HB 364

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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MEMORANDUM March 3, 2008

SUBJECT: CSHB 364(JUD); Work Order No. 25-LS1406\E

TO: Representative Jay Ramras
Chair of the House Judiciary Committee
Attn: Jane Pierson

FROM: Pam Finley
Revisor of Statutes

Enclosed is the CS you requested. Please note that we also added a reference to the physician's designee at page 4, line 13 of HB 364 (page 4, line 15 of the CS) because this seemed consistent with amendment # 9. Also, please take a look at AS 18.16.030(n)(5), added in bill sec. 8. I was listening to the hearing and was pretty sure that amendment #16 included the court's requiring the school to excuse the minor when the minor was having the abortion, if one was authorized by the court. If I am wrong about this, let me know and we will delete "**and to have the abortion if one is authorized by the court**".

Also, you may want to have the next committee look at two questions:

1. In AS 18.16.030(b)(4)(B), should "**notice to or**" be added before "the consent of"? This change was made in AS 18.16.030(a) and 18.16.030(b)(3) and (4)(A), but I don't know whether the omission of this language in AS 18.16.030(b)(4)(B) was intentional or not.

2. AS 18.16.030(n)(5), added in sec. 8, lists things the minor should be told that the court can order. But, there is no corresponding direction requiring or authorizing the court to consider ordering those things.

Please let me know if you have any questions about the above.

PF:ljw
08-132.ljw

Enclosure

ALASKA STATE HOUSE OF REPRESENTATIVES

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Session

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Room 204

REPRESENTATIVE JOHN COGHILL

SPONSOR STATEMENT

HB 364 Parental Notification and Consent for a Pregnant Minor Aborting an Unborn Child

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One-page sponsor statements are the preferred norm, but the issue of parental consent and the eleven-year struggle for protecting parental rights and the thirty-five-year struggle for protecting the right of life for an unborn child requires the complete picture for us to tackle this subject.

On November 2, 2007 in *State of Alaska v. Planned Parenthood of Alaska*, the Alaska Supreme Court, in a 3 – 2 decision, has once again undermined a long line of case law, the intent of the Constitution, and the will of the people of Alaska. HB 364 is a direct response to an active judiciary and an attempt to put this issue to rest once and for all.

The legislature passed the Parental Consent Act (PCA) in 1997. In July of that same year, Alaska Superior Court Judge Sen Tan ruled the law was unconstitutional because "the privacy clause of the Alaska Constitution protects minors as well as adults." The Superior Court did not address whether or not the PCA violated the privacy clause. The State appealed the decision and the Supreme Court ruled that the privacy clause extends to minors unless there is a compelling state interest using the least restrictive means available. The Supreme Court remanded the case back to Sen Tan to hold an evidentiary hearing to determine if PCA furthered a compelling state interest.

In January 2003 the Superior Court held a bench trial spanning almost three weeks to hear evidence regarding the constitutionality of the PCA. In October 2003, Judge Sen Tan ruled the PCA was unconstitutional because it did not further a compelling state interest while using the least restrictive means available. In January 2004 the Superior Court enjoined the State from enforcing the PCA declaring the PCA was unconstitutional under the equal protection and privacy clauses of the Alaska Constitution.

The primary purpose of the right to privacy is to protect Alaskans from **"unwarranted intrusions by the State"** (*Ravin*, P.2d 514). How can this be interpreted to mean a parent has no say in the approval of a medical procedure for a minor that would result in the termination of an unborn relative? State law already requires parental consent for tattoos, immunization, school use of student information, body piercing, school travel for extra-

curricular activities, marrying, entering the military, and all medical procedures except abortion.

In *Valley Hospital Association v. Mat-Su Coalition for Choice,* (948 P.2d 963 Alaska 1997) the court concluded that a *"woman's control of her body, including the choice of whether or when to have children"* is most personal and protected under the privacy clause. The decision was based on the *"uniquely personal physical, psychological, and economic implications of the abortion decision."* However, the *Valley* decision did not address pregnant minors.

In its November 2, 2007 decision, the court agreed with the State that *"protecting minors from their own immaturity and aiding parents in fulfilling their parental responsibilities"* are *"compelling interests."* So the issue at hand for the court was whether the PCA was the least restrictive means of achieving the State's compelling interests.

Although we are responding to a judicial body writing law with philosophical vents, HB 364 addresses the legal issues of parental consent in a practical manner based on the historical beliefs of our forefathers. The Parental Consent Act of 1997 was fully compliant with the U.S. Supreme Court precedent *Bellotti v. Baird,* (443 U.S. 622 1979). In essence, the Alaska Supreme Court in its November 2, 2007 decision struck down a decision of the U.S. Supreme Court. Justice Carpeneti eloquently wrote the dissenting decision stating the following:

> *"Because this court's rejection of the legislature's thoughtful balance is inconsistent with our own case law and unnecessarily dismissive of the legislature's role in expressing the will of the people, I respectfully dissent."*

The dissent opinion brought to light the lack of consideration or recognition in case law that *"children are not generally considered competent to consent to medical procedures."* It brought to light the four exemptions in the PCA, *"married minors, ... minors who have been legally emancipated, ...minors who have entered the armed services of the United States ,and ...who have become employed and self-subsisting."* For those pregnant minors who did not fall into the four exempt categories a judicial bypass provision was provided for appropriate circumstances. It was a process designed to be speedy and cost-free to the child. The PCA called for a five-day response of the court; HB 364 calls for a three-day response. Failure by the court to respond in time would be construed as an act constructive authorization. The judicial bypass requires a sworn statement from the pregnant minor and an adult family member or state agent such as an Office of Children's Services caseworker or law enforcement officer.

Carpeneti discussed the fact that the Court quickly recognized that there was a compelling State interest but failed *to "look closely at the nature of the state's and parents' interests"* leaving *"its constitutional 'balance' one-sided."* Carpeneti continues in his dissent to outline case law that creates a judicial history of *"treating minors differently from adults," "protecting twelve-year-olds from older teenagers and from their own immaturity in choosing to participate in harmful activity,"* prohibiting minors from making contract to *"smoke cigarettes or drink alcoholic beverages or consent to sexual intercourse. Without a parent's consent they may not become licensed drivers or get married or obtain general medical or dental treatment."*

"In sum, the Alaska Parental Consent Act appears to be the product of a concerted effort to make certain that those pregnant girls who are sufficiently mature to make the decision to obtain an abortion on their own are allowed to do so while those who are not sufficiently mature either obtain a parent's consent or, in the case of parental abuse, a judicial determination that the procedure is in their best interest."

In his dissenting opinion, Carpeneti uses the litmus test for parental consent that is required for participation in school field trips to demonstrating the extent to which the State must go to terminate parental rights is his argument:

"In addition to society's interest in protecting children from their own immaturity, we have long held that parents have a fundamental right in raising of their children."

Carpeneti's dissenting opinion determines that the State's compelling interest does outweigh the equal protection and privacy clauses because:

"In sum, the norm in American, and Alaskan, life and law is that the parents are a child's first and most important resource for assistance in decision-making. For that reason, the state's interest in protecting children from the consequences of their own immaturity, and in so doing protecting the health of its children, and its interest in supporting parents' right and duty to guide the upbringing of their children is particularly compelling."

HB 364 enacts the notification process that the Court determined is the least restrictive means of achieving the State's compelling interest but further continues to require parental consent unless the minor chooses a judicial bypass. It leaves intact the four exemptions from parental consent: *married minors, minors who have been legally emancipated, minors who have entered the armed services of the United States, and minors who have become employed and self-subsisting.*

I believe parental consent can still be a part of a three-legged stool that recognizes the State's compelling interest in *"protecting minors from their own immaturity and aiding parents in fulfilling their parental responsibilities."* In addition to **parental consent**, HB 364 provides for a judicial bypass for sexual abuse cases using a ***lower standard than the 1997 PCA Act's clear and convincing*** provision, and a **provision prohibiting the parents from coercing a pregnant minor to have an abortion**.

In an era where government intrusion continues to be an issue with infringement on freedom of speech, removing God from government and schools, Real ID, the Patriot Act, infringement on Second Amendment rights, and now abrogation of parental rights, it is time to reverse the trend and protect those principles our forefathers rooted in government to preserve our freedom.

ALASKA STATE LEGISLATURE
HOUSE JUDICIARY COMMITTEE

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Representative Max Gruenberg
Representative Lindsey Holmes

State Capitol, Room 120
Juneau, Alaska 99801-1182

Fax

To: Leg. Legal

Fax #: 2029 Number of pages including cover: 2

From: Jane Pierson

Date: March 1, 2008

Re: HJUD final for HB 364 (25-LS1406\C)

Please go final on the above-referenced bill with the following conceptual amendments:

Amendment #6 Adopted
P. 3, L. 29 After (a) insert (1)

Amendment #9 Adopted
P. 3, L. 29 P. 3, L. 29 insert physician designee may initiate calls and the physician shall give notice.
P. 4, L. 14 after physician insert "'s designee"

Amendment #11 Adopted
P. 4, L.23 After "mail" insert ", restricted delivery to addressee only."

Amendment #12 Passed 6-1
P. 4, L. 29 After "products of conception" insert "and evidence"

Amendment #14 Adopted
P. 7, L. 14 Delete the comma after court.

L. 15 delete the comma after jurisdiction

Amendment #16 Adopted not to let that
P. 7, L. 16 insert "cause ~~to prevent~~ the minor ~~from~~ having an abortion"
is

Amendment #17 Adopted
P. 7, L. 21 Delete "parent, legal guardian, or custodian of a minor" and insert "person"

Amendment #20 Adopted
P. 10, L. 26-31 Delete Sec. 18. Also conforming amendments to Sec. 16 & 19

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Log for
Representative Jay Ramras
(907) 465-2070
Mar 01 2008 1:01PM

Last Transaction

Date	Time	Type	Identification	Duration	Pages	Result
Mar 1	1:01PM	Fax Sent	2029	0:37	2	OK

HB364 HJUD Conceptual Amendments

Amendment #1 Withdrawn
P. 2, L. 6 After consents insert a period "." Delete the remainder of lines 6 and 7.

Amendment #2 Failed 2-5
P 2, L. 29. Delete "medical instability caused by a"

Amendment #3 Failed 2-5
P.2, L. 27 – 30 strike all after "necessary to avert" and insert "a serious risk to the minor's health."

Amendment #4 Failed 2-5
P. 3, L. 6 After abortion delete "not less than 48 hours before the abortion is performed"

Amendment #5 Failed 2-5
P. 3, L. 15-28 Inset "a minor who is a victim of physical abuse, sexual abuse, or emotional abuse is not required to give notice or obtain consent when such abuse is documented in a writing signed by the minor under penalty of perjury."

Amendment #6 Adopted
P. 3, L. 29 After (a) insert (1)

Amendment #7 Withdrawn
P. 3, L. 15 – 18 add in (4) "without notice or consent of parent, guardian, or custodian…and the minor consents."

Amendment #8 Withdrawn
P. 3, L. 31 After the first use of word abortion insert "or the physician's designee"

Amendment #9 Adopted
P. 3, L. 29 P. 3, L. 29 insert physician designee may initiate calls and the physician shall give notice.
P. 4, L. 14 after physician insert "'s designee"

Amendment #10 Withdrawn
P. 4, L. 13 Delete after "telephone" "but" and insert after "physician" shall make reasonable efforts to comply with this subsection. A physician that makes reasonable attempts to comply with this subsection shall not be held liable for failure to notify." Delete the rest of lines 13-16.

Amendment #11 Adopted
P. 4, L.23 After "mail" insert ", restricted delivery to addressee only."

