

# Parental Involvement and Consent for a Minor's Abortion

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**ABSTRACT: A continuing debate exists in both law and medicine regarding an adolescent’s capacity to make rational, independent decisions. This is particularly true concerning an adolescent’s capacity to make an informed decision with regard to abortion. Neuroscience research responds to the question by noting that the area of the brain involved in critical thinking and decision-making does not reach full maturity until the early to mid-twenties. Consequently, teens are more likely to act impulsively, rather than with rational and goal-oriented thought. Relying upon outdated information and decision-making research performed in a laboratory setting, medical organizations have generally maintained that most teens are fully competent to understand the risks and consequences of, and give informed consent to, medical procedures including abortion without parental knowledge, involvement, or consent. The American College of Pediatricians examines the data and challenges this position, emphasizing the important contribution of parents in advising their adolescent children about such life-changing decisions.**

There is professional consensus that adolescents have a real need for adult guidance, ideally that of their parents, in decision-making. A 2005 *amicus curiae* brief submitted to the United States Court of Appeals for the First Circuit, referred to as the Alaska brief, states: “In almost all cases, adolescent girls do not plan their pregnancies, are shocked by the news that they are pregnant, and consider the resulting situation to be a crisis. Pregnant minor girls need adult guidance in dealing with crisis pregnancies.”<sup>1</sup> A majority of state legislatures also agree as 38 states require some parental involvement in a minor’s decision to have an abortion.<sup>2</sup> Thirty-seven of these states, however, include a judicial bypass procedure to circumvent parental input. In addition, six states permit a minor to obtain an abortion if a grandparent or other adult relative is involved in the decision; 35 permit it in a medical emergency; and 15 allow it for cases of abuse, assault, incest, or neglect.<sup>2</sup> The American Academy of Pediatrics (AAP) also maintains as continuing policy that: “Adolescents who are willing to involve parents in their abortion decisions will likely benefit from adult experience, wisdom, and support.”<sup>3</sup>

## Neuroscience

The aforementioned Alaska brief made an additional and more significant observation: “The capacity to become pregnant and the capacity for mature judgment concerning the wisdom of abortion are not necessarily related.” Recently published medical studies lend credence to this statement. Dr. Jay Giedd has used brain imaging studies to longitudinally follow adolescents’ brain development. Through functional magnetic resonance imaging (MRI), he demonstrated that the area of the brain involved in critical thinking and decision-making does not reach full maturity until the early to mid-twenties. He stated, “The dorsal lateral prefrontal cortex, important for controlling impulses, is among the latest brain regions to mature without reaching adult dimensions until the early twenties.”<sup>4,5,6,7,8</sup>

Dr. Giedd also discovered that significant changes occur not just in the connections between the nerve cells, but also in the hormonal environment. These changes “prime” the teen to learn and helps them become more efficient in routine activities; however, it also encourages the adolescent to attempt risky behaviors.<sup>9</sup>

Not only is the prefrontal cortex immature, but the emotion center (amygdala) and the pleasure-reward center (limbic system) of the adolescent brain are also immature – and are poorly connected to the prefrontal cortex. This means adolescents may have stronger emotional responses to situations and are less likely to utilize their prefrontal cortex when making decisions. “But in the heat of the moment, their decision-making can be overly influenced by emotions, because their brains rely more on the limbic system (the emotional seat of the brain) than the more rational prefrontal cortex.”<sup>10</sup>

In an article specifically discussing the ability of adolescents to make medical decisions, the authors state, “Executive function and emotional responses are not just less developed or different in teens: These two capacities are also less closely linked than in the typical adult brain. As a result, a teen may intellectually understand an issue and emotionally have a response to that issue, but those two processes may occur nearly in parallel rather than in dialogue. Emotional and executive functions must work together to bring about almost any kind of decision.”<sup>11</sup>

In a 2003 article examining the criminal culpability of juveniles, Steinberg and Scott argued that juveniles should not be held to the same standards of criminal responsibility as adults because “...adolescents’ decision-making capacity is diminished, they are less able to resist coercive influence, and their character is still undergoing change.” They concluded, “The uniqueness of immaturity as a mitigating condition argues for a commitment to a legal environment under which most youths are dealt with in a separate justice system and none are eligible for capital punishment.”<sup>12</sup>

