

The Child Custody Protection Act: A ‘Minor’ Issue at the Top Of the Antiabortion Agenda

By Rebekah Saul

According to its lead House sponsor, Rep. Ileana Ros-Lehtinen (R-FL), the so-called Child Custody Protection Act (CCPA) would “assure that the rights of parents across the Nation are not trampled by strangers who, without the knowledge of the parents, take the minor girls to obtain an abortion.” Approved overwhelmingly by the House last month and slated for Senate consideration this fall, the CCPA would make it a federal crime to transport a minor across state lines to obtain an abortion if the parental involvement requirements in her home state have not been met (see *For the Record*, page 12).

Introduced only last February, the CCPA’s meteoric rise to the top of the congressional agenda in an abbreviated and already jam-packed election-year session is testament to the power of social conservatives within the Republican party. Top movement leaders, including James Dobson and Phyllis Schlafly, have recently threatened to leave the GOP and take their grassroots with them if the party doesn’t demonstrate its commitment to their policy priorities. In its public relations and politics, the CCPA is well-suited to the leaders’ demands. As evidenced in Ros-Lehtinen’s statement, it is a kind of “two-for-one”—tailored to win election-year kudos from backers of the conservative “parental rights” movement as well as from abortion rights opponents.

The fact remains, however, that the CCPA would affect only a small portion of women seeking abortion services—those under age 18 living in states with parental consent or noti-

fication laws who are unable or unwilling to involve their parents when faced with an unwanted pregnancy. That it is the centerpiece of this year’s antiabortion agenda could be seen more as indicative of the movement’s central weakness than its ultimate strength. Indeed, as most of its leaders are now openly willing to admit, the movement has been compelled by the realities of public opinion to defer working actively on its ultimate goal—revoking the constitutional right to abortion and outlawing the procedure entirely—and focus, at least for the foreseeable future, on making gains at the margins.

None of which, at least in the short term, makes it any easier for the pro-choice side. To the contrary, the issues that are now the focus of the antiabortion movement’s incremental strategy, like banning “partial-birth” abortion and enforcing parental involvement in minors’ abortions, are also highly popular—even among many who consider themselves pro-choice. Yet, while they might target a relatively small number of women, their impact would hardly be “marginal” on those affected.

Indeed, as passed by the House and by Senate committee, the CCPA would criminalize *anyone*—a grandparent, sibling, member of the clergy or medical professional—who aids a minor in traveling to obtain an abortion, subjecting them to up to a year in jail and a fine of \$100,000. In effect, it tells a young woman to find a way to deal with a crisis pregnancy by herself, rather than by turning to a trusted friend or family member.

In addition, because the bill effectively requires the federal government to take sides on policies that are made by individual states—policies on which states are diametrically opposed—the legislation raises a host of constitutional and “federalism” issues that transcend the abortion issue.

Minors and Abortion

While *teenagers* account for about one-fifth of all abortions obtained in the United States, *minors* account for fewer than one in 10 abortions performed. Nonetheless, the debate over whether a minor should be prohibited from obtaining an abortion without her parent’s knowledge ranks as one of the most contentious and relentless among policymakers across the country.

Parental involvement proponents contend that parents have a right to decide what medical services are provided to their minor children. However, states have long recognized the importance of allowing teens to

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receive confidential health services, especially where sensitive health issues are concerned. According to a 1997 analysis by The Alan Guttmacher Institute (AGI), *no* state mandates parental consent or notice for minors seeking contraceptive services, prenatal care, sexually transmitted disease (including HIV) services or treatment for alcohol or drug abuse; in fact, many states have explicitly authorized minors to consent for these services. Similarly, states have largely declined to obstruct a minor’s ability to make other reproductive-related life decisions; only a handful of states require parental involvement in adop-

tion services, and none requires parental permission for a minor to carry a pregnancy to term and become a parent herself.

Moreover, many minors voluntarily involve their parents when deciding to terminate an unplanned pregnancy. The younger the minor, the more likely she is to involve one or both parents in this decision; according to a 1991 study conducted by AGI, more than seven in 10 minors under age 16 who obtained an abortion reported that one or both parents knew about it. And, in virtually every case in which the parent knew about the minor's abortion, the parent was actively involved in some way—either by helping the minor to make the decision, paying for the abortion or helping her get to the abortion clinic.

According to the same study, fully three in 10 minors who obtained an abortion without telling a parent did so because they had experienced violence in the family, feared that violence would occur, or were afraid of being forced to leave home. Still,

many states have enacted laws that require the involvement of at least one parent in a minor's abortion decision. A number of states, however, have enacted *expanded* adult involvement laws that allow grandparents, adult siblings or other adult relatives to consent instead of a parent.

Twenty-one states are not enforcing parental involvement laws of any kind, either because the legislature has considered and rejected such a policy, or because the state constitution affords the same privacy protections to minors as it does to adult women. In two states and the District of Columbia, legislatures explicitly have granted minors the right to consent to abortion services. As a result of states' divergent views, the United States represents a patchwork of conflicting and varying laws on this issue (see map).

