them, that would have probably just killed me, or like, tore a hole in the middle of me.” Instead, she had the opportunity to decide “I’m ready to tell you this now... On my own time.”

A 22-year-old organizer with the National Asian Pacific American Women's Forum (NAPAWF) Chicago Chapter said “Youth have rights. They have agency, and they should have agency over their own bodies. In the state of Illinois, youth are able to make really big decisions about their bodies: whether they want to put a kid up for adoption, whether to have a C-section [Caesarean section]. If they decide to carry [a pregnancy to term], that’s their decision.” Commenting on the state’s parental notification requirement for abortion, she asked, “Why are we putting up this extra barrier?”¹⁵⁹

Dr. Hillary McLaren stressed that young people know what is best for themselves on the full spectrum of sexual and reproductive health decisions: “Young people know what they want. They are entirely capable of making decisions about what kind of birth control to be on, if [they] want an abortion, if [they] want to breastfeed. Young people know how to answer those questions for themselves. We don’t have to tell them who to turn to [to?] answer those questions. These are deeply personal decisions.”¹⁶⁰

Dr. Rebecca Commito added, “We need to affirm and acknowledge that there’s a maturity and thoughtfulness that exists there. Young people are experts of their own bodies and can make decisions themselves. They know who they can trust, who they can turn to.... Young people can and do time and time again make a lot of well-educated decisions for themselves. Our job is to elevate that instead of disrupt it.”¹⁶¹

¹⁵⁹ Human Rights Watch phone interview with organizer, National Asian Pacific American Women's Forum (NAPAWF), November 20, 2020.

¹⁶⁰ Human Rights Watch phone interview with Dr. Hillary McLaren, obstetrician-gynecologist, University of Chicago, December 3, 2020.

¹⁶¹ Human Rights Watch phone interview with Dr. Rebecca Commito, obstetrician-gynecologist, October 15, 2020.

VI. International Legal Standards

Under international human rights law, all people have rights to life, health, privacy, and non-discrimination, among others.¹⁶²

The Convention on the Rights of the Child, which the United States has signed but not ratified, sets out in further detail the human rights of every person under 18. It states that “[i]n all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration,”¹⁶³ and establishes the right of everyone under 18 to be heard.¹⁶⁴

The research presented in this report confirms that notifying a parent or other adult family member about an abortion decision is not always in a young person’s best interests and can carry harmful consequences. Illinois’ Parental Notice of Abortion Act violates a range of human rights, including young people’s rights to health, to be heard, to privacy and confidentiality of health services, to nondiscrimination and equality before the law, to decide the number and spacing of children, and to be free from cruel, inhuman or degrading treatment.

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.¹⁶⁵ In particular, the UN Committee on the

¹⁶² International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, UN Doc. A/6316 (1966), 999 UNTS 171, entered into force March 23, 1976, ratified by the US in 1992, <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx> (accessed February 25, 2021), arts. 2, 3, 6, 17, 26; International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, UN Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force January 3, 1976, <https://www.ohchr.org/Documents/Professionalinterest/cescr.pdf> (accessed October 19, 2020), art. 12. The US has signed but not yet ratified ICESCR; Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted December 18, 1979, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, UN Doc.A/34/46, entered into force September 3, 1981, <https://www.ohchr.org/en/professionalinterest/pages/cedaw.aspx> (accessed February 25, 2021). The US has signed but not yet ratified CEDAW.

¹⁶³ Convention on the Rights of the Child, art. 3.

¹⁶⁴ Convention on the Rights of the Child, art. 12.