The U.S. Supreme Court, in its March 1, 2005 ruling on juvenile executions, found it significant that “...juveniles are vulnerable to influence, and susceptible to immature and irresponsible behavior. In light of juveniles’ diminished culpability, neither retribution nor deterrence provides adequate justification for imposing the death penalty.”<sup>13</sup> Experts in mental health agree with this ruling. As David Sternberg noted in 2005, “Psychiatrists across the country, having argued for years that adolescents’ brains function differently from those of adults, applauded last month’s Supreme Court ruling that abolished juvenile executions.”<sup>14</sup>

Clearly, child and adolescent psychiatrists note differences in brain development between adolescents and adults that affect judgment, behavior, impulse control, and decision-making ability. They also point out that teens, with their still-maturing brains, rely more on impulse than rational and goal-oriented thought.

Based on this research-derived data and its implications for adolescent decision-making capacity, there should be no debate regarding parental involvement in a minor’s abortion. Prior to the Supreme Court decision on abortion in 1973,<sup>15</sup> parental consent would have been an assumed preliminary to the initiation of any medical care involving an underage minor child. It was not until 1975 that the Burger Court, in its decision in *Planned Parenthood v. Danforth*, declared that minors had a constitutional right to privacy and that it was unconstitutional to require parental permission for their abortion procedure.<sup>16</sup> This was, however, subsequently refined in *H.L. v. Matheson* to allow states to require parental notification/consent.<sup>17</sup>

In 1995, the AAP Committee on Bioethics published a statement that identified limitations to research purported to show mature adolescent decision-making capacity.<sup>18</sup> Despite this, in 1996 the AAP Committee on Adolescence, without citing any new research, characterized these same studies as “well-designed” and published the opinion that, “Summaries of well-designed research conclude that most minors 14-17 years of age are as competent as adults to provide consent to abortion. They are able to understand the risks and benefits of options and to make voluntary, rational, independent decisions.”<sup>18</sup> Decision-making research is mainly performed in a laboratory setting, utilizing hypothetical situations that do not take into account the possible influences of emotions. In addition, the research often compares adolescents younger than 18 years of age to “adults” who are older than 18 or 21 years of age – not a valid comparison with parents who would have more life experience.<sup>19</sup> Largely relying on that opinion, state legislators enshrined the concept in law that an adolescent is responsible and competent to consent to her own medical treatment during a pregnancy and to make medical decisions regarding her fetus or newborn. This opinion had dramatic implications for the health care of female minors. The 1996 statement of the APP Committee on Adolescence should be re-evaluated in light of current research.

### **Abortion should be treated as any other medical / surgical procedure.**

The College affirms that human life begins at conception (fertilization) and ends with natural death, and therefore does not support abortion. For purposes of consent, however, abortion should be treated as any other medical or surgical procedure. Medical care of children and adolescents uniformly requires written and verbal parental consent for any procedure – inside or outside of a medical office. For example, written parental consent is required for minor children to receive over-the-counter medications when in day care or at school. This is because appropriate medical care can only be provided within the context of the patient’s family and medical history. Physicians would be considered negligent if they did not obtain past medical and family history when providing care for a patient. This information is more crucial when a patient faces a surgical procedure that occurs in some abortions, and it is the parents who are more likely to have the complete medical information required for optimal medical care of the adolescent.

### **Pregnant adolescents benefit from parental involvement.**

The pregnant adolescent herself benefits from the involvement of a loving adult. The most likely or available candidate is a parent. When caring parents are involved in their teen’s pregnancy, they can help their daughter think about her pregnancy and consider her options. Whether the choice is abortion, parenting, or adoption, parents can assist their pregnant daughter as she navigates the health care system by helping her select a provider who is a board-certified obstetrician-gynecologist as well as choosing a facility that is affiliated with and close to a hospital in case complications occur. Parents can accompany their daughter to medical visits, ensure she understands any procedures, all the while emotionally supporting her and providing necessary medical information to the provider. Also, parents are the only ones who can help monitor an adolescent for complications after any medical procedure, such as abortion. Parents can help ensure compliance with medical instructions, prescriptions, and follow-up medical care.