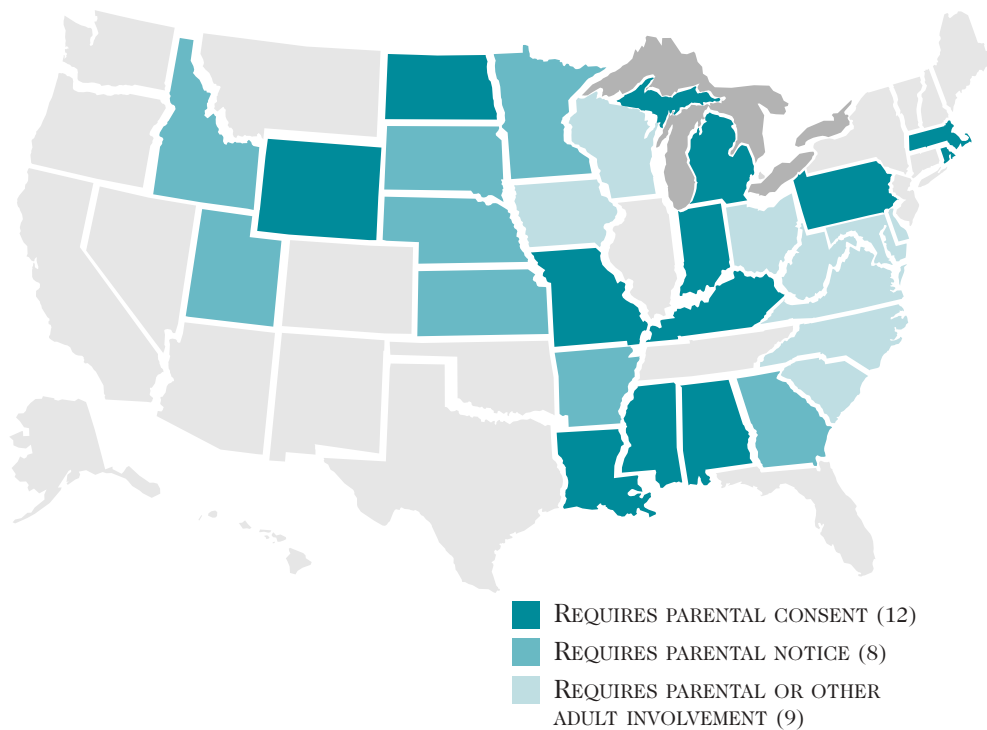
Family Values?

CCPA proponents argue that the legislation is necessary to close a "loophole" in state laws—the fact that minors, if they have the means and resources, may be able to travel

to a neighboring state. In fact, there is some evidence that minors—as well as adult women—do travel across state lines to obtain abortions, although it is not known what portion do so to avoid parental involvement laws or for other reasons, such as to obtain services from the nearest facility.

To bolster their case, bill sponsors have repeatedly highlighted a recent incident in Pennsylvania in which a 13-year-old was taken out of state by her boyfriend's mother to obtain an abortion without parental consent. If enacted, they say, the legislation would serve to prevent situations where "strangers" are involved in aiding a minor to travel. As written, however, the CCPA, targets *anyone* who would help an adolescent get to a clinic in another state. In committee markups, antiabortion members rejected attempts to amend the legislation to exempt grandparents, aunts, uncles, and siblings, along with members of the clergy and emergency medical personnel, saying such amendments would "weaken" the bill.

STATE PARENTAL INVOLVEMENT LAWS



During floor consideration of the bill, opponents complained vociferously that the bill does nothing for family values since it targets family members as well as the "strangers" to whom the bill's authors refer. "Unfortunately..." stated Sheila Jackson-Lee (D-TX), "family members, including a minor's grandparents, can be criminally prosecuted for assisting their granddaughter in obtaining an abortion....If we force our daughters, our granddaughters, our sisters, our nieces and cousins to act without the guidance of someone they can trust, where will they turn?"

Taking Sides

In addition to raising critical policy concerns, the CCPA brings with it a host of constitutional and legal problems, foremost among them issues of federalism. On a policy question

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over which states are divided, it would be unprecedented for the federal government to take sides and help one state enforce its policies across borders, while providing no such assistance to a state with an opposing view. Sen. Patrick Leahy (D-VT) has emphasized this point, arguing that “[J]ust because some in Congress may prefer the policies of one State over those in Vermont, does not mean we should give those policies federal enforcement authority across the nation.”

As an example, Leahy pointed out that Vermont allows the carrying of concealed weapons without a permit, while Massachusetts’ law bars that practice. “When Vermonters

travel to neighboring states and across the nation, we understand that we must conform our behavior to the laws of the States we visit. When residents of each State may carry with them only the laws of their own State, they may be advantaged or disadvantaged but one thing is clear: We will have turned our federal system on its ear.”

Looking Ahead

The overwhelming margin by which the House endorsed the CCPA—the vote was 276–159—amply demonstrates the extent to which abortion foes have mainstream appeal going for them on this issue. In their strategic calculations, bill proponents probably also did not overlook the fact that President Clinton signed a mandatory parental notice law while governor of Arkansas.

Indeed, the White House has indicated a particular sensitivity to this measure: In a Statement of Administration Policy (SAP), it suggested the president could support “properly crafted” legislation that was amended to exclude close family members from criminal and civil liability as well as protect persons who only provide information, counseling, referral or medical services.

As with the pending ban on “partial-birth” abortion, which the president also has said he would sign if it were modified only slightly to include an exception to protect the woman’s health, antiabortion leaders are unlikely to take up the president’s challenge. Apparently they have made the political calculation that, new law or not, they have a winning horse to ride into the fall campaigns. ☉