Amendment #12 Passed 6-1
P. 4, L. 29 After "products of conception" insert "and evidence"

Amendment #13 Failed 2-5
P. 5, L. 20-21 Delete "a pattern of"

Amendment #14 Adopted
P. 7, L. 14 Delete the comma after court.
L. 15 delete the comma after jurisdiction

Amendment #15 Withdrawn
P. 7, L. 16 After section insert "obtaining"

Amendment #16 Adopted
P. 7, L. 16 insert "cause to prevent the minor from having an abortion"

Amendment #17 Adopted
P. 7, L. 21 Delete "parent, legal guardian, or custodian of a minor" and insert "person"

Amendment #18 Failed 1-6
P. 7, L. 21 delete "minor" and insert "person"

Amendment #19 Failed 2-5
P. 7, L. 22 Before the period insert "or to bear a child"
P. 7, L. 25 After "abortion" insert "or to bear a child"

Amendment #20 Adopted
P. 10, L. 26-31 Delete Sec. 18. Also conforming amendments to Sec. 16 & 19

Amendment #21 Failed 2-5
Page 9, L. 26 delete "clear and convincing" and insert "a preponderance of the"

AS 18.16.030(e) is amended by deleting "clear and convincing" and inserting "a preponderance of the"

AS 18.16.030(f) is amended by deleting "clear and convincing" and inserting "a preponderance of the"

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: HB 36 '
() Publish Date:

ID(File name) HB364-DHSS-MS-02-19-08
Title NOTICE & CONSENT FOR MINOR'S ABORTION
Sponsor COGHILL
Requester HOUSE JUD

Dept Affected: Health & Social Services
RDU: Health Care Services
Component: Medicaid Services
Component No: 2077

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2009**	**FY 2009**	**FY 2010**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims	*		*	*	*	*	*
Miscellaneous							
TOTAL OPERATING	*	0.0	*	*	*	*	*
CAPITAL EXPENDITURES							
CHANGE IN REVENUES (0)							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF	*		*	*	*	*	*
1037 GF/Mental Health							
Other(Specify Type-do not abbreviate)							
Other(Specify Type-do not abbreviate)							
TOTAL	*	0.0	*	*	*	*	*

Estimate of any current year (FY2008) cost:

POSITIONS

Full-time							
Part-time							
Temporary							

ANALYSIS: *(Attach a separate page if necessary)*

This fiscal note is indeterminate (*).

There is no way to determine which minors enrolled in Medicaid had consent from a parent or guardian for abortions because the department does not require a consent form to process claims. The department estimates that requiring parental consent could increase Medicaid costs due to higher risk factors associated with these pregnancies, including delayed prenatal care.

Continued on page 2.

Prepared by: William J Streur, Deputy Commissioner — Phone: 334-2520
Division: Health Care Services — Date/Time: 02/11/2008
Approved by: Karleen Jackson, Commissioner — Date: 02/19/2008
Agency: Department of Health and Social Services

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

BILL NO: HB 364

ANALYSIS CONTINUATION

Expenditures for abortions are made from general fund dollars. These claims are paid pursuant to an Alaska Supreme Court decision that requires state funding of medically necessary abortions for low-income women eligible for Medicaid. The only abortion services eligible for federal financial participation are those that the department is required to cover under the federal Hyde amendment. To qualify under the Hyde amendment, the abortion must be the result of rape or incest, or the life of the mother must be endangered if the pregnancy were carried to term. Hyde amendment qualifying abortion claims are rare—in FY 2007, there were no Hyde amendment claims.

ALASKA STATE HOUSE OF REPRESENTATIVES

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REPRESENTATIVE JOHN COGHILL

HB 364 Penalties, Parental Notice, Parental Consent, and Judicial Bypass for an Abortion

SECTIONAL

*** Section 1.** Adds a notice requirement to the consent requirement in AS 18.16.010(a). Section 3 sets out specific requirements for notice and consent

***Sec. 2.** AS 18.16.010(g) is reenacted to shift the burden of proof for prosecution of a physician who performs an abortion to the State. With the new statutory language all it takes to determine the standard for whether or not an abortion is required because of a medical emergency is the doctor's good faith, clinical judgment. The doctor should make one of the following findings:

(1) an immediate abortion of the minor's pregnancy is necessary to avert the minor's death; or

(2) a delay in providing an abortion will create a serious risk of medical instability due to a substantial and irreversible impairment of a major bodily function of the pregnant minor.

***Sec. 3.** Requires the physician performing the abortion or the referring physician to give actual notice to one legal parent or the legal guardian or custodian of the possible abortion. Is notice must be in person or by telephone. If in person the parent or guardian must provide a government issued I.D. and provide documentation of their legal relationship with the minor requesting an abortion. If the notice is by telephone, the call must be initiated by the physician and the physician must take reasonable steps to verify the true identity of the person receiving notice and his or her relationship to the minor.

If the physician has exhausted efforts for notice in person or by phone, the physician can send written notice to the parent or guardian at the last known legal mailing address. This bill adjusts the waiting period to 48 hours after actual notice or 48 hours after the letter is deemed received. A letter is deemed received 48 hours after it is mailed, so that would be 96 hours. If the doctor actually talks to a parent, the waiting period would only be 48 hours.
One of the minor's parents or the minor's legal guardian or custodian has consented in a notarized writing to the performance or inducement of the abortion

Notice and consent is not required if the minor and a brother or sister of the minor who is over the age of 21, or a law enforcement officer, or a representative of state Child Protective services, or a grandparent, or a stepparent specified by the minor signs a notarized written statement certifying their personal knowledge of the abuse against the minor by a parent or guardian or sexual abuse by another person.

The other exceptions to notice and consent would be if a court issues an order under AS 18.16.030 authorizing the minor to proceed with the abortion without notice to the parent, guardian, or custodian or if a court, by its inaction under AS 18.16.030, constructively has authorized the minor to proceed with the abortion without notice to the parent, guardian, or custodian.

If the physician proceeds with the abortion proceeds after receiving notarized declarations of abuse, the physician performing or inducing the abortion must certify in the patient's medical record that he or she has received the written declarations of abuse or neglect abuse to and must report the abuse to OCS. Any physician who relies in good faith on written statements declaring abuse and who reports the abuse to Child Protection authorities shall not be civilly or criminally liable for failure to give notice to or to obtain consent from a parent, guardian or custodian. If the minor's pregnancy was the result of a sexual assault on the minor, the physician performing or inducing the abortion must retain, and take reasonable steps to preserve, the products of conception following the abortion for use by law enforcement authorities in any subsequent criminal prosecution of the assailant.

*** Sec. 4.** This amends AS 18.16.030, **Judicial bypass for minor seeking an abortion.** (a) A woman who is pregnant, unmarried, under 17 years of age, and unemancipated who wishes to have an abortion without notice to and without the consent of a parent, guardian, or custodian may file a complaint in the superior court requesting the issuance of an order authorizing the minor to proceed with the abortion without notice to the parent, guardian or custodian and/or to consent to the performance or inducement of an abortion without the consent of a parent, guardian, or custodian.

In the interest of shortening any delays in the process of obtaining the judicial bypass, subsection (c) reduces from five to three days the time in which Superior Court must render a decision on a judicial bypass. If the court does not issue a decision in three days the inaction will be considered a constructive order.

*** Sec. 5.** Adds notice to process for filing for judicial bypass without notice to and the consent of a parent, guardian, or custodian.

***Sec. 6.** Requires the court to hold a hearing not later than the third business day after a judicial bypass complaint has been filed. This reduces the deadline from five to three days for expediency purposes.

Sec. 7. Amends provisions for an appeal to a dismissed complaint for judicial bypass by adding notice language and reducing the timeline from four to three days the superior court has to deliver a copy of the appeal to the supreme court.

Sec. 8. Provides for a minor requesting a judicial bypass can request the superior court issue an order directing the minor's school allow the minor to attend a judicial bypass hearing and prohibits the school from notifying the parents, guardian, or custodian

***Sec. 9.** This is a new section of the law prohibiting a parent, guardian, custodian, or any other person from coercing a pregnant minor to have an abortion performed. If a minor is denied financial support by the minor's parents, guardian, or custodian due to the minor's refusal to have an abortion performed, the minor shall be deemed emancipated for the purposes of eligibility for public assistance benefits, except that such benefits may not be used to obtain an abortion. As used in this Section, "coercion" means restraining or dominating the choice of a minor female by force, threat of force, or deprivation of food or shelter.

Requires physicians to submit monthly reports to the Department Health and Social Service on forms prescribed by the department reporting the following:

1. the number of consents obtained under this law
2. the number of times in which exceptions were made to the consent requirement under this law
3. the type of exception, the minor's age
4. the number of prior pregnancies and prior abortions of the minor

No patient names are to be used on the forms. The Department is required to make a compilation of the data reported available to the public on an annual basis.

***Sec. 10.** Direct court rule change adding notice to consent provisions of Rule 220(a) Rules of Appellant Procedure, scope of judicial bypass appeals. It also contains language cleanup from revisor that replaces "parental consent" with consent of a parent, guardian, or custodian.

***Sec. 11.** Direct court rule change adding notice to consent provisions of Rule 220(c)(1) Rules of Appellant Procedure, notice of judicial bypass appeals. It also contains language cleanup from revisor that replaces "parental consent" with consent of a parent, guardian, or custodian.

***Sec. 12.** Direct court rule change amending Rule 220(a) Rules of Appellant Procedure, constructive order of judicial bypass appeals. It reduces from five to three days the deadline for the appellant to receive a constructive order because the court did not enter an order on an appeal.

***Sec. 13.** Direct court rule change adding "notice" to consent language in Rules of Probate Procedure Rule 20(a), Petition for Judicial Bypass Procedure to Authorize Minor to Consent to an Abortion.

***Sec. 14.** Direct court rule change adding notice to consent provisions of Rule 20(e) Rules of Probate Procedure, Findings and Order of Judicial Bypass Procedure to Authorize Minor to Consent to an Abortion.. It also contains language cleanup from revisor that replaces "parental consent" with consent of a parent, guardian, or custodian.

***Sec. 15.** Direct court rule change adding notice to consent provisions of Rule 20(f) Rules of Probate Procedure, Findings and Order of Judicial Bypass Procedure to Authorize Minor to Consent to an Abortion. It reduces from five to three days the deadline for the appellant to receive a constructive order because the court did not enter an order on an appeal.

***Sec. 16.** Indirect court rule amendment of Rules of Civil Procedure Rule 24(a) Right to Intervention by providing of a legislative right to intervention in Section 18.

***Sec. 17.** Severability clause.

***Sec. 18.** This new provision of law allows the Legislature, by joint resolution or by and through the Legislative Council, to appoint one or more of its members who sponsored or co-sponsored this Act, as a matter of right and in his or her official capacity, to intervene to defend this law in any case in which its constitutionality is challenged.

***Sec 19.** The enactment of Section 18, legislative right to intervention, is contingent on a two-thirds vote approval on indirect court rule amendment of Rules of Civil Procedure Rule 24(a) Right to Intervention.

***Sec. 20.** This Act takes effect within thirty (30) days of its enactment.

Sarah Palin
Governor
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STATE OF ALASKA
OFFICE OF THE GOVERNOR

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Press Release

GOVERNOR'S PRESS OFFICE

IMMEDIATE RELEASE **No. 07-216**

Governor Palin Dismayed with State Supreme Court Decision

November 2, 2007, Juneau, Alaska - In a 3-2 vote this morning, the Alaska Supreme Court ruled Alaska's Parental Consent Act unconstitutional. The PCA, passed by the Alaska Legislature in 1997, requires girls 16 and younger to obtain parental consent before getting an abortion. The court decided the law burdens a minor girl's fundamental right to reproductive freedom.

"It is outrageous that a minor girl can get an abortion without parental consent," said Governor Palin. "The State Supreme Court has failed Alaska by separating parents from their children during such a critical decision, moving in the exact opposite direction from the law's intent."

Governor Palin has instructed Attorney General Talis Colberg to file a petition for rehearing. Twenty-six states have parental consent laws that are in effect. Sixteen states have parental notification statutes in effect.

"Our court is out of step with mainstream judicial decisions and our citizens," Governor Palin said. "This decision is clearly a case of legislating from the bench."

In 1997, the Alaska Legislature passed the law that required girls 16 years and younger to obtain parental consent before getting an abortion. Justice Walter Carpeneti, one of the two dissenting justices, recognized the will of the state in his dissent:

"In 1997, faced with competing interests of the highest constitutional level – an underage pregnant girl's constitutional right to privacy in deciding whether to terminate her pregnancy, her parents' constitutional right (and duty) to protect her best interests, and the state's compelling interests in protecting the children against their own immaturity – the Alaska Legislature carefully crafted the Alaska Parental Consent Act in an effort to recognize and protect all of these interests. That law is fully consistent with United States Court precedent, yet today's opinion strikes it down. Because this court's rejection of the legislature's thoughtful balance is inconsistent with our own case law and unnecessarily dismissive of the legislature's role in expressing the will of the people, I respectfully dissent."