### **Parental involvement protects an adolescent from sexual abuse.**

Parental notification prior to an adolescent’s abortion provides increased protection against sexual exploitation of minors by adult men. National studies show that two-thirds of adolescent mothers have partners who are 20 years of age or older, with the youngest mothers (those under age 15 years) being about six times more likely to have partners who are over 20. Data collected by the California Center for Health Statistics and ETR Associates, a research branch of Planned Parenthood, reports that about half of the births to teen mothers involve men ages 20 – 24, and an additional one-sixth are over age 25.<sup>20</sup> These pregnancies are therefore typically the result of exploitive, abusive, criminal acts.

When a parent is not informed of their adolescent’s pregnancy, the adolescent most often involves her partner in making the abortion decision. In one study, 89 percent of adolescents said their boyfriends were involved in the decision when their parents were not informed, and 76 percent of the time the boyfriend paid for the abortion.<sup>21</sup> In that study, two percent of the adolescents admitted they were forced to have sex. All of this information raises the concern that, without parental involvement, adult men may coerce their pregnant adolescent partners to have abortions, perhaps after having previously pressured them to have sexual intercourse.

### **Parental involvement does not cause a delay in obtaining abortions for those who choose this option.**

Opponents of parental involvement in a minor’s abortion, including the AAP, in its Position Statement “The Adolescent’s Right to Confidential Care When Considering Abortion,” argue that parental notification legislation causes a delay in obtaining medical care as well as an increase in the risk of family violence.<sup>21</sup> Older research conducted in 1995 in Mississippi did find that “minors, on average, were

delayed [in obtaining an abortion] by about three days. This delay is marginally statistically significant.”<sup>22</sup> However, more recent data does not confirm this delay. What studies reveal regarding the impact of parental involvement laws is that they reduced the abortion rate for minors. Levine suggests the introduction of these laws may have contributed to the reduction in the frequency of abortions by minors (up to a rate of 15-20 percent),<sup>23</sup> but no study demonstrates an increased birth rate. Implied is that adolescents might change their behavior when such laws are implemented.

Joyce, et. al., in 2006, evaluated the effect of the implementation of the parental notification law in Texas and found that in the 15-17-year age group abortion rates decreased between 11-20 percent, depending on the age, with no increase in birth rates. Teens who were subject to the law at conception (17.5 – 17:74 years of age), but who turned 18 years of age (and therefore not subject to the law) by 12 weeks of gestation, were more likely to not get an abortion. Those in that age range who did chose abortion were 34% more likely to have a second trimester abortion compared to those who were 18 years old at conception.<sup>24</sup> Similar data was found in 2009. Joyce evaluated the change from parental notification to parental consent in Arkansas and found that there was no increase in second trimester abortions. Those adolescents who utilized the judicial bypass did obtain abortions approximately one week earlier than the majority who got parental consent, but there was no significant delay overall in obtaining abortions as a result of the parental consent law.<sup>25</sup>

In 2008, Michael New found that abortion rates decreased 13.6 percent in states that implemented parental notification and decreased by 18 percent in states that had parental consent laws in effect.<sup>26</sup>

### **Parental involvement does not contribute to family violence.**

Family violence is a tragedy and no child or adolescent should ever be subjected to abuse, physical, emotional, or in any other way. However, the risk of such abuse or family violence, following parental notification of a planned abortion, has been overestimated and overstated. The AAP misquotes the Henshaw and Kost study to say that “one-third of minors who do not inform parents already have experienced family violence and fear it will recur.”<sup>27</sup> In reality, their study found 72 percent of girls had no concerns for any type of violence, and 28 percent of girls listed concerns over what they *anticipated might happen*.<sup>28</sup> These included parents drinking too much or violence between parents. It is noteworthy that 18 percent of this family violence had already occurred prior to the pregnancy being disclosed. Only one percent of adolescents presenting for abortion in the Henshaw and Kost study actually did experience violence; one percent was forced to leave home; and <0.5 percent reported being beaten (with the important note that the girls could check more than one answer). Elsewhere in the Henshaw article, the author states “...a minimum of 6 percent of these minors appear to have suffered relatively harmful consequences.” It is tragic that these adolescents have been harmed. If the health professional suspects parental notification or involvement would cause an adolescent to be harmed, then, legal recourse should be taken to remove the pregnant minor from the abusive household.

