



HB0964 Public Health - Abortion Sought by Minors - Parent or Guardian Consent

Presented to the Hon. Shane E. Pendergrass and
Members of the House Health and Government Operations Committee
March 8, 2019, 1:00 p.m.

POSITION: OPPOSE

NARAL Pro-Choice Maryland **urges the House Health and Government Operations Committee an unfavorable report on HB0964**, Public Health - Abortion Sought by Minors - Parent or Guardian Consent, sponsored by Del. Neil Parrott.

In 1979, the United States Supreme Court ruled in *Bellotti v. Baird* that if a state has a parental involvement statute which dictates that a clinic offering abortion care to a minor must first provide parental notice or obtain parental consent, the state must also provide an alternative procedure, such as a judicial bypass. The judicial bypass procedure must be confidential and expedient, and an order granted overrides parental involvement if a judge decides that a minor is mature and sufficiently informed to make an abortion care decision, or if the desired abortion care is in the minor's best interest.ⁱ ⁱⁱ Currently, 37 states have parental involvement laws, 36 of which have a judicial bypass procedure.ⁱⁱⁱ As of 1992, Maryland's parental involvement law mandates that at least one parent or legal guardian be notified before a minor obtains an abortion care. Uniquely, Maryland has a physician bypass procedure by which a physician may determine that: the minor is mature and capable of giving informed consent, parental notification is not in the minor's best interest, or parental notice may put the minor at risk of future physical or emotional abuse.^{iv}

HB0964 prohibits a physician from providing abortion care to a minor in Maryland without parental or guardian *consent*, and removes the physician bypass, replacing it with a judicial bypass procedure in which a minor must petition in circuit court to obtain an order authorizing a parental consent waiver. This waiver may only be granted under the parameters that the minor is deemed sufficiently mature and informed to make an abortion care decision, or parental or guardian consent is not in the minor's best interest, including under the circumstance that the minor has experienced a pattern of physical, sexual, or emotional abuse or neglect. If the waiver is granted, the clinic must then notify the parent or legal guardian of the minor's intent.

Under the guise of protecting minors, HB0964 is an anti-abortion bill that aims to create a barrier to youth seeking abortion care that they have decided is the best choice for their health, well-being, and long-term outcomes. However, this bill makes many disturbing assumptions. The legislative intent of many states that have passed parental involvement laws has been to decrease the number of minors seeking abortion care, as

well as reduce the number of unintended pregnancies due to concern that minors were engaging in sexual activity while counting on abortion care as a method of birth control. However, the majority of studies show that the laws have not resulted in any significant impact on pregnancy rates, nor has the recent national decline in the number of minors seeking abortion care been significantly attributed to the enactment of such laws.ⁱ Proponents of parental involvement laws insist that such statutes encourage consultation between minors and their parents regarding pregnancy decision-making and assume that youth should always confide in their parents about their pregnancies, no matter the outcome of the communication.^v Opponents to such statutes counter that communication between parents and daughters cannot be legislated, especially in families where there is a significant degree of separation, dysfunction, and/or abuse.^{vi}

In addition, the process of bypassing parental involvement through the courts has not met expectations in implementation. One of the commonly reported unintended impacts of these statutes is the delay minors experience in seeking medical due to the complicated process of complying with notification, consent, or judicial bypass procedures or traveling out of their home states when access to fair hearings has been proven difficult or impossible^{vii}. There have also been issues raised related to how minors are affected by negative experiences in the judicial bypass process when confidentiality, expediency, fair access, and due process are denied due to active bias or passive aggressive tactics by court actors opposed to abortion care or the notion of minors acting independently of their parents.^{viii}

Adding to the debate are various research studies conducted in the fields of social sciences, public health, and law that examine factors that influence pregnancy-decision-making among minors. Many of the authors of these studies call for a reconsideration of the value and legality of parental involvement laws and raise concerns that law and public policy measures are not reflecting the growing body of studies on how minors engage in exercising their reproductive rights. Prominent representatives of the health professions have spoken out against parental involvement laws in favor of minors seeking confidential reproductive healthcare.