###

Note: The Governor's comments regarding the State Supreme Court's decision will be on the Governor's satellite window at 3:30 p.m.

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Web posted November 8, 2007

Lawmakers pushing for parental consent abortion referendum

About 15 percent of the Legislature says state's high court erred in ruling

STEVE QUINN
The Associated Press

Two Republicans are leading a push by state lawmakers to place a constitutional amendment on the ballot next year to determine whether underage teenage girls need parental consent to have an abortion.

Rep. John Coghill of North Pole and Sen. Fred Dyson of Eagle River are among 10 members - or about 15 percent - of the Alaska Legislature who say the state Supreme Court erred in ruling that girls 16 and younger can get abortions without permission from their parents.

"What this court decision did was put the parents out of the loop when it comes to the care, protection, nurturing and decision-making of the child," Coghill said Wednesday at a news conference. "The Legislature did everything it could to protect the privacy of a young child getting pregnant."

Clover Simon, head of Planned Parenthood of Alaska, said lawmakers should focus on more pressing priorities - ethics reform, oil taxes and future construction of a natural gas pipeline - and let the Supreme Court's ruling stand.

"The reality is almost every single teen we've seen come to Planned Parenthood for abortion services, are coming with a parent," Simon said. "The laws are not going to fix the problem of parent-child communication."

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Voice Your Thoughts

Do you agree with the Alaska Supreme Court's decision to allow underage teens to get abortions without parental consent?

•••

Post your comments at http://juneaublogger.com/voxbox/

Friday's 3-2 decision by the Supreme Court ended a 10-year battle over the Parental Consent Act passed by the Legislature in 1997.

The majority opinion written by Chief Justice Dana Fabe said the law "places a burden on minors' fundamental right to privacy."

But in the dissent, Justice Walter Carpeneti wrote, "society has long-standing and pervasive interests in protecting children from their own immaturity."

The final decision riled many legislators, including Coghill and Dyson, who want to put the question before voters as a proposed constitutional amendment. Lawmakers are now immersed in a special session over oil taxes, so no formal action can be taken until January when the Legislature returns for its regular session.

On Friday, Gov. Sarah Palin called the Supreme Court ruling "outrageous" and directed Attorney General Talis Colberg to file a petition for a rehearing.

Palin later said she supports putting the parental consent question on the ballot, said the governor's spokeswoman Sharon Leighow.

At least two-thirds of the House's 40 members and Senate's 20 members each must approve a resolution to put the issue on the ballot.

"Parents must be able to control the medical care their children get," Dyson said. "Aside from how you view the abortion issue, this denigration of parental rights is absolutely unacceptable."

The issue of parental consent or parental notification for a teen to receive an abortion is playing out nationwide.

According to NARAL Pro-Choice America, an abortion rights group, 43 states restrict young women's access to abortion with a parental notice or consent. But of those states, seven had laws ultimately ruled to be unconstitutional or unenforceable, including Alaska.

The results are wide-ranging.

Voters in California turned back the state's first abortion-related measure, 53 percent to 47 percent, in 2005. The proposal would have required doctors to alert parents before performing the procedure on minors.

In Idaho last spring, Gov. C.L. "Butch" Otter signed into law a bill requiring minor girls to get permission from a parent or guardian for an abortion. However, teens can bypass their parents and received a judge's approval in cases such as incest, abuse or a medical emergency.

In New Hampshire in 2006 Gov. John Lynch approved legislation to make the state the first to repeal a 2003 law requiring parents be notified before a minor receives an abortion. Like Alaska's Parental Consent Act, New Hampshire's repealed law never took affect.

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State v. Planned Parenthood of **Alaska**
Alaska,2007.

Supreme Court of Alaska.
STATE of **Alaska**, Appellant/Cross-Appellee,
v.
PLANNED PARENTHOOD OF **ALASKA** and **Jan Whitefield**, M.D., Appellees/Cross-Appellants.
Nos. S-11365, S-11386.

Nov. 2, 2007.
Rehearing Denied Dec. 14, 2007.

Background: Abortion provider and two physicians brought action alleging that Parental Consent Act, which prohibited doctors from performing abortions on minors without parental consent or judicial authorization, violated state constitution. Plaintiffs filed motion for summary judgment. The Superior Court granted motion, concluding that Act violated equal protection clause. State appealed. The Supreme Court, Bryner, J., 35 P.3d 30, affirmed in part and reversed in part. On remand, the Superior Court, Third Judicial District, Anchorage, Sen K. Tan, J., entered judgment declaring that Act was unconstitutional under the equal protection and privacy clauses. State appealed.

Holdings: The Supreme Court, Fabe, J., held that:

(1) Act placed a burden on minors' fundamental right to privacy and, thus, was subject to strict scrutiny;

(2) State has compelling interests in protecting minors from their own immaturity;

(3) State has compelling interest in aiding parents to fulfill their parental responsibilities; and

(4) Act was not the least restrictive means of achieving State's compelling interests and, thus, violated minors' fundamental right to privacy under state constitution.

Decision of Superior Court affirmed.

Carpeneti, J., dissented and filed opinion in which Matthews, J., joined.

West Headnotes

[1] Appeal and Error 30 ⇐1008.1(5)

30 Appeal and Error
30XVI Review
30XVI(I) Questions of Fact, Verdicts, and Findings
30XVI(I)3 Findings of Court
30k1008 Conclusiveness in General
30k1008.1 In General
30k1008.1(5) k. Clearly Erroneous Findings. Most Cited Cases
Supreme Court reviews the superior court's factual determinations for clear error.

[2] Appeal and Error 30 ⇐893(1)

30 Appeal and Error
30XVI Review
30XVI(F) Trial De Novo
30k892 Trial De Novo
30k893 Cases Triable in Appellate Court
30k893(1) k. In General. Most Cited Cases
Supreme Court reviews constitutional

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questions de novo, adopting the most persuasive rule of law in light of precedent, reason, and policy.

[3] Constitutional Law 92 ⇐656

92 Constitutional Law
92V Construction and Operation of Constitutional Provisions
92V(F) Constitutionality of Statutory Provisions
92k656 k. Facial Invalidity. Most Cited Cases
Courts uphold a statute against a facial constitutional challenge if despite any occasional problems it might create in its application to specific cases, the statute has a plainly legitimate sweep.

[4] Constitutional Law 92 ⇐1210

92 Constitutional Law
92XI Right to Privacy
92XI(A) In General
92k1210 k. In General. Most Cited Cases
Supreme Court begins its analysis in case alleging that legislation violates state constitutional right to privacy by measuring the weight and depth of the individual right at stake so as to determine the proper level of scrutiny with which to review the challenged legislation. Const. Art. 1, § 22.

[5] Constitutional Law 92 ⇐1217

92 Constitutional Law
92XI Right to Privacy
92XI(A) In General
92k1217 k. Compelling Interest. Most Cited Cases
If the individual right at stake, in action alleging that legislation violates state constitutional right to privacy, proves to be fundamental, Supreme Court must review the challenged legislation strictly, allowing the law to survive only if the State can establish that it advances a compelling state interest using the least restrictive means available. Const. Art. 1, § 22.

[6] Constitutional Law 92 ⇐1217

92 Constitutional Law
92XI Right to Privacy
92XI(A) In General
92k1217 k. Compelling Interest. Most Cited Cases
In cases involving the right to privacy, the precise degree to which the challenged legislation must actually further a compelling state interest and represent the least restrictive alternative is determined, at least in part, by the relative weight of the competing rights and interests. Const. Art. 1, § 22.

[7] Constitutional Law 92 ⇐1079

92 Constitutional Law
92VII Constitutional Rights in General
92VII(B) Particular Constitutional Rights
92k1079 k. Personal Liberty. Most Cited Cases

Constitutional Law 92 ⇐1214

92 Constitutional Law
92XI Right to Privacy
92XI(A) In General
92k1214 k. Absolute, Inviolable, or Unlimited Nature. Most Cited Cases
The rights to privacy and liberty under state constitution are neither absolute nor comprehensive and their limits depend on a balance of interests. Const. Art. 1, § 22.

[8] Constitutional Law 92 ⇐1240

92 Constitutional Law
92XI Right to Privacy
92XI(B) Particular Issues and Ap-

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plications
92k1237 Sex and Procreation
92k1240 k. Abortion. Most Cited Cases
Parental Consent Act, which prohibited doctors from performing abortions on minors without parental consent or judicial authorization, placed a burden on minors' fundamental right to privacy and, thus, was subject to strict scrutiny. Const. Art. 1, § 22; AS 18.16.010(a)(3), 18.16.020.

[9] Constitutional Law 92 ⇐1210

92 Constitutional Law
92XI Right to Privacy
92XI(A) In General
92k1210 k. In General. Most Cited Cases
Primary purpose of state constitution's privacy clause is to protect citizens' personal privacy and dignity against unwarranted intrusions by the State. Const. Art. 1, § 22.

[10] Constitutional Law 92 ⇐1211

92 Constitutional Law
92XI Right to Privacy
92XI(A) In General
92k1211 k. Relation Between State and Federal Rights. Most Cited Cases
Because state constitution's right to privacy is explicit, its protections are necessarily more robust and broader in scope than those of the implied federal right to privacy. Const. Art. 1, § 22.

[11] Infants 211 ⇐13

211 Infants
211II Protection
211k13 k. Protection of Health and Morals. Most Cited Cases
State has compelling interest in the health, safety, and welfare of its minor citizens and may properly take affirmative steps to safeguard minors from their own immaturity.

[12] Parent and Child 285 ⇐1

285 Parent and Child
285k1 k. The Relation in General. Most Cited Cases
State has a compelling interest in aiding parents to fulfill their parental responsibilities.

[13] Abortion and Birth Control 4 ⇐ 117

4 Abortion and Birth Control
4k116 Substitution and Bypass; Notice
4k117 k. In General. Most Cited Cases

Constitutional Law 92 ⇐1240

92 Constitutional Law
92XI Right to Privacy
92XI(B) Particular Issues and Applications
92k1237 Sex and Procreation
92k1240 k. Abortion. Most Cited Cases
Parental Consent Act, which prohibited doctors from performing abortions on minors without parental consent or judicial authorization, was not the least restrictive means of achieving State's compelling interests in protecting minors from their own immaturity and aiding parents in fulfilling their parental responsibilities, and thus Act violated minors' fundamental right to privacy under state constitution; given that Act shifted the right to reproductive choice to minors' parents, it was, all else being held equal, more restrictive than a parental notification statute. Const. Art. 1, § 22; AS 18.16.010(a)(3), 18.16.020.

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Held UnconstitutionalAS 18.16.010(a)(3).

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Before: BRYNER, Chief Justice, MATTHEWS, EASTAUGH, FABE, and CARPENETI, Justices.

OPINION

FABE, Justice.

I. INTRODUCTION

From time to time, we are called upon to decide constitutional cases that touch upon the most contentious moral, ethical, and political issues of our day. In deciding such cases, we are ever mindful of the unique role we play in our democratic system of government. We are not legislators, policy makers, or pundits charged with making law or assessing the wisdom of legislative enactments. We are not philosophers, ethicists, or theologians, and "cannot aspire to answer" fundamental moral questions or resolve societal debates.FN1 We are focused only on upholding the constitution and laws of the State of Alaska.

> FN1. *State, Dep't of Health & Soc. Servs. v. Planned Parenthood of Alaska*, 28 P.3d 904, 906 (Alaska 2001) (noting that we do not decide "philosophical questions about abortion which we, as a court of law, cannot aspire to answer").

Today, we are once again called upon to decide a case that implicates the controversial issue of abortion; more specifically, we are called upon to decide whether the Parental Consent Act impermissibly in-

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fi ges upon a minor's fundamental right to privacy when deciding whether to terminate a pregnancy. We decide today that the State has an undeniably compelling interest in protecting the health of minors and in fostering family involvement in a minor's decisions regarding her pregnancy. And contrary to the arguments of Planned Parenthood, we determine that the constitution permits a statutory scheme which ensures that parents are notified so that they can be engaged in their daughters' important decisions in these matters. But we ultimately conclude that the Act does not strike the proper constitutional balance between the State's compelling interests and a minor's fundamental right to privacy.

