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THE ADOLESCENT HEALTH CARE SAFETY ACT: A NEW APPROACH TO PARENTAL NOTICE

By MICHELLE KAPLAN

Whether Illinois minors seeking an abortion will be required to notify their parents remains to be decided by judges and politicians.¹

In January 2007, Representative John Fritchey introduced House Bill 317 to the Illinois General Assembly, which created the Adolescent Health Care Safety Act (AHCSA).² If enacted, the legislation would repeal the much-debated Illinois Parental Notice Act of 1995.³

The 1995 Act, which has been enjoined from enforcement since it was passed, prohibits minors from obtaining an abortion without notifying a parent, grandparent or legal guardian.⁴

In September 2006, the Illinois Supreme Court issued rules for the Illinois Parental Notice Act.⁵ According to these rules, physicians could waive the parental notice requirement in the case of an emergency, if the minor seeking an abortion received judicial bypass or if she declared that she is a survivor of abuse or neglect by an adult family member.⁶

In January 2007, Illinois Attorney General Lisa Madigan requested that the injunction barring enforcement of the Illinois Parental Notice Act be lifted.⁷ She argued that, because the Illinois Supreme Court had adopted rules governing its implementation, the act is now constitutionally sound.⁸

District Court Judge David Coar denied Madigan's request, saying that Madigan's action was "premature" because Illinois courts are not prepared to enforce the law according to these rules, particularly with respect to the judicial bypass provisions.⁹

The AHCSA expands on the Illinois Parental Notice Act by providing other options for minors seeking abortion.¹⁰ First, the AHCSA broader defines the term "adult family member," and allows minors to notify an aunt, uncle, grandparent, adult sibling or member of the clergy.¹¹ The AHCSA permits physicians to waive parental notice in the case of an emergency or if the minor declares in writing that she is a victim of physical or sexual abuse.¹²

The Act also permits minors to bypass parental notice by participating in information and counseling services.¹³ According to Fritchey's bill, the counseling services will be aimed at providing young women with an opportunity to ask questions, explore alternative options and discuss the possibility of involving an adult family member.¹⁴

Both the ACLU and Planned Parenthood, who have long opposed the Illinois Parental Notice Act, support the AHCSA.¹⁵

"The Adolescent Health Care Safety Act, unlike previous legislation, provides appropriate options for young women who fear abuse, forced homelessness or parental rejection because of an unintended pregnancy," said Lorie Chaiten,

Director of the ACLU of Illinois Reproductive Rights Project.¹⁶ Chaiten criticized the judicial bypass provision of the 1995 Act stating that “parental notice laws force the most vulnerable teens into the court system.”¹⁷

According to Pamela Sutherland, CEO of Illinois Planned Parenthood Counseling, Planned Parenthood clinics would not have to alter their practices.¹⁸

“[T]his bill would ‘set into law standards of practice for all providers that would mirror ours,’ said Sutherland.”¹⁹ “We support HB 317 because it takes into consideration the real lives of Illinois adolescents and puts their health and safety first.”²⁰

Parental notice supporters, however, oppose the AHCSA.²¹

“Because of the traumatic physical and emotional implications of the [abortion] procedure, minors should be required to notify a parent or legal guardian before terminating an unwanted pregnancy,” said Zach Wichmann, Director of Education at the Catholic Conference of Illinois.²² “A minor in school can’t get an aspirin without a parent’s consent, why should she be allowed to get an abortion without parental consent?”²³

“Any parental notice could be waived under this bill as long as any counselor for an abortion provider signs off on it,”²⁴ said Thomas Brejcha, president and lead counsel of the Thomas More Society, a Chicago-based legal advocacy group “dedicated to fighting for the rights and dignity of all human life.”²⁵

Between the opposite poles, there are some who see the AHCSA as a “promising middle ground,” such as Leah Piekarz, Counselor at Evanston Township High School.²⁶ However, according to Piekarz, the counseling waiver could become problematic for social workers and counselors providing the services, particularly if they are practitioners who work closely with the families and the community.²⁷

“If a parent found out that a counselor participated in waiving their child’s abortion, this could put the counselor in a very bad position,” said Piekarz.²⁸

If the AHCSA passes, Piekarz feels that legislators need to make sure that those individuals providing the counseling services have “a good knowledge base on

both the health care issues as well as the emotional issues” that minors face when terminating a pregnancy.²⁹

If the Fritchey’s bill is not passed, the 1995 Act could be enforced for the first time.³⁰ Officials at Madigan’s office said they plan to help courts around the state make appropriate adjustments in conformity with the Act and then refile their motion to have the injunction lifted.³¹