¹⁶⁵ Special rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Report of the special rapporteur on the right of everyone to the enjoyment of the highest attainable standard of

Rights of the Child (CRC), which monitors the implementation of the Convention on the Rights of the Child, has noted that “the risk of death and disease during the adolescent years is real, including from preventable causes such as ... unsafe abortions,” and urged governments to “ensure that girls have access to safe abortion and post-abortion services, review legislation with a view to guaranteeing the best interests of pregnant adolescents and ensure that their views are always heard and respected in abortion-related decisions.”¹⁶⁶

Right to Health

The right to health—both physical and mental—is protected in international human rights law.¹⁶⁷ Article 24 of the Convention on the Rights of the Child recognizes “the right of the child to the enjoyment of the highest attainable standard of health” and requires states to “strive to ensure that no child is deprived of his or her right of access to such health care services.”¹⁶⁸ The Committee on the Rights of the Child (CRC) has established that states have an obligation to provide young people under 18 with access to sexual and reproductive health information and services, including safe abortion.

In General Comment No. 15 on the right of the child to the enjoyment of the highest attainable standard of health, the CRC noted, “States should ensure that health systems and services are able to meet the specific sexual and reproductive health needs of adolescents, including family planning and safe abortion services.”¹⁶⁹ In its General Comment No. 20 on the implementation of the rights of the child during adolescence, the CRC emphasized, “All adolescents must have access to confidential adolescent-responsive and non-discriminatory reproductive and sexual health information and services, available both on and off-line, including ... safe abortion services.”¹⁷⁰

physical and mental health, April 4, 2016, A/HRC/32/32, para. 16; Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 22 (2016) on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights), May 2, 2016, E/C.12/GC/22, para. 41.

¹⁶⁶ UN Committee on the Rights of the Child (CRC), General comment No. 20 (2016) on the implementation of the rights of the child during adolescence, December 6, 2016, CRC/C/GC/20, paras. 13, 60.

¹⁶⁷ ICESCR, art. 12(1)

¹⁶⁸ Convention on the Rights of the Child, adopted November 20, 1989, G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, UN Doc. A/44/49 (1989), entered into force September 2, 1990, art. 24, para. 1.

¹⁶⁹ UN Committee on the Rights of the Child (CRC), General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24), April 17, 2013, CRC/C/GC/15, para. 56.

¹⁷⁰ UN Committee on the Rights of the Child (CRC), General comment No. 20 (2016) on the implementation of the rights of the child during adolescence, December 6, 2016, CRC/C/GC/20, para. 59.

The Committee on Economic, Social, and Cultural Rights (CESCR) in General Comment No. 22 on the right to sexual and reproductive health, affirmed “Removal of all barriers interfering with access by women to comprehensive sexual and reproductive health services, goods, education and information is required...Preventing unintended pregnancies and unsafe abortions requires States to adopt legal and policy measures to guarantee all individuals access to affordable, safe and effective contraceptives and comprehensive sexuality education, including for adolescents; to liberalize restrictive abortion laws; to guarantee women and girls access to safe abortion services and quality post-abortion care.”¹⁷¹

Right to be Heard

Young people under 18 have a right to be heard, including regarding their health and medical care.¹⁷² The CRC in General Comment No. 15 specified that the child’s right to health includes both “freedoms and entitlements” and that:

The freedoms, which are of increasing importance in accordance with growing capacity and maturity, include the right to control one’s health and body, including sexual and reproductive freedom to make responsible choices.¹⁷³

The CRC noted that states should ensure young people “can make autonomous and informed decisions on their reproductive health.”¹⁷⁴ The CRC has stressed that young people’s views in abortion-related decisions in particular should be respected.¹⁷⁵

¹⁷¹ Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 22 (2016) on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights), May 2, 2016, E/C.12/GC/22, para. 28.

¹⁷² Convention on the Rights of the Child, art. 12; UN Committee on the Rights of the Child (CRC), General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24), April 17, 2013, CRC/C/GC/15, para. 19.

¹⁷³ UN Committee on the Rights of the Child (CRC), General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24), April 17, 2013, CRC/C/GC/15, para. 24.

¹⁷⁴ *Ibid.*, para. 56.

¹⁷⁵ UN Committee on the Rights of the Child (CRC), General comment No. 20 (2016) on the implementation of the rights of the child during adolescence, December 6, 2016, CRC/C/GC/20, para. 60.