This is the second time that this case has been before us, and we earlier held that the privacy clause of the Alaska Constitution extends to minors as well as adults and that the State may restrict a minor's privacy right "only when necessary to further a compelling state interest and only if no less restrictive means exist to advance that interest." [FN2] The State's asserted interest in protecting a minor from her own immaturity by encouraging parental involvement in her decision-making process is undoubtedly compelling. But by prohibiting a minor from obtaining an abortion without parental consent, the Act effectively shifts that minor's fundamental right to choose if and when to have a child from the minor to her parents. There exists a less burdensome and widely used means of actively involving parents in their minor children's abortion decisions: parental notification.[FN3] The United States Supreme Court has recognized, in a different context, that "notice statutes are not equivalent to consent statutes because they do not give anyone a veto power over a minor's abortion decision." [FN4] And many states currently employ this less restrictive approach. Because the State has failed to establish that the greater intrusiveness of a statutory scheme that requires parental consent, rather than parental notification, is necessary to achieve its compelling interests, the Parental Consent Act does not represent the least restrictive means of achieving the State's interests and therefore cannot be sustained.

FN2. *State v. Planned Parenthood of Alaska*, 35 P.3d 30, 41 (Alaska 2001)(*Planned Parenthood I*).

FN3. *Ohio v. Akron Ctr. for Reproductive Health*, 497 U.S. 502, 511, 110 S.Ct. 2972, 111 L.Ed.2d 405 (1990) (citing *H.L. v. Matheson*, 450 U.S. 398, 411 n. 17, 101 S.Ct. 1164, 67 L.Ed.2d 388 (1981)).

FN4. *Id.*

II. FACTS AND PROCEEDINGS

In 1997 the Alaska Legislature passed the ***580** Alaska Parental Consent Act (PCA).[FN5] The PCA prohibits doctors from performing an abortion on an "unmarried, unemancipated woman under 17 years of age" without parental consent or judicial authorization.[FN6] The Act subjects doctors who knowingly perform abortions on minors without the required consent or judicial authorization to criminal prosecution.[FN7] The parental consent requirement can be met through written consent from a parent, guardian, or custodian of the minor.[FN8] The Act also includes a judicial bypass procedure whereby a minor may file a complaint in superior court and obtain judicial authorization to terminate a pregnancy if she can establish by clear and convincing evidence either that she is "sufficiently mature and well enough in-

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formed to decide intelligently whether to have an abortion" or that being required to obtain parental consent would not be in her best interests.[FN9] If the court fails to hold a hearing within five business days after the complaint is filed, the court's inaction is considered a constructive order authorizing the minor to consent to terminate the pregnancy.[FN10]

FN5. Ch.14, §§ 1-10, SLA 1997.

FN6. AS 18.16.010(a)(3); AS 18.16.020.

FN7. AS 18.16.010(c). The Act provides the doctor with an affirmative defense to prosecution and civil liability where compliance with the Act was not possible "because an immediate threat of serious risk to the life or physical health of the pregnant minor from the continuation of the pregnancy created a medical emergency necessitating the immediate performance or inducement of an abortion." AS 18.16.010(g). We note that the superior court interpreted this statutory language as "broad enough" to "contain[ ] an appropriate medical emergency exception."

FN8. AS 18.16.020(1).

FN9. AS 18.16.030.

FN10. AS 18.16.030(c). Similar time limits apply to this court's consideration of a minor's appeal from a denied petition. AS 18.16.030(j).

On July 25, 1997, Planned Parenthood, Drs. Jan Whitefield and Robert Klem, and ten unidentified Jane Does filed a complaint in superior court seeking declaratory and injunctive relief. The complaint alleged that the PCA violates state constitutional rights to privacy, equal protection, and due process. On January 7, 1998, the plaintiffs filed a motion for summary judgment. The superior court granted that motion, concluding that the PCA violates the equal protection clause of the Alaska Constitution. The superior court also concluded that the privacy clause of the Alaska Constitution protects minors as well as adults. However, in light of its equal protection ruling, the superior court did not decide whether the PCA violates the Alaska Constitution's privacy clause.

The State appealed, and on November 16, 2001, we issued our decision in *Planned Parenthood I*.[FN11] In that case, we concluded that the privacy clause of the Alaska Constitution extends to minors as well as adults and that the State may constrain a pregnant minor's privacy right "only when necessary to further a compelling state interest and only if no less restrictive means exist to advance that interest."[FN12] We also reversed the grant of summary judgment and remanded the case for an evidentiary hearing to determine whether the PCA actually furthers compelling state interests using the least restrictive means available.[FN13]

FN11. 35 P.3d 30 (Alaska 2001).

FN12. *Id.* at 41.

FN13. *Id.* at 46.

On October 4, 2002, prior to the evidentiary hearing on remand, the plaintiffs again moved for summary judgment, this time arguing that the PCA violates the constitution by failing to exclude abortions performed in medical emergencies. On January 2, 2003, the superior court denied the motion for summary judgment.

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From January 6 to January 24, 2003, the superior court held a bench trial to hear evidence regarding the constitutionality of the PCA. On October 13, 2003, the superior court issued a decision on remand holding that the PCA is unconstitutional because it fails to further compelling state interests using the least restrictive means available. On January 7, 2004, the superior court entered judgment declaring that the PCA was unconstitutional under the equal protection and ***581** privacy clauses of the Alaska Constitution and enjoining the State from enforcing the Act.

The State now appeals the superior court's judgment. The plaintiffs cross-appeal the superior court's denial of their motion seeking summary judgment based on the absence of a medical emergency exception.

III. STANDARD OF REVIEW

[1][2][3] We review the superior court's factual determinations for clear error.[FN14] We review constitutional questions de novo, adopting the most persuasive rule of law in light of precedent, reason, and policy.[FN15] We uphold a statute against a facial constitutional challenge if "despite any occasional problems it might create in its application to specific cases, [the statute] has a plainly legitimate sweep."[FN16]

FN14. *Grimm v. Wagoner*, 77 P.3d 423, 427 (Alaska 2003).

FN15. *Treacy v. Municipality of Anchorage*, 91 P.3d 252, 260 (Alaska 2004).

FN16. *Id.* at 260 n. 14.

IV. DISCUSSION

[4][5][6][7] Under our case law, we begin our analysis in cases such as the one at hand by measuring the weight and depth of the individual right at stake so as to determine the proper level of scrutiny with which to review the challenged legislation.[FN17] If this individual right proves to be fundamental, we must then review the challenged legislation strictly, allowing the law to survive only if the State can establish that it advances a compelling state interest using the least restrictive means available.[FN18] In cases involving the right to privacy, the precise degree to which the challenged legislation must actually further a compelling state interest and represent the least restrictive alternative is determined, at least in part, by the relative weight of the competing rights and interests.[FN19] As we have previously explained, "the rights to privacy and liberty are neither absolute nor comprehensive ... [and] their limits depend on a balance of interests."[FN20]

FN17. *Ravin v. State*, 537 P.2d 494, 497 (Alaska 1975).

FN18. *Planned Parenthood I*, 35 P.3d at 41.

FN19. *Cf. Sampson v. State*, 31 P.3d 88, 91 (Alaska 2001).

FN20. *Id.*

A. The Individual Right at Stake Is Fundamental.

[8][9][10] The plaintiffs assert that the PCA burdens minors' fundamental right to privacy under article I, section 22 of the Alaska Constitution.[FN21] This section of the constitution maintains that "[t]he right of the people to privacy is recognized and shall not be infringed." As we have previ-

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ously explained, the primary purpose of this section is to protect Alaskans' "personal privacy and dignity against unwarranted intrusions by the State." [FN22] Because this right to privacy is explicit, its protections are necessarily more robust and "broader in scope" than those of the implied federal right to privacy.[FN23]

> FN21. Because we conclude that the PCA violates the right to privacy under the Alaska Constitution, we need not address the plaintiffs' arguments that the Act also violates the equal protection clause or that the superior court erred in interpreting the Act to include a medical emergency exception.
>
> FN22. *Luedtke v. Nabors Alaska Drilling Inc.*, 768 P.2d 1123, 1129 (Alaska 1989) (quoting *Woods & Rohde, Inc. v. State, Dep't of Labor*, 565 P.2d 138, 148 (Alaska 1977)).
>
> FN23. *See Ravin*, 537 P.2d at 514-15 (Boochever, J., concurring) (reasoning that "[s]ince the citizens of Alaska ... enacted an amendment to the Alaska Constitution expressly providing for a right to privacy not found in the United States Constitution, it can only be concluded that that right is broader in scope than that of the Federal Constitution").

Included within the broad scope of the Alaska Constitution's privacy clause is the fundamental right to reproductive choice. As we have stated in the past, "few things are more personal than a woman's control of her body, including the choice of whether and when to have children," and that choice is therefore necessarily protected by the right ***582** to privacy.[FN24] Of course, our original decision concerning the fundamental right to reproductive choice specifically addressed only the privacy interests of adult women, but because the "uniquely personal physical, psychological, and economic implications of the abortion decision ... are in no way peculiar to adult women," [FN25] its reasoning was and continues to be as applicable to minors as it is to adults.[FN26] Thus, in *Planned Parenthood I*, we explicitly extended the fundamental reproductive rights guaranteed by the privacy clause to minors.[FN27]

> FN24. *Valley Hosp. Ass'n v. Mat-Su Coalition for Choice*, 948 P.2d 963, 968 (Alaska 1997) (internal quotations omitted).
>
> FN25. *Planned Parenthood I*, 35 P.3d at 40 (internal quotations omitted).
>
> FN26. *Id.* (noting that "[d]eciding whether to terminate a pregnancy is at least as difficult, and the consequences of such decisions are at least as profound, for minors as for adults").
>
> FN27. *Id.*

In the case at hand, the PCA requires minors to secure either the consent of their parent or judicial authorization before they may exercise their uniquely personal reproductive freedoms. This requirement no doubt places a burden on minors' fundamental right to privacy. As such, the PCA must be subjected to strict scrutiny and can only survive review if it advances a compelling state interest using the least restrictive means of achieving that interest.[FN28]

> FN28. The dissent appears to liken a minor's decision of whether to terminate a pregnancy to decisions

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about attending school field trips, joining sports teams, viewing "R"-rated movies, and lifting weights at the gym. But this analogy overlooks the fundamental autonomy at stake in an adolescent's control over her own body. And in other important ways, a minor's decision to terminate a pregnancy is wholly unlike these decisions-the immediacy of the need to address the situation, coupled with the lasting and profound consequences of the decision, make it utterly unlike the day-to-day decisions mentioned by the dissent.

B. The State's Asserted Interests Are Compelling.

The State asserts that the PCA works, on the most generalized level, to advance two interrelated interests: protecting minors from their own immaturity and aiding parents in fulfilling their parental responsibilities.[FN29] We agree with the State that these are compelling interests.

FN29. More specifically, the State asserts that the PCA aims to (1) ensure that minors make an informed decision on whether to terminate a pregnancy; (2) protect minors from their own immaturity; (3) protect minors' physical and psychological health; (4) protect minors from sexual abuse; and (5) strengthen the parent-child relationship.

[11] Although the Alaska Constitution extends the right to privacy in equal measure to both minors and adults, it is not blind to the unique vulnerabilities and needs that accompany minority. As we noted in *Planned Parenthood I*, state interests that are inapplicable to adults may sometimes be compelling with regard to minors.[FN30] And this is certainly the case with regard to the State's asserted interest in protecting minors from their own immaturity. Lacking in "experience, perspective, and judgment," minors often do not possess the capacity to make informed, mature decisions, and are therefore susceptible to a host of pitfalls and dangers unknown in adult life.[FN31] As we have recognized in the past, the State has a special, indeed compelling, interest in the health, safety, and welfare of its minor citizens and may properly take affirmative steps to safeguard minors from their own immaturity.[FN32]

FN30. 35 P.3d at 41 (quoting *Am. Acad. of Pediatrics v. Lungren*, 16 Cal.4th 307, 66 Cal.Rptr.2d 210, 940 P.2d 797, 819 (1997)) (stating that a "statute's relationship to minors properly is employed in the constitutional calculus in determining whether an asserted state purpose or interest is 'compelling' ").

FN31. *Bellotti v. Baird*, 443 U.S. 622, 635, 99 S.Ct. 3035, 61 L.Ed.2d 797 (1979).