The Illinois legislature is expected to vote on House Bill 317 in the upcoming months.³² For now, organizations including Planned Parenthood and the Catholic Conference of Illinois are focused on educating legislators on the issues.³³

Whether the future brings the AHCSA or the Illinois Parental Notice Act, Sutherland believes that the “real answer to teen pregnancy is prevention and strong caring families, not new laws that endanger our daughters.”³⁴

“If for whatever reason our daughters can’t or won’t come to us, we must make sure they get safe medical attention and quality counseling from caring professionals,” she said.³⁵

NOTES

1 Michael Higgins, Illinois Judge Blocks Implementation of Parental Notification Act for Minors Seeking Abortions, Chicago Tribune, February 7, 2007, available at http://constitutioncenter.org/education/TeachingwithCurrentEvents/ConstitutionNewswire/17268_print.shtml.

2 Adolescent Health Care Safety Act, H.B. 317, 9th G.A. (Ill. 2007), available at <http://www.ilga.gov/legislation/billstatus.asp?DocNum=317&GAID=9&GA=95&DocTypeID=HB&LegID=27079&SessionID=51> (last visited Apr. 21, 2007).

3 Press Release, American Civil Liberties Union, ACLU of Illinois Calls on House Committee to Protect Young Women’s Health and Well Being (Feb. 22, 2007), available at http://www.aclu-il.org/news/press/2007/02/aclu_of_illinois_calls_on_hous.shtml.

4 Higgins, *supra* note 1, at 1.

5 Bill Introduced To Repeal, Replace Parental Notification Law Recently Revived by Illinois Supreme Court, Kaiser Network Daily Report, Kaiser Daily Women’s Health Policy, Oct. 5, 2006, www.kaisernetwork.org/daily_reports/print_report.cfm?DR_ID=40232&dr_cat=2.

6 *Id.*

7 Press Release, American Civil Liberties Union, Federal Judge Blocks Effort to Revive Dormant Parental Notification Law (Feb. 6 2007), available at www.aclu-il.org/news/press/2007/02/federal_judge_blocks_efforts_to.shtml.

- 8 *Id.*
- 9 *Id.*
- 10 Adolescent Health Care Safety Act, H.B. 317 § 5, 95th G.A. (Ill. 2007).
- 11 Adolescent Health Care Safety Act, H.B. 317 § 10, 95th G.A. (Ill. 2007).
- 12 Adolescent Health Care Safety Act, H.B. 317 § 20, 95th G.A. (Ill. 2007).
- 13 Adolescent Health Care Safety Act, H.B. 317 § 20, 95th G.A. (Ill. 2007).
- 14 Adolescent Health Care Safety Act, H.B. 317 § 25, 95th G.A. (Ill. 2007).
- 15 Kaiser Daily Women's Health Policy, *supra* note 5, at 1; *see also* ACLU of Illinois Calls on House Committee to Protect Young Women's Health and Well Being, *supra* note 3, at 1.
- 16 ACLU of Illinois Calls on House Committee to Protect Young Women's Health and Well Being, *supra* note 3, at 1.
- 17 *Id.*
- 18 Kaiser Daily Women's Health Policy, *supra* note 5, at 1.
- 19 *Id.*
- 20 Interview with Pamela Sutherland, President, Illinois Planned Parenthood Council in Chicago, Ill. (Mar. 15, 2007).
- 21 Eric Zorn, Madigan Move on Consent Law isn't Final Word, Chicago Tribune, Jan 23, 2007, at 1.
- 22 Interview with Zach Wichmann, Director of Education at the Catholic Conference of Illinois, March 28, 2007, Chicago, IL.
- 23 *Id.*
- 24 Kaiser Daily Women's Health Policy, *supra* note 3; *see also* www.thomasmoresociety.org.
- 25 *Id.*
- 26 Interview with Leah Piekarz, Counselor, Evanston Township High School in Evanston, Ill. (Mar. 21, 2007).
- 27 *Id.*
- 28 *Id.*
- 29 *Id.*
- 30 Higgins, *supra* note 1, at 1.
- 31 *Id.*
- 32 H.B. 317, 95th G.A. (Ill. 2007), Illinois Generally Assembly Bill Status, <http://www.ilga.gov/legislation/BillStatus.asp?DocNum=317&GAID=9&DocTypeID=HB&LegID=27079&SessionID=51>.
- 33 Sutherland, *supra* note 20; *see also* Wichmann, *supra* note 22.
- 34 Sutherland, *supra* note 20.
- 35 *Id.*