In General Comment No. 20 the CRC further discussed consent to medical treatment and the evolving capacities of adolescents, urging states to “review or introduce legislation recognizing the right of adolescents to take increasing responsibility for decisions affecting their lives.... Consideration should also be given to the introduction of a legal presumption that adolescents are competent to seek and have access to preventive or time-sensitive sexual and reproductive health commodities and services.”¹⁷⁶

The CRC also stated:

There should be no barriers to commodities, information and counselling on sexual and reproductive health and rights, such as requirements for third-party consent or authorization. In addition, particular efforts need to be made to overcome barriers of stigma and fear experienced by, for example, adolescent girls, girls with disabilities and lesbian, gay, bisexual, transgender and intersex adolescents, in gaining access to such services.¹⁷⁷

Commenting specifically on the issue of parental involvement in sexual and reproductive health care, CESCR has stated:

The obligation to respect also requires States to repeal, and refrain from enacting, laws and policies that create barriers in access to sexual and reproductive health services. This includes third-party authorization requirements, such as parental, spousal and judicial authorization requirements for access to sexual and reproductive health services and information, including for abortion and contraception.¹⁷⁸

In a 2016 report on adolescents’ rights to physical and mental health, the special rapporteur on health commented on young people’s right and capacity to make their own decisions regarding health care:

¹⁷⁶ UN Committee on the Rights of the Child (CRC), General comment No. 20 (2016) on the implementation of the rights of the child during adolescence, December 6, 2016, CRC/C/GC/20, para. 39.

¹⁷⁷ UN Committee on the Rights of the Child (CRC), General comment No. 20 (2016) on the implementation of the rights of the child during adolescence, December 6, 2016, CRC/C/GC/20, para. 60.

¹⁷⁸ Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 22 (2016) on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights), May 2, 2016, E/C.12/GC/22, para. 41.

[T]oo often States continue to deny adolescents the right to make autonomous and confidential decisions with regard to accessing health services by requiring parental notification or consent. These restrictions often make adolescents reluctant to access needed services so as to avoid seeking parental consent, which may result in rejection, stigmatization, hostility or even violence. States are urged to consider the introduction of a legal presumption of competence that an adolescent seeking preventive or time-sensitive health goods and services, including for sexual and reproductive health, has the requisite capacity to access such goods and services. Where minimum ages of consent exist, as the Committee on the Rights of the Child has argued, any adolescent below that age and able to demonstrate sufficient understanding should be entitled to give or refuse consent. At a minimum, States should ensure a minimum age well below 18 years at which adolescents have the right to consent to or refuse services without mandatory authorization or notification of parent, guardian, spouse or intimate partner.¹⁷⁹

Rights to Privacy and Confidentiality of Health Information and Services

International human rights law affirms the right to privacy.¹⁸⁰ The CRC has stated, “The right to privacy takes on increasing significance during adolescence.”¹⁸¹

As described above, the CRC has affirmed that all adolescents should have access to confidential reproductive and sexual health information and services, including safe abortion care.¹⁸² It has recommended that governments ensure that anyone under 18 has access to confidential medical counsel and assistance without parental consent, including

¹⁷⁹ Special rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Report of the special rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, April 4, 2016, A/HRC/32/32, paras. 59-60.

¹⁸⁰ ICCPR, art. 17(1).

¹⁸¹ UN Committee on the Rights of the Child (CRC), General comment No. 20 (2016) on the implementation of the rights of the child during adolescence, December 6, 2016, CRC/C/GC/20, para. 46.