FN32. *See, e.g., Planned Parenthood I*, 35 P.3d at 40 (noting that "we have long emphasized the State's special interest in protecting the health and welfare of children").

[12] Insofar as and to the same extent that the State has an interest in protecting minors, so too does it have an interest in aiding parents to fulfill their parental responsibilities.***583** A minor child "is not [a] mere creature of the state," [FN33] and the "affirmative process of teaching, guiding, and inspiring" [FN34] a minor child is, in large part, "beyond the competence of impersonal political institutions." [FN35]

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Parents, therefore, have an "important 'guiding role' to play in the upbringing of their children." [FN36] Indeed, it is the right and duty, privilege and burden, of all parents to involve themselves in their children's lives; to provide their children with emotional, physical, and material support; and to instill in their children "moral standards, religious beliefs, and elements of good citizenship." [FN37] We thus echo the United States Supreme Court's statement that, "[u]nder the Constitution, the State can 'properly conclude that parents ... who have [the] primary responsibility for children's well-being are entitled to the support of laws designed to aid [in the] discharge of that responsibility.' " [FN38]

FN33. *Bellotti*, 443 U.S. at 637, 99 S.Ct. 3035 (quoting *Pierce v. Soc'y of Sisters*, 268 U.S. 510, 535, 45 S.Ct. 571, 69 L.Ed. 1070 (1925)).

FN34. *Id.* at 638, 99 S.Ct. 3035.

FN35. *Id.*

FN36. *H.L. v. Matheson*, 450 U.S. 398, 410, 101 S.Ct. 1164, 67 L.Ed.2d 388 (1981).

FN37. *Wisconsin v. Yoder*, 406 U.S. 205, 233, 92 S.Ct. 1526, 32 L.Ed.2d 15 (1972).

FN38. *Bellotti*, 443 U.S. at 639, 99 S.Ct. 3035 (quoting *Ginsberg v. New York*, 390 U.S. 629, 639, 88 S.Ct. 1274, 20 L.Ed.2d 195 (1968)).

C. The PCA Is Not the Least Restrictive Means of Achieving the State's Compelling Interests.

[13] Having identified and weighed the rights and interests at stake, we now turn to the task of assessing whether the PCA advances the State's compelling interests using the least restrictive means available.

We recognize that the legislature has made a serious effort to narrowly tailor the scope of the PCA by exempting seventeen-year-olds and other categories of pregnant minors from the Act's ban. It is true that the PCA is less restrictive than many other state statutes in terms of the scope of its coverage. But scope is only one of the important criteria that determine the extent to which a parental involvement law restricts minors' privacy rights. The method by which the statute involves parents is also central to determining whether the Act's provisions constitute the least restrictive means of pursuing the State's ends.

By prohibiting minors from terminating a pregnancy without the consent of their parents, the PCA bestows upon parents what has been described as a "veto power" over their minor children's abortion decisions.[FN39] This "veto power" does not merely restrict minors' right to choose whether and when to have children, but effectively shifts a portion of that right from minors to parents. In practice, under the PCA, it is no longer the pregnant minor who ultimately chooses to exercise her right to terminate her pregnancy, but that minor's parents. And it is this shifting of the locus of choice-this relocation of a fundamental right from minors to parents-that is constitutionally suspect. For a review of statutory schemes enacted around the nation reveals a widely used legislative alternative that does not shift a minor's right to choose: parental notification.

FN39. *Ohio v. Akron Ctr. for Reproductive Health*, 497 U.S. 502, 511, 110 S.Ct. 2972, 111 L.Ed.2d 405 (1990) (citing *Matheson*, 450 U.S. at 411 n. 17, 101 S.Ct. 1164)

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Currently, fifteen states have parental notification statutes in place.[FN40] Although the precise details of these statutes vary, they all prohibit minors from terminating a pregnancy until their parents have been notified and afforded an appropriate period of time to actively involve themselves in their minor children's decision-making processes.[FN41] Stated***584** another way, these statutes seek to involve parents, not by giving them "veto power," but by giving them notice and time to consult with and guide their daughters through this important decision. As such, although parental notification statutes undoubtedly burden the privacy rights of minors, they do not go so far as to shift a portion of those rights to parents.

FN40. COLO. REV. STAT. ANN. § 12-37.5-101 to 107; DEL.CODE ANN. tit. 24, §§ 1780-1789(B); FLA. STAT. § 390.01114; Ga.Code Ann. § 15-11-110 to 114; ILL. COMP. STAT. 70/1-99; IOWA CODE § 135L.3; KAN. STAT. ANN. §§ 65-6701 to 6709; MD.CODE ANN., HEALTH-GEN. § 20-103; MINN.STAT. § 144.343; MONT.CODE ANN. §§ 50-20-201 to 215; NEB.REV.STAT. §§ 71-6901 to 6908; NEV.REV.STAT. 442.255; NJ STAT. ANN. § 9:17A-1.1 to 1.12; S.D. CODIFIED LAWS § 34-23A-7; W. VA.CODE §§ 16-2F-1 to 9.

FN41. *See, e.g.*,GA.CODE ANN. § 15-11-112(a) (prohibiting physicians from performing an abortion on a minor unless the physicians give either "24 hours' actual notice, in person or by telephone, to a parent or guardian" or twenty-four hours' written notice, which is deemed delivered forty-eight hours after mailing); IOWA CODE § 135L.3(1) (prohibiting physicians from performing an abortion on a minor "until at least forty-eight hours' prior notification is provided to a parent of the pregnant minor").

Of course, as the dissent emphasizes, the PCA does include a judicial bypass procedure through which some minors may effectively regain the right to reproductive choice by obtaining judicial authorization to forgo parental consent.[FN42] The State argues that "judicial bypass is the means by which a girl can *relieve herself of the burden of parental consent.*" (Emphasis in original.) But the State and its supporting amici fail to effectively rebut the trial court's express findings to the contrary. According to the superior court's findings, the PCA's bypass procedures build in delay that may prove "detrimental to the physical health of the minor," particularly for minors in rural Alaska who "already face logistical obstacles to obtaining an abortion." The trial court found that judicial bypass procedures "will increase these problems, delay the abortion, and increase the probability that the minor may not be able to receive a safe and legal abortion." The State has not expressly challenged as "clearly erroneous" the superior court's findings on this point but dismisses these concerns, arguing that "[r]ural Alaskan girls will pursue bypass on the same trip to the same urban location where they must go to obtain their procedures." But not all minors possess the wherewithal to embark upon a formal legal adjudication during a time of crisis.

FN42. AS 18.16.030(e)-(f) provides that a minor may bypass the PCA's parental consent requirement if a

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> court determines by clear and convincing evidence that she is sufficiently mature and well enough informed to decide whether to have an abortion or that parental consent would not be in her best interests.

Moreover, the inclusion of this judicial bypass procedure does not reduce the restrictiveness of the PCA relative to a parental notification statute. Every state to enact a parental notification regime has opted to include either a judicial bypass procedure similar to the PCA's procedure or an even more permissive bypass procedure.FN43 As such, the PCA's inclusion of a judicial bypass procedure does not set the PCA apart from or reduce its intrusiveness relative to parental notification statutes.

> FN43. *See, e.g.*,MD.CODE ANN., HEALTH-GEN. § 20-103(c)(1) (providing that a physician may perform an abortion without notice to a parent or guardian if, "in the professional judgment of the physician[,] ... [n]otification would not be in the best interest of the minor"); W. VA.CODE § 16-2F-3(c) (providing that parental notification may be "waived by a physician, other than the physician who is to perform the abortion, if such other physician finds that the minor is mature enough to make the abortion decision independently or that notification would not be in the minor's best interest").

Ultimately, because the PCA shifts the right to reproductive choice to minors' parents, we must conclude that the PCA is, all else being held equal, more restrictive than a parental notification statute. The State has failed to establish that the "greater intrusiveness of consent statutes" is in any way necessary to advance its compelling interests. In fact, in its briefing before us, the State has not focused on the PCA's benefits as flowing directly from the parental "veto power"; instead, it has consistently suggested that the PCA's benefits flow from increased parental communication and involvement in the decision-making process. According to the State, the PCA protects minors from their own immaturity by increasing "adult supervision"; it protects the physical, emotional, and psychological health of minors, "[p]articularly in the post-abortion context, [by increasing] parental participation ... for the purposes of monitoring ... risks"; it ensures that minors give informed consent to the abortion procedure by making it more likely that they will receive "counsel that a doctor cannot give, advice, adapted to her unique family situation, that covers the moral, social and religious aspects of the abortion decision"; it ***585** protects minors from sexual abuse since "once appr[ ]ised of a young girl's pregnancy, parents ... will ask who impregnated her and will report any sexual abuse"; and it strengthens the parent-child relationship by "increas[ing] parental involvement," "parental consultation," and open and honest communication.

These expressed legislative goals-increased parental communication, involvement, and protection-are no less likely to accompany parental notification than the parental "veto power." The dissent suggests that where a minor forgoes judicial bypass, parental consent guarantees "a conversation." But it guarantees no more than a one-way conversation and "allows parents to refuse to consent not only where their judgment is better informed and considered than that of their daughter, but also where it is colored by personal religious

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belief, whim, or even hostility to her best interests." FN44

FN44. *State v. Koome*, 84 Wash.2d 901, 530 P.2d 260, 265 (1975) (holding that parental consent statute violates state constitutional right to privacy); *see also Am. Acad. of Pediatrics v. Lundgren*, 16 Cal.4th 307, 66 Cal.Rptr.2d 210, 940 P.2d 797, 816 (1997) (holding that parental consent law "intrude[s] upon" a pregnant minor's "protected privacy interest under the California Constitution").

Notification statutes protect minors "by enhancing the potential for parental consultation concerning a [minor's] decision." FN45 In fact, to the extent that parents who do not possess a "veto power" over their minor children's abortion decision have a greater incentive to engage in a constructive and ongoing conversation with their minor children about the important medical, philosophical, and moral issues surrounding abortion, a notification requirement may actually better serve the State's compelling interests.

FN45. *Matheson*, 450 U.S. at 412, 101 S.Ct. 1164; *see also Planned Parenthood Ass'n of the Atlanta Area, Inc. v. Miller*, 934 F.2d 1462, 1472-74 (11th Cir.1991) (holding that Georgia's notification statute furthered the state's interest in "protecting immature minors" and promoting parental input).

In sum then, the PCA does not represent the least restrictive means of achieving the State's asserted interests and therefore cannot be sustained. In reaching this decision, we go no further than the Alaska Constitution demands, and merely reaffirm that the State does not strike the proper constitutional balance between its own compelling interests and the fundamental rights of its citizens by adopting an unnecessarily restrictive statute.

V. CONCLUSION

For the reasons detailed above, we AFFIRM the superior court's decision striking down the Parental Consent Act as a violation of the Alaska Constitution's right to privacy.

CARPENETI, Justice, with whom MATTHEWS, Justice, joins, dissenting.

In 1997, faced with competing interests of the highest constitutional level-an underage pregnant girl's constitutional right to privacy in deciding whether to terminate her pregnancy, her parents' constitutional right (and duty) to protect her best interests, and the state's compelling interests in protecting children against their own immaturity-the Alaska Legislature carefully crafted the Alaska Parental Consent Act in an effort to recognize and protect all of these interests. That law is fully consistent with United States Supreme Court precedent, yet today's opinion strikes it down. Because this court's rejection of the legislature's thoughtful balance is inconsistent with our own case law and unnecessarily dismissive of the legislature's role in expressing the will of the people, I respectfully dissent.

I. The Constitutional Framework

Before looking at the Parental Consent Act in detail to determine how it balances the strong competing interests involved, it is helpful to consider the analytical framework used by courts in deciding constitutional challenges of the kind involved in

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this case. In a series of cases, we have established a three-step process. We have first looked to the nature and extent of the individual right that is claimed. If we determine that the right is fundamental, we then examine whether the state's interest in burdening the ***586** individual right is compelling. If the state's interest is compelling, we look to make certain that there is a sufficiently close fit between the goals of the legislation and the means adopted by the state to reach those goals.

The individual right claimed in this case is the fundamental right of an unmarried pregnant minor to privacy in her decision whether to terminate her pregnancy. The compelling interest claimed by the state is multi-faceted, including protecting minors from their own immaturity (by recognizing the parents' right (and duty) to guide their children's upbringing) and protecting the health of minors. If both the individual right is fundamental and the state's interest is compelling, the court must decide whether the law is tailored closely enough to achieve its intended purpose.