### **Parental involvement encourages the correct view of family.**

As Ross proficiently states: “What are we teaching our adolescents when they find persons in authority willing to help them deceive their parents? What does it teach these adolescents with regard to the respect owed to any adult, least of all a deceitful doctor or a duped parent?”<sup>29</sup> Intentionally removing a teen’s parent(s) from the decision-making process, misleads the teen toward the false notion that parents are nonessential, simply obstructive to the process, and that the teen is completely capable of making mature, wise decisions without the parent’s advice.

## **Parental involvement laws benefit the adolescent, the family, and society.**

There is research demonstrating benefits when parental involvement laws are instituted, including a decrease in abortion rates without an increase in birth rates, a possible decrease in sexually transmitted infections, as well as a decrease in suicide and depression. Abortion rates have been reported to decrease by 2.8 %<sup>30</sup> – 19%<sup>31</sup> without an associated increase in birth rates<sup>32</sup> as adolescents most likely increased their use of contraception or abstained (a 2008 study in the *Journal of Law Economics & Organization* shows that parental involvement laws reduce the gonorrhea rate anywhere from 12% to 20% for females under 20.<sup>33</sup> Finally, the journal *Economic Inquiry* published a study that shows that the enactment of parental involvement laws is associated with an 11% to 21% reduction in the number of 15- to 17-year-old females who commit suicide.<sup>34</sup> In addition no increase in rates of post-partum depression have been found in women who reside in states with parental involvement laws.<sup>32</sup>

## **Abortion has long-term consequences for the adolescent.**

Many studies now document that there are mental health consequences after abortions. A 25-year longitudinal study of 630 young women in New Zealand found that women who had an abortion between the ages of 15 and 25 were significantly more likely to develop mental health problems post-abortion, including depression, suicidal behaviors, and substance use disorders than those who had never been pregnant or who had been pregnant but not had an abortion.<sup>35</sup> This was the case even when accounting for confounding variables, including pre-existing psychological conditions (in direct contrast to the conclusions of the American Psychological Association 2008 report).<sup>36</sup>

In addition, there are physical consequences after abortion, including the increased risk of breast cancer, especially for those adolescents in whom there is a family history of breast cancer.<sup>37</sup> There is also an increased risk of giving birth prematurely with future pregnancies.<sup>38</sup>

**For additional information on the risks of abortion, see the College position statement: [Induced Abortion: Risks that may impact adolescents, young adults, and their children](#)**

## **Conclusion**

Adolescents need the advice and involvement of their parents. As more is learned about the immaturity of the adolescent brain, especially in the development of the decision-making frontal lobes, it is obvious that parents should be allowed to guide their teens in all medical decisions, including decisions regarding pregnancy. Legislation mandating or encouraging parental involvement in decisions related to a minor's pregnancy protects adolescents during a very vulnerable time in their lives. Society recognizes this need, and often requires and encourages parents to be a positive resource for their adolescents in matters of health, and other issues of consequence. Therefore, excluding them from a minor's decision about abortion cannot be justified.

The American College of Pediatricians advocates for all children, including pregnant minors and their unborn children. Parents are in the best position to help their children learn how to make good decisions regarding their health and well-being. Pediatricians can offer expertise concerning decisions involving the child's health care without undermining parental authority. The existing policy statements of medical organizations which limit parental involvement are based on old and flawed data about the decision-making capacity of minors.

Given this background and the desire to promote what is best for children, the American College of Pediatricians supports all efforts to enact and enforce parental notification/consent requirements for adolescents requiring or contemplating any medical treatment or surgical procedure, including abortion.

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*The American College of Pediatricians is a national medical association of licensed physicians and healthcare professionals who specialize in the care of infants, children, and adolescents. The mission of the College is to enable all children to reach their optimal, physical and emotional health and well-being.*

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