¹⁸² UN Committee on the Rights of the Child (CRC), General comment No. 20 (2016) on the implementation of the rights of the child during adolescence, December 6, 2016, CRC/C/GC/20, para. 59.

for reproductive health services,¹⁸³ and specifically called for adolescents to have access to safe and confidential abortion without stigmatization.¹⁸⁴

The CESCR has also stressed that “The realization of the right to health of adolescents is dependent on the development of youth-friendly health care, which respects confidentiality and privacy and includes appropriate sexual and reproductive health services.”¹⁸⁵

Rights to Nondiscrimination and Equality under the Law

The rights to nondiscrimination and equality under the law are set forth in major international human rights treaties.¹⁸⁶ Ensuring these rights is critical for guaranteeing all adolescents the right to make autonomous decisions about their sexual and reproductive health. Denial of these rights has a disproportionate impact on young women and lesbian, gay, bisexual, and transgender (LGBT) people.¹⁸⁷ The findings of this report also suggest that the burden of the PNA law in Illinois disproportionately falls on Black, Indigenous, and other young people of color, as described in Section IV above, which appears to reflect structural racial discrimination. The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), prohibits discrimination in effect as well as purpose on racial or ethnic grounds, and requires governments to overcome structural discrimination.¹⁸⁸

Human rights bodies have recognized that overly restrictive laws regarding sexual and reproductive health services—such as laws restricting the legality of abortion care and

¹⁸³ See, for example, CRC concluding observations on Poland, UN Doc. E/C.12/POL/CO/6 (2016); Indonesia, UN Doc. CRC/C/IDN/CO/3-4 (2014); Venezuela, UN Doc. CRC/C/VEN/CO/3-5 (2014); and Morocco, UN Doc. CRC/C/MAR/CO/3-4 (2014).

¹⁸⁴ See, for example, CRC concluding observations on Sri Lanka, UN Doc. CRC/C/LKA/CO/5-6 (2018); and India, UN Doc. CRC/C/IND/CO/3-4 (2014).

¹⁸⁵ CESCR General Comment 14, para. 23.

¹⁸⁶ ICCPR, arts. 2, 26 and ICESCR, art. 2.

¹⁸⁷ See, for example, Submission by Human Rights Watch to the UN Special Rapporteur on the Right to Privacy, October 19, 2020, <https://www.hrw.org/news/2020/10/19/submission-human-rights-watch-un-special-rapporteur-right-privacy>.

¹⁸⁸ International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), 660 U.N.T.S. 195, entered into force January 4, 1969 (prohibiting unlawful discrimination “based on race, colour, descent, or national or ethnic origin”), art. 1. The US ratified the ICCPR in June 1992 and ICERD in October 1994. UN Committee on the Elimination of Racial Discrimination, General Comment No. 34 (2011) on racial discrimination against people of African descent, October 3, 2011, CERD/C/GC/34, para. 6.

requiring third-party involvement—can violate the right to nondiscrimination.¹⁸⁹ The CESCR has said, “There exists a wide range of laws, policies and practices that undermine autonomy and right to equality and non-discrimination in the full enjoyment of the right to sexual and reproductive health, for example criminalization of abortion or restrictive abortion laws” and urged states to ensure “that all individuals and groups have equal access to the full range of sexual and reproductive health information, goods and services, including by removing all barriers that particular groups may face.”¹⁹⁰ CESCR identified adolescents among the “particular groups [that] may be disproportionately affected by intersectional discrimination in the context of sexual and reproductive health.”¹⁹¹

Right to Decide the Number and Spacing of Children

The Convention on the Elimination of Discrimination Against Women provides that “States Parties shall ... ensure, on a basis of equality of men and women.... [t]he same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education, and means to enable them to exercise these rights.”¹⁹²

The CEDAW Committee has called on states to increase access to high-quality contraception methods as a means to prevent unwanted pregnancy.¹⁹³ However, if she becomes pregnant, abortion may be the only way for a woman or girl to exercise her right to decide the number and spacing of children. The CEDAW Committee has noted that

¹⁸⁹ See, for example, CRC Committee, Concluding Observations: Namibia, para. 57(a), UN Doc. CRC/C/NAM/CO/2-3 (2012); (“The State party’s punitive abortion law and various social and legal challenges, including long delays in accessing abortion services within the ambit of the current laws for pregnant girls. In this regard, the Committee notes with concern that such a restrictive abortion law has led adolescents to abandon their infants or terminate pregnancies under illegal and unsafe conditions, putting their lives and health at risk, which violates their rights to life, to freedom from discrimination, and to health”).