II. The Alaska Parental Consent Act

The hallmark of the Alaska Parental Consent Act (PCA or the Act) is the remarkable length to which the legislature went in order to accommodate all of the various, and at times competing, interests that are involved when an unmarried teenage (or pre-teen) girl is faced with pregnancy.[FN1] In recognition of the primary role that parents are normally expected to play in the upbringing of their children, and in recognition of the fact that children are generally not considered competent to consent to medical procedures, the Act requires the consent of a parent in order for the child to undergo an abortion.[FN2] In recognition of the fact that divulging her pregnancy to her parents may in some instances be unnecessary or inappropriate-because the minor is sufficiently mature and intelligent to decide the question on her own or because her parent or parents have engaged in physical, sexual, or emotional abuse against her (or because obtaining their consent is otherwise not in the child's best interests)-the Act provides for a confidential and speedy "judicial bypass" procedure in which a judge decides whether the minor is competent to decide for herself.[FN3]

FN1. In drafting the Alaska Parental Consent Act, the legislature appears to have tracked carefully the requirements for parental consent and parental notification laws set out by the United States Supreme Court in *City of Akron v. Akron Ctr. for Reproductive Health, Inc.*, 462 U.S. 416, 103 S.Ct. 2481, 76 L.Ed.2d 687 (1983); *Bellotti v. Baird*, 443 U.S. 622, 99 S.Ct. 3035, 61 L.Ed.2d 797 (1979); *H.L. v. Matheson*, 450 U.S. 398, 101 S.Ct. 1164, 67 L.Ed.2d 388 (1981); *Planned Parenthood Ass'n. of Kansas City, Mo., Inc. v. Ashcroft*, 462 U.S. 476, 103 S.Ct. 2517, 76 L.Ed.2d 733 (1983); *Planned Parenthood of Cent. Mo. v. Danforth*, 428 U.S. 52, 96 S.Ct. 2831, 49 L.Ed.2d 788 (1976), *partially overruled on other grounds by Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 112 S.Ct. 2791, 120 L.Ed.2d 674 (1992).

FN2. AS 18.16.020(1).

FN3. AS 18.16.020(2). In the event that the court fails to act, such failure will be considered to be judicial authorization for the abortion. AS

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18.16.020(3).

The legislature engrafted multiple exceptions to the scope of the Act in an effort to create a law that was specifically targeted, to the greatest extent possible, at the population of underage pregnant girls who would be in greatest need of adult guidance in reaching the decision whether to terminate pregnancy. First, the legislature exempted from the scope of the Act all seventeen-year-old girls.[FN4] The importance of this exemption can hardly be overstated. Studies consistently show that nearly half of all underage abortions are obtained by girls who have reached the age of seventeen.FN5 Moreover, only one state consent law exempts seventeen-year-olds from its scope,[FN6] and only one state notification***587** law does so.[FN7] This exception also identifies the population of teenage girls most likely competent, by virtue of maturity and experience, to make the decision regarding abortion without adult assistance, and allows them to do so.

FN4. AS 18.16.020.

FN5. Stanley K. Henshaw & Kathryn Kost, *Parental Involvement in Minors' Abortion Decisions*, 24 Family Planning Perspectives, Sept/Oct 1992 at Table 1. *See also* Letter from Susan K. Steeg, General Counsel, Texas Department of Health (May 26, 2004) (stating that of the 3654 minor women who obtained an abortion in Texas in 2002, 1694 or forty-six percent of them were age seventeen); Aida Torres, Jacqueline Darroch Forrest & Susan Eisman, *Telling Parents: Clinic Policies and Adolescent's Use of Family Planning and Abortion Services*, 12 Family Planning Perspectives, Nov/Dec 1980, 284, 287 (forty-four percent of the 1170 unmarried minor abortion patients surveyed were seventeen years old).

FN6. S.C.CODE ANN. § 44-41-10(m) (2006).

FN7. DEL.CODE ANN. tit. 24 § 1782(6) (2007).

Second, the legislature exempted from the scope of the Act four additional classes of minors. Each exemption shows that the legislature was attempting to shape a law that would be applied only to those pregnant girls who would most be in need of adult help. Accordingly, the law does not apply to married minors,[FN8] to minors who have been legally emancipated,[FN9] to minors who have entered the armed services of the United States,[FN10] and to minors who have become employed and self-subsisting.[FN11]

FN8. AS 18.16.020.

FN9. *Id.* and AS 18.16.090(2)(C).

FN10. AS 18.16.020, .090(2)(A).

FN11. AS 18.16.020, .090(2)(B).

Third, in an apparent effort to make certain that the Act would not have coverage over any other underage pregnant girls who were capable of making the decision on their own, the legislature included a catch-all exception to the Act: any who had "otherwise become independent from the care and control of [her] parent, guardian, or custodian."[FN12]

FN12. AS 18.16.020, .090(2)(D).

The legislature next created a judicial bypass procedure to cover those cases of underage pregnancy not covered by these

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exceptions. The judicial bypass procedure is designed to be confidential, speedy, cost-free to the child, and easy to use. The court system is directed to prepare forms for use by the child [FN11] without charge [FN12] and have them available at every court location in the state: superior court, district court, and magistrate.[FN13] Counsel shall immediately be made available without charge to any minor who seeks judicial bypass [FN14] and the forms shall contain this notification.[FN15] There are no filing fees to be charged [FN16] and no court costs assessed [FN17] against the child.

FN13. AS 18.16.030(*l*).

FN14. *Id.*

FN15. AS 18.16.030(n).

FN16. AS 18.16.030(d). The only exception is that if the child already has counsel. *Id.*

FN17. AS 18.16.030(n)(3).

FN18. AS 18.16.030(n)(1).

FN19. AS 18.16.030(n)(2).

The proceedings surrounding judicial bypass are strictly confidential: Courts are instructed to conduct all proceedings so as to preserve the anonymity of the child.FN20 Moreover, the Act specifically directs the court that it "may not notify the parents, guardian, or custodian" of the child that she is pregnant or seeks an abortion.[FN21] All papers and records pertaining to the matter "shall be kept confidential and are not public records" under Alaska law.[FN22]

FN20. AS 18.16.030(k).

FN21. AS 18.16.030(h).

FN22. AS 18.16.030(k).

In deference to the need for speedy resolution of the consent question in cases where an abortion is sought, the Act provides for extremely short timelines. The court is directed to set the hearing "at the earliest possible time" and in any event no more than five business days after the complaint is filed.[FN23] The court is directed to enter judgment "immediately after the hearing is ended." [FN24] If the hearing is not held by the fifth day after the case is filed, that failure will be considered to be a constructive authorization by the court for the child to consent to an abortion.[FN25] Similarly short deadlines apply to an appeal.[FN26]

FN23. AS 18.16.030(c).

FN24. *Id.*

FN25. *Id.*

FN26. AS 18.16.030(j). *See also* Alaska R.App. P. 220.

***588** As to the substance of the inquiry that the judge must make, it is straightforward and simple: The court determines whether the child is sufficiently mature and informed to make the decision to have an abortion.[FN27] (In those cases where the minor has alleged abuse by her parent or guardian, the court determines whether such abuse has occurred.[FN28]) If the child is sufficiently mature to make the decision (or if abuse has occurred and an abortion is in the minor's best interest), the court authorizes her to consent to an abortion; if she is not sufficiently mature to decide on her own or if there has not been abuse, the case is dismissed.[FN29]

FN27. AS 18.16.030(e).

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FN28. AS 18.16.030(f).

FN29. AS 18.16.030(e), (f).

In sum, the Alaska Parental Consent Act appears to be the product of a concerted effort to make certain that those pregnant girls who are sufficiently mature to make the decision to obtain an abortion on their own are allowed to do so while those who are not sufficiently mature either obtain a parent's consent or, in the case of parental abuse, a judicial determination that the procedure is in their best interest.

III. Analysis

Application of the three-part test for constitutionality (set out above in the discussion of the constitutional framework) has tended in this case to focus on the third part of the test: whether the means chosen by the legislature are sufficiently narrowly tailored to the goals of the legislation. I agree that this inquiry is the most difficult in this case. But I also believe that failure to focus carefully on the nature of the interests involved can lead to a failure to assess correctly the success of the legislature's effort to tailor the legislation to meet its goals. For this reason, I turn now to each step of the test for constitutionality.

A. The Individual Right-To Exercise Autonomy in the Control of One's Body, and in the Choice to Bear a Child-Is Fundamental.

The individual right involved in this case is the right to privacy. While that right is often associated with the maintenance of secrecy or confidentiality with regard to one's affairs (and that is present to some extent in this case), the gravamen of the individual's concerns in this case is the right to exercise autonomy in the control of one's body. In *Valley Hospital Association v. Mat-Su Coalition for Choice*,[FN30] we relied on the need for a woman to have "control of her body, and the choice whether or when to bear children," [FN31] in determining that "reproductive rights are fundamental, and that they are encompassed within the right to privacy." [FN32]

FN30. 948 P.2d 963 (Alaska 1997).

FN31. *Id.* at 968.

FN32. *Id.* at 969.

But it is important to remember that *Valley Hospital* concerned the rights of adult women. Today's opinion relies on the court's statement in its earlier decision in this case that "minors and adults start from the same constitutional footing," [FN33] but it does not meet the promise of that earlier opinion fully to take into account the fact that the persons to whom the statute in this case is directed are children. In holding that "[c]onstitutional rights do not mature and come into being magically only when one attains the state-defined age of majority," [FN34] the court's earlier opinion in this case hastened to add:

> FN33. Opinion at 581; *State v. Planned Parenthood of Alaska*, 35 P.3d 30, 41 (Alaska 2001)(*Planned Parenthood I*).
>
> FN34. 35 P.3d at 40 (quoting *Planned Parenthood of Cent. Mo. v. Danforth*, 428 U.S. 52, 74, 96 S.Ct. 2831, 49 L.Ed.2d 788 (1976)).

Of course this does not mean that evidence of the "peculiar vulnerability of children [and] their inability to make critical decisions in an informed, mature manner" has no place in determining whether the

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parental consent or judicial authorization act is constitutional. To the contrary, we have long emphasized the state's special ***589** interest in protecting the health and welfare of children.[FN35]

FN35. 35 P.3d at 40 (footnote omitted).

The opinion then explained how this "peculiar vulnerability" of children was to be taken into account in the constitutional analysis: "[A] statute's relationship to minors properly is employed in the constitutional calculus in determining whether an asserted state purpose or interest is 'compelling.' "[FN36] Indeed, in support of its conclusion that minors enjoy a constitutional right to privacy similar to that of adults, this court quoted Justice Marshall's dissent in *H.L. v. Matheson*[FN37] that, rather than saying the minor's privacy right is somehow less fundamental than an adult's, "the more sensible view is that state interests inapplicable to adults may justify burdening the minor's right."[FN38] But when the court looks to the state's and parents' interests in this case, it treats them in conclusory fashion. A fuller exposition is warranted.

FN36. *Id.* at 41 (quoting *American Acad. of Pediatrics v. Lungren*, 16 Cal.4th 307, 66 Cal.Rptr.2d 210, 940 P.2d 797, 819 (1997)).

FN37. 450 U.S. 398, 101 S.Ct. 1164, 67 L.Ed.2d 388 (1981).

FN38. *Id.* at 441 n. 32, 101 S.Ct. 1164.

B. The State's Interests-To Protect Children from Their Own Immaturity and To Protect Parents' Rights and Duties To Raise Their Children-Are Compelling.

Despite the promise of *Planned Parenthood I* to take into account the fact that children are involved during step two of the constitutional analysis-the step that asks "whether an asserted state purpose or interest is 'compelling' "-the court today quickly passes over this step.

The court's cursory discussion of the nature of the state's compelling interests at stake in this case is inconsistent with our case law on the right to privacy; moreover, it deprives the court's later means-to-ends analysis of any context. Let us consider each of these failings in turn.

In *Sampson v. State*,[FN39] a privacy-based challenge to Alaska law precluding physician-assisted suicide, we set out the importance of carefully examining the *nature* of the competing interests involved. In upholding the ban on physician-assisted suicide, we said:

FN39. 31 P.3d 88 (Alaska 2001).