The American Medical Association, the Society for Adolescent Medicine, the American Public Health Association, the American College of Obstetricians and Gynecologists, the American Academy of Pediatrics, and other health professional organizations have reached a consensus that minors should not be compelled or required to involve their parents in their decisions to obtain abortion cares, although they should be encouraged to discuss their pregnancies with their parents and other responsible adults. These conclusions result from objective analyses of current data, which indicate that legislation mandating parental involvement does not achieve the intended benefit of promoting family communication, but does increase the risk of harm to the adolescent by delaying access to appropriate medical care. (Felice and Boulter 1996)^{ix}

These groups oppose parental involvement laws stating that mandated parental consultation and the resulting loss of confidentiality are deterrents for minors seeking sexual healthcare.^x Legal scholars have recognized that the medical field view parental involvement laws as interfering with medical practice and undermining tenets of public health.^{xi} One law professor states that the laws, “are less concerned with developing nuanced policies to improve the quality of teenage health or decision-making than with securing a set of political goals aimed at making abortions harder to get, restoring parental authority, and punishing girls for having sex”^{xii} Due to the body of research that has emerged in the psychology field on this issue, the American Psychological Association has participated in law suits challenging these restrictions by filing amicus briefs pointing out that

ⁱ For more information see Heather Boonstra, 2002. Issues in brief, teen pregnancy: Trends and lessons learned, *The Alan Guttmacher Institute*. (591) 1-4.

scientific arguments regarding the decision-making capacity of minors are not being recognized by the courts.^{xiii} The National Association of Social Workers also opposes parental involvement laws stating that they are unnecessary and their intentions violate the rights of minors in obtaining confidential services and achieving self-determination.^{xiv}

In the last two decades, studies have improved their methodology in examining minors' decision-making by "using psychological variables closely linked to the legal construct of informed consent" and finding minors are as competent as adults.^{xv} Research shows that minors 14 years and older make medical decisions generally in the same manner as adults and are equal to adults to make informed, voluntary, and intelligent decisions regarding medical treatment.^{xvi} Minors are comparable to adults in the capacity to recognize implications of pregnancy; understand treatment alternatives, risks, and benefits; compare alternatives; and make a decision consistent with personal values and short-term and long-term goals.^{xvii}

While proponents of HB0964 may argue that it is important for minors to have support when making a decision about whether or not to seek abortion care, the judicial bypass procedure does not accomplish this, as judges are neither required nor necessarily equipped to counsel on the issue.^{xviii} ^{xix} Empirical evidence reveals that about half of pregnant adolescents considering abortion care without notifying their parents consult with a non-parental adult, as well as that older adolescents are as competent as adults when making decisions about medical treatment as a whole - and about abortion care in particular.^{xx} ^{xxi} Additionally, this type of legislation targets the most disenfranchised youth in the state, including individuals whose parents are deceased, missing, or incarcerated. These minors frequently have the support of an alternative caregiver such as a grandparent, aunt or uncle, or older sibling, who cannot legally provide consent for the minor to obtain abortion care.^{xxii} It is crucial that these minors do not face an additional barrier to reproductive healthcare and justice by requiring a court appearance.

In a similar vein, while proponents of this bill may argue that parental or legal guardian consent is in the best interest of a minor's physical wellbeing, the process of a judicial bypass is commonly reported to delay a minor from accessing medical care, and research suggests that morbidity associated with childbirth is greater than that of abortion care, and the risk of death associated with childbirth is approximately 14 times greater.^{xxiii} ^{xxiv} According to a 2017 publication by the American Academy of Pediatrics (AAP), legislation mandating parental involvement in a minor's decision to seek abortion care does not promote parent-minor communication and increases the risk of harm from delaying access to medical care.^{xxv}

As an advocate for reproductive health, rights, and justice, we vehemently oppose passing legislation that presumes Maryland minors are incapable of making their own reproductive decisions and denies youth the fundamental right of reproductive control. The American Medical Association (AMA) recommends that when a minor seeks abortion care services, a physician not require a minor's parents to be involved in the decision.^{xxvi} As the Center for Adolescent Health and the Law (CAHL) notes in its compendium on adolescent health services, "[w]hen, in the opinion of the physician, parental involvement would not be beneficial, parental consent or notification should not be a barrier to care" (Center for Adolescent Health and the Law, p.53).^{xxvii}

Therefore, NARAL Pro-Choice Maryland urges an unfavorable report on HB0964. Thank you for your time and thoughtful consideration.

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- ⁱⁱⁱ Guttmacher Institute. (2018, March 1). *Parental Involvement in Minors' Abortion cares*. Retrieved from <https://www.guttmacher.org/state-policy/explore/parental-involvement-minors-abortion-cares>
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- ^x Butler, Amy and Bailey, Deb. 2008. The maturity and competence of girls obtaining abortion cares: Are parental involvement laws needed? *Journal of Policy Practice*, 7(1): 58-80
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- ^{xii} Sanger 2004
- ^{xiii} Adler, Nancy E.; Ozer, Emily J.; and Tschann, Jeanne. 2003. Abortion care among adolescents. *American Psychologist*. 58 (3): 211-217.
- ^{xiv} Butler & Bailey, 2008
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