¹⁹⁰ Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 22 (2016) on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights), May 2, 2016, E/C.12/GC/22, para. 34.

¹⁹¹ Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 22 (2016) on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights), May 2, 2016, E/C.12/GC/22, para. 30.

¹⁹² CEDAW, art. 16(1).

¹⁹³ See CEDAW Committee, “Statement of the Committee on the Elimination of Discrimination against Women on sexual and reproductive health and rights: Beyond 2014 ICPD review”; CEDAW Committee concluding observations on Cuba, UN Doc. CEDAW/C/CUB/CO/7-8 (2013); and CEDAW Committee concluding observations on Eritrea, UN Doc. CEDAW/C/ERI/CO/5 (2015).

“[d]ecisions to have children or not, while preferably made in consultation with spouse or partner, must not nevertheless be limited by spouse, parent, partner or Government.”¹⁹⁴

Freedom from Cruel, Inhuman, or Degrading Treatment

Human Rights Watch has discussed elsewhere how the criminalization and inaccessibility of abortion is incompatible with the right to freedom from torture and other cruel, inhuman, or degrading treatment or punishment.¹⁹⁵

The Committee on the Elimination of Discrimination Against Women (CEDAW) identified “the denial or delay of safe abortion” and “forced continuation of pregnancy” as “forms of gender-based violence that, depending on the circumstances, may amount to torture or cruel, inhuman or degrading treatment.”¹⁹⁶

The special rapporteur on torture, in a 2016 report on the experiences of women, girls, and lesbian, gay, bisexual, transgender and intersex persons, noted that women and girls can “face significant difficulties in accessing legal abortion services due to administrative and bureaucratic hurdles, refusal on the part of health-care workers to adhere to medical protocols that guarantee legal rights, negative attitudes, official incompetence or disinterest.” The special rapporteur concluded, “The denial of safe abortions and subjecting women and girls to humiliating and judgmental attitudes in such contexts of extreme vulnerability and where timely health care is essential amount to torture or ill-treatment.”¹⁹⁷

¹⁹⁴ CEDAW Committee, General Recommendation No. 21 on equality in marriage and family relations, 1994, A/49/38, para. 22.

¹⁹⁵ See, for example, Human Rights Watch, *“It’s Your Decision, It’s Your Life”: The Total Criminalization of Abortion in the Dominican Republic*, November 2018, <https://www.hrw.org/report/2018/11/19/its-your-decision-its-your-life/total-criminalization-abortion-dominican-republic>; Human Rights Watch, Amicus Curiae Regarding Access to Abortion in Colombia, January 30, 2020, <https://www.hrw.org/news/2020/01/30/amicus-curiae-regarding-access-abortion-colombia>.

¹⁹⁶ CEDAW, General Recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, July 26, 2017, CEDAW/C/GC/35, para. 18.

¹⁹⁷ Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Report of the special rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, January 5, 2016, A/HRC/31/57, para. 44.

VII. The Way Forward

To ensure all young people in the state can safely access basic health care, Illinois needs to repeal the harmful Parental Notice of Abortion Act. Lawmakers have a responsibility to keep Illinois youth safe, and that requires removing unnecessary and dangerous hurdles that interfere with their access to abortion care.

The testimonies and cases presented in this report show the profound consequences of inaction: young people forced to continue pregnancies against their will, to endure abuse, humiliation, and punishment by unsupportive parents, or to face a challenging and even traumatizing court experience just to be able to make decisions about their own bodies and lives.

Minor modifications to the existing law will not solve these harms. Every young person's family dynamics and circumstances are different; a one-size-fits-all approach like forced PNA cannot ensure safety, health, and dignity for young people.

Illinois leaders have repeatedly affirmed their commitment to protecting reproductive rights in the state. Repealing PNA is essential to fulfilling that commitment.

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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

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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