This court has often emphasized the importance of personal autonomy under our constitution. Yet we have also recognized that the rights to privacy and liberty are neither absolute nor comprehensive-that their limits depend on a balance of interests. The nature of the balance varies with the importance of the rights actually infringed.[FN40]

FN40. 31 P.3d at 91 (footnotes omitted).

Because the nature of the balance varies with the importance of the rights involved and because in the context of the case before us now-pregnant children who are considering abortion-there are important rights on both sides of the equation, in-

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cluding the rights of parents to guide their children, it is particularly important that the court look closely at the nature of the state's interests in the legislation.

The court's failure to look closely at the nature of the state's and parents' interests leaves its constitutional "balance" one-sided. Because the court has not fully and accurately set out the nature of society's compelling interest in the protection of children and of parents' right and duty to raise their children, it is impossible to accurately gauge how close the law comes to meeting its objectives. As a detailed look at the state's interest shows, it is multi-faceted and is served in many ways by Alaska's Parental Consent Law. It consists of at least two [FN41] separate aspects.

> FN41. The superior court actually identified six compelling state interests in its opinion. They were as follows: (1) "State has a compelling interest in protecting minors from their own immaturity." (2) "State has a compelling interest in protecting the physical, emotional, and psychological health of minors." (3) "State has a compelling interest in ensuring that doctors obtain informed consent from their minor patients contemplating pregnancy related decisions." (4) "State has a compelling interest in protecting minors from sexual abuse...." (5) "The court finds that the state does have many interests, some of them compelling, in fostering and protecting the family structure...." (6) "This court finds that protecting rights to a civil action is a compelling state interest."

***590** First, society has longstanding and pervasive interests in protecting children from their own immaturity. The United States Supreme Court has repeatedly recognized society's interest in protecting children from their own immaturity. In *Hodgson v. Minnesota*,[FN42] the Court held: "The State has a strong and legitimate interest in the welfare of its young citizens, whose immaturity, inexperience, and lack of judgment may sometimes impair their ability to exercise their rights wisely." [FN43] The Court noted that "[t]hat interest, which justifies state-imposed requirements that a minor obtain his or her parent's consent before undergoing an operation, marrying, or entering military service, extends also to the minor's decision to terminate her pregnancy." [FN44] In *Stanford v. Kentucky*,[FN45] Justice Brennan noted:

> FN42. 497 U.S. 417, 110 S.Ct. 2926, 111 L.Ed.2d 344 (1990).
>
> FN43. *Id.* at 444, 110 S.Ct. 2926.
>
> FN44. *Id.* at 444-45, 110 S.Ct. 2926. *See also Planned Parenthood Ass'n of Kansas City, Mo., Inc. v. Ashcroft*, 462 U.S. 476, 490-91, 103 S.Ct. 2517, 76 L.Ed.2d 733 (1983) ("A State's interest in protecting immature minors will sustain a requirement of a consent substitute, either parental or judicial."); *Parham v. J. R.*, 442 U.S. 584, 603, 99 S.Ct. 2493, 61 L.Ed.2d 101 (1979) ("Most children, even in adolescence, simply are not able to make sound judgments concerning many decisions, including their need for medical care or treatment. Parents can and must make those judgments."); *Planned Parenthood of Cent. Mo. v. Danforth*, 428 U.S. 52, 102-04, 96 S.Ct. 2831, 49 L.Ed.2d 788 (1976) (Stevens, J., concurring

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and dissenting) (minors may not make enforceable bargains, work, or travel where they please, attend exhibitionsofconstitutionally-protected adult motion pictures, marry, etc.); *Gallegos v. Colorado*, 370 U.S. 49, 54, 82 S.Ct. 1209, 8 L.Ed.2d 325 (1962) (holding that fourteen-year-old's criminal confession made without advice of adult violated due process because of child's inherent lack of maturity).

FN45. 492 U.S. 361, 109 S.Ct. 2969, 106 L.Ed.2d 306 (1989), *overruled byRoper v. Simmons*, 543 U.S. 551, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005).

[M]inors are treated differently from adults in our laws, which reflects the simple truth derived from communal experience that juveniles as a class have not the level of maturation and responsibility that we presume in adults and consider desirable for full participation in the rights and duties of modern life.

... Adolescents "are more vulnerable, more impulsive, and less self-disciplined than adults," and are without the same "capacity to control their conduct and to think in long-range terms." [FN46]

FN46. *Id.* at 395, 109 S.Ct. 2969 (Brennan, J., dissenting) (quoting TWENTIETH CENTURY FUND TASK FORCE ON SENTENCING POLICY TOWARD YOUNG OFFENDERS, CONFRONTING YOUTH CRIME 7 (1978)).

State courts too have long recognized that children require protection from their own immaturity. Pennsylvania, for example, has noted that the state's strong interest in protecting younger minors from the sexual aggressiveness of minors over sixteen is based on the immaturity and poor judgment of younger minors. [FN47] Similarly, Florida upheld a law prohibiting consensual sexual contact between minors sixteen and older and those under thirteen because the state had a compelling interest in "protecting twelve-year-olds from older teenagers and from their own immaturity in choosing to participate in harmful activity." [FN48]

FN47. *Commonwealth v. Albert*, 563 Pa. 133, 758 A.2d 1149, 1154 (2000).

FN48. *J.A.S. v. State*, 705 So.2d 1381, 1386 (Fla.1998). *See also In re E.G.*, 133 Ill.2d 98, 139 Ill.Dec. 810, 549 N.E.2d 322, 327 (1989) (holding that court should distinguish mature minors from immature minors for purpose of determining right to refuse medical treatment because "the State has a *parens patriae* power to protect those incompetent to protect themselves").

As Justice Matthews set out in his dissent in our earlier consideration of this case, *Planned Parenthood I*:

Children's freedoms have long been constrained in ways that would not be permissible for adults. Constraints on children are imposed in order to protect them, and sometimes society as a whole, from the consequences of their immaturity. Thus children may not exercise the fundamental right to vote. They generally may not make contracts or smoke cigarettes or drink alcoholic beverages or consent to ***591** sexual intercourse. Without a parent's consent they may not become licensed drivers or get married or obtain general medical or dental treatment. Alaska's parental consent/

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judicial bypass act is in the tradition of these constraints on children's freedoms.... The act is designed to ensure that each child makes a decision that is best for her.[FN49]

FN49. 35 P.3d at 46-47.

The notion that parental consent laws further the state interest of protecting minors from their immaturity is neither novel nor surprising. As a matter of law society demands much of parents; it is expected that they will assist their children in making proper decisions until those children reach adulthood. Parents of teenagers and younger children are familiar with the ubiquitous "permission slips" which must be signed before their children may go on a school field trip; and parental permission is routinely required before minors may join a sports team, before an under-seventeen minor may view an "R"-rated movie, and before a minor may even lift weights at the local gym.[FN50] Parental involvement in the everyday decisions of their children enables parents to continue to help their children develop, even as the children grow older and more independent. The rights and obligations of parents to remain involved is intricately bound up with the rights of children to receive guidance and to be protected from their own immaturity. Courts have long recognized these interests: "[T]he custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder."[FN51]

FN50. Today's Opinion mistakenly asserts that the dissent "appears to liken a minor's decision of whether to terminate a pregnancy to decisions about attending school field trips, joining sports teams, viewing "R"-rated movies, and lifting weights at the gym" and argues that the decision to terminate a pregnancy is wholly unlike these decisions. (Opinion 582, n. 28) The Opinion misses the point entirely: Of course permission-slip decisions do not have the "lasting and profound consequences" (Opinion 582, n. 28) of the abortion decision, *and yet the law imposes the necessity of parental consent upon them.* If society deems parental consent critical in such lesser matters, should not the parents play a similar role when the consequence to the child are so vastly greater? And in arguing that "fundamental autonomy [is] at stake in an adolescent's control over her own body," (Opinion 582, n. 28) the Opinion ignores that parental consent is required for virtually every other medical procedure involving a child. *See Hodgson v. Minnesota*, 497 U.S. 417, 423, 110 S.Ct. 2926, 111 L.Ed.2d 344 (1990) (recognizing "the common-law requirement of parental consent for any medical procedure performed on minors.").

FN51. *Prince v. Massachusetts*, 321 U.S. 158, 166, 64 S.Ct. 438, 88 L.Ed. 645 (1944).

For an immature pregnant minor, parental involvement is at least as important in the difficult decision concerning abortion as it is in the "permission slip" activities mentioned in the last paragraph. In *Ohio v. Akron Center for Reproductive Health*(*Akron II*),[FN52] a case concerning a parental notification requirement, the United States Supreme Court held that the requirement

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furthered the state's interest in helping minors to make more mature decisions.FN53 Some minors may hesitate to seek parental advice if not required to by law because they are young and afraid. In those cases where a pregnant minor has been abused or fears an improper parental response, the PCA carves out a judicial bypass procedure whereby the minor may avoid all parental notification. However, it is improper for this court to assume that harmful parental responses will be a likely or typical response for the minors compelled to seek parental consent under the PCA. As Justice Kennedy noted in *Akron II*,"[i]t is both rational and fair for the State to conclude that, in most instances, the family will strive to give a lonely or even terrified minor advice that is both compassionate and mature." FN54 Indeed, to prohibit states from ensuring that in most cases young women receive guidance from a parent when making this decision would "deny all dignity to the family." FN55 Similarly, Justice Stevens noted that it is reasonable for a state legislature to ***592** conclude that "most parents will be primarily interested in the welfare of their children," making the imposition of a consent requirement an "appropriate method of giving the parents an opportunity to foster that welfare by helping a pregnant distressed child to make and implement a correct decision." FN56 Because pregnant minors in Alaska will normally benefit from the involvement of a parent in one of the most critical decisions they can ever make, the PCA furthers the state interests of protecting minors from their immaturity and preserving the rights of parents to raise their children.

FN52. 497 U.S. 502, 110 S.Ct. 2972, 111 L.Ed.2d 405 (1990).

FN53. *Id.* at 519, 110 S.Ct. 2972.

FN54. *Id.* at 520, 110 S.Ct. 2972.

FN55. *Id.*

FN56. *Planned Parenthood v. Danforth*, 428 U.S. 52, 104, 96 S.Ct. 2831, 49 L.Ed.2d 788 (1976) (Stevens, J., concurring).

The PCA seeks to protect a second compelling interest in abortion cases involving children. In addition to society's interest in protecting children from their own immaturity, we have long held that parents have a fundamental right in the raising of their children. In *S.O. v. W.S.*,FN57 we noted that when the state seeks to terminate the parent-child relationship, the result may be the involuntary deprivation of "the fundamental natural right of parents to nurture and direct the destiny of their children." FN58 *S.O.* relied on and quoted *Turner v. Pannick*,FN59 in which Justice Dimond, in commenting on this fundamental right of parents to nurture and direct the upbringing of their children, stated: "This is a truth which one discovers by reason, and has the status of knowledge rather than mere opinion." FN60 He noted that "[the family] forms the basic unit of our society" and is "one of the oldest institutions known to mankind." FN61

FN57. 643 P.2d 997 (Alaska 1982).

FN58. *Id.* at 1006.

FN59. 540 P.2d 1051 (Alaska 1975).

FN60. *Id.* at 1055 (Dimond, J., concurring).

FN61. *Id.* at 1055-56.

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In sum, the norm in American, and Alaskan, life and law is that parents are a child's first and most important resource for assistance in decision-making. For that reason, the state's interest in protecting children from the consequences of their own immaturity, and in so doing protecting the health of its children, and its interest in supporting parents' right and duty to guide the upbringing of their children is particularly compelling.

C. The Fit Between the State's Interests and the Means Adopted To Reach Them Are Sufficiently Close To Pass Constitutional Muster.

We now reach the third part of the constitutional analysis. In order to survive constitutional scrutiny, the PCA must be narrowly tailored in meeting the state's interests. Because the child's privacy interests are fundamental, there must be no less restrictive alternative available to the state.[FN62] As the following shows, the PCA is narrowly tailored to its goals. In addition, the alternatives discussed by the superior court and today's opinion are either more restrictive than the PCA or ineffective at meeting the state's interests, or both.

FN62. *Planned Parenthood I*, 35 P.3d 30, 41 (Alaska 2001).

1. The PCA is narrowly tailored.

Before embarking on this analysis, however, it is important to address the majority's assertion that "the PCA bestows upon parents what has been described as a 'veto power' over their minor children's abortion decisions."[FN63] Indeed, the claim that the PCA gives parents a "veto power" runs throughout today's Opinion,[FN64] and this supposed "veto power" may fairly be seen as the fundamental weakness of the PCA in the court's view. But the claim is false as it applies to minors who are sufficiently mature to make the decision, and it relies on ***593** quotation of the United States Supreme Court taken out of context. The claim is false because a pregnant minor faced with the abortion decision may decide to obtain an abortion *without parental consent* by using the judicial bypass procedure.[FN65] The quotation is taken out of context because the case it comes from, *Ohio v. Akron Center for Reproductive Health*, restated the Supreme Court's clearly established precedent "that, in order to *prevent* another person from having an absolute veto power over a minor's decision to have an abortion, a State must provide some sort of bypass procedure if it elects to require parental consent."[FN66] Thus, today's Opinion's repeated assertions that the PCA gives parents a veto power over their child's abortion decision is simply not true as applied to children who are sufficiently mature to make the decision. And its implication that the United States Supreme Court would regard the PCA as giving parents a "veto power" is equally wrong: Because the PCA does provide a bypass procedure, the Act-in the language of the Supreme Court-"prevent[s]" the parent from holding veto power.

FN63. Opinion at 583, quoting *Ohio v. Akron Ctr. for Reproductive Health*, 497 U.S. 502, 511, 110 S.Ct. 2972, 111 L.Ed.2d 405 (1990).

FN64. *See, e.g.*, Opinion at 579 ("the Act effectively shifts that minor's fundamental right to choose if and when to have a child from the minor to the parents"); 4 ("veto

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power"); 12 (same); 13 (same); 15 ("the PCA shifts the right to reproductive choice to minors' parents"); 16 ("veto power").

FN65. *See*AS 18.16.030. The judge in a bypass case must decide whether the child is "sufficiently mature and well enough informed to decide intelligently whether to have an abortion." If she is, the court issues an order authorizing her to consent to the procedure "without the consent of a parent, guardian, or custodian." AS 18.16.030(e). (If she is not, the court dismisses the case. *Id.* Presumably, a child found to be insufficiently mature to make such a decision should not make it.)

FN66. 497 U.S. at 510-11, 110 S.Ct. 2972 (emphasis added). Moreover, although the reference in today's Opinion to the use of "veto power" in the United States Supreme Court's opinions in *H.L. v. Matheson* and *Ohio v. Akron Center* is technically accurate (in the sense that the term appears in both opinions), it is also misleading. *Ohio v. Akron Center*, when it referred to *Matheson*, simply established that notice statutes are not equivalent to consent statutes for the purpose of constitutional analysis. Neither *Matheson* nor *Akron Center* directly addressed what types of bypass procedures are capable of curing the constitutionally fatal "veto power" found in consent statutes *without* bypass procedures. Instead, both *Matheson* and *Akron Center* dealt solely with the constitutionality of parental notification statutes.

The Parental Consent Act is very narrowly drawn to achieve its compelling state interests. To begin, as noted above, the PCA excludes all seventeen-year-olds.FN67 We have seen that the exclusion of seventeen-year-olds is particularly noteworthy because almost half of minor abortions are performed on seventeen-year-old minors,[FN68] and thus by excluding seventeen-year-olds the legislature almost halved the pool to which the PCA applies. We have also seen that this narrowing of the minors covered by the Act is not arbitrary, but instead is tailored to eliminate those least likely to need the legislation: the most mature of the pregnant minors.

FN67. AS 18.16.020.

FN68. *See supra* note 5.

The use of age as a proxy for maturity is fundamental to our legal system and social culture. As the Supreme Court recently noted in *Roper v. Simmons*,[FN69] the difference in maturity levels between adults and children is evidenced by both common sense and science:

FN69. 543 U.S. 551, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005).

[A]s any parent knows and as the scientific and sociological studies ... tend to confirm, a lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the young. These qualities often result in impetuous and ill-considered actions and decisions.... Even the normal 16-year-old customarily lacks the maturity of an adult.... [A]dolescents are overrepresented statistically in virtually every category of reckless behavior. In recognition of the comparative immaturity and irresponsibility of juven-

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iles, almost every State prohibits those under 18 years of age from voting, serving on juries, or marrying without parental consent.[FN70]

FN70. *Id.* at 569, 125 S.Ct. 1183 (internal quotations and citations omitted).

Age distinctions are not made with an expectation that they perfectly track maturity.***594** [FN71] All minors under age eighteen are prohibited from voting not because it is unfathomable that a seventeen-year-old is capable of responsibly exercising the right to vote, nor is the prohibition based upon the assumption that all adults vote responsibly. Rather, the legal system accepts lack of perfection in meeting the state's interests in order to create a feasible, more convenient, and less intrusive system of governance. As Justice Holmes noted in *Louisville Gas & Electric Co. v. Coleman*:

FN71. *Planned Parenthood of Cent. Mo. v. Danforth*, 428 U.S. 52, 104-05, 96 S.Ct. 2831, 49 L.Ed.2d 788 (1976) (Stevens, J., concurring and dissenting) ("In all ... situations [where state legislation seeks to protect minors from the consequences of decisions they are not prepared to make] chronological age has been the basis for imposition of a restraint on the minor's freedom of choice even though it is perfectly obvious that such a yardstick is imprecise and perhaps even unjust in particular cases.").

When a legal distinction is determined, as no one doubts that it may be, between night and day, childhood and maturity, or any other extremes, a point has to be fixed or a line has to be drawn, or gradually picked out by successive decisions, to mark where the change takes place. Looked at by itself without regard to the necessity behind it the line or point seems arbitrary. It might as well or nearly as well be a little more to one side or the other. But when it is seen that a line or point there must be, and that there is no mathematical or logical way of fixing it precisely, the decision of the Legislature must be accepted unless we can say that it is very wide of any reasonable mark.[FN72]

FN72. 277 U.S. 32, 41, 48 S.Ct. 423, 72 L.Ed. 770 (1928) (Holmes, J., dissenting).

The Alaska Court of Appeals similarly noted in *Allam v. State*[FN73] that "[s]tatutes [that set the age for possession of tobacco, possession of alcohol, age of consent for sexual intercourse, etc.,] and the social policy decisions that underlie them, are within the province of the legislature. There is no legal requirement that the same age of majority apply to all activities and circumstances." [FN74] By exempting seventeen-year-olds from the PCA, the legislature appropriately tailored the legislation to affect the less mature population of pregnant minors.

FN73. 830 P.2d 435 (Alaska App.1992).

FN74. *Id.* at 438.

Significantly, this narrowing of the PCA based on age also makes it *less* restrictive than every other parental consent law but one [FN75] and *less* restrictive than all but one of the notification laws in effect in other states because all the rest apply to seventeen-year-olds,[FN76] as discussed in more detail below.

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FN75. *See*S.C.CODE ANN. § 44-41-10(m) (also defining minors as "under the age of seventeen").

FN76. Delaware appears to be the only exception among "notification" states. DEL.CODE ANN. tit. 24, § 1782(6) (requiring notification for those under age sixteen). *But cf.* KAN. STAT. ANN. § 65-6701(f) (2006); MD.CODE ANN., HEALTH-GEN. § 20-103 (2005); MINN.STAT. § 144.343 (2005); MONT.CODE ANN. § 50-20-203(6) (2005); NEB.REV.STAT. § 71-6901(5) (2006); NEV.REV.STAT. § 442.255 (2005); S.D. CODIFIED LAWS § 34-23A-7 (2006); TEX. FAM.CODE ANN. § 33.002 (2007); W. VA.CODE § 16-2F-2 (2007).

As noted, the legislature further tailored the PCA by excluding four additional categories of minors: legally emancipated minors,[FN77] married minors,[FN78] minors living independently,[FN79] and minors who are members of the ***595** armed services.[FN80] These are hallmarks of maturity in our society. By excluding identifiably mature minors age sixteen and under, the legislature went a long way towards assuring that the legislation would not be over-inclusive. Furthermore, in these respects the PCA is less restrictive than every other state's notification laws that do not contain these exceptions.[FN81]

FN77. AS 18.16.020 (applying the statute only to minors known to be "unmarried ... and unemancipated"). The majority opinion notes that a minor must prove by clear and convincing evidence that she is sufficiently mature in order to obtain a judicial bypass, while the standard of proof for legal emancipation is a preponderance of the evidence. Because any minor who has established legal emancipation is already exempted from the scope of the PCA, however, the PCA is not over-broad on this account. Furthermore, it is logical that a minor who cannot prove that she is globally ready to be free from parental supervision may nonetheless be mature on the specific issue of the decision to terminate her pregnancy. This discrepancy in what must be proven negates an easy comparison regarding the burden of proof that a minor must satisfy.

FN78. *Id.*

FN79. AS 18.16.090(2)(B). By its express terms the PCA provides a much broader interpretation of the term "unemancipated" than Alaska's formal emancipation statute, AS 09.55.590. The term is defined in AS 18.16.090(2):

"unemancipated" means that a woman who is unmarried and under 17 years of age has not done any of the following:

(A) entered the armed services of the United States;

(B) become employed and self-subsisting;

(C) been emancipated under AS 09.55.590; or

(D) otherwise become independent from the care and control of the woman's parent, guardian, or custodian.

FN80. AS 18.16.090(2)(A).

FN81. MD.CODE ANN., HEALTH-GEN. § 20-103 (no exception for emancipated minors);

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KAN. STAT. ANN. § 65-6705 (2006) (no exception for unemancipated minors living independently); MINN.STAT. § 144.343 (same); MONT.CODE ANN. §§ 50-20-201 to 215 (same); NEB.REV.STAT. §§ 71-6901 to 6908 (same); S.D. CODIFIED LAWS § 34-23A-7 (same); TEX. FAM.CODE ANN. §§ 33.001 to 011 (same); W. VA.CODE §§ 16-2F-1 to 9 (same).

The final narrowing of the PCA is derived from the judicial bypass procedure. Although neither the superior court nor this court's majority analyze the bypass procedure under the least restrictive means test, the judicial bypass significantly narrows the effect of the law because it provides a way for mature minors who are not otherwise statutorily exempted to obtain an abortion without parental consent. As Justice Matthews recognized in *Planned Parenthood I*, the judicial bypass procedure satisfies all the criteria established by the United States Supreme Court in *Bellotti v. Baird*.[FN82] Indeed, the judicial bypass process was meticulously crafted with the minor's need for confidentiality and an expedited decision incorporated into the system. The PCA errs on the side of granting the judicial bypass whenever delay is threatened: If the superior court fails to provide a hearing within five business days of a minor filing the petition, the delay operates as an automatic finding in the minor's favor, resulting in a constructive waiver of the consent requirement. Similarly, if the minor loses in the superior court and the hearing on appeal is delayed more than five days after the docketing of the appeal, a constructive order must issue authorizing the minor to undergo the abortion.[FN83]

FN82. 35 P.3d at 51-52 (Matthews, C.J., dissenting) (citing to *Bellotti*, 443 U.S. 622, 99 S.Ct. 3035, 61 L.Ed.2d 797 (1979)) (noting that (1) proceedings must except minor from any parental consent requirements if minor can establish she is mature enough to make abortion decision, or that requiring consent is not in her best interests and (2) proceedings must be completed with anonymity and sufficient expedition).

FN83. AS 18.16.030(j).

2. The PCA is the least restrictive means to achieve the state's compelling interests.

The PCA not only furthers a compelling state interest in a manner narrowly tailored and in compliance with the federal constitution, but it is also the least restrictive means of doing so. The least restrictive means test is properly a difficult burden for the state to meet, as it protects fundamental rights against unnecessary state intrusion. However, it is not an impossible standard for the state to meet. A mere showing that the state might have taken less restrictive action, say, by enacting a notification statute instead, is not sufficient to defeat legislation absent a determination that the less restrictive action would effectively achieve the state's compelling interests. Indeed, the least restrictive action that a state may take in every case is not to legislate at all.

In *Treacy v. Municipality of Anchorage*,[FN84] in upholding the constitutionality of an Anchorage curfew law imposed on minors under age eighteen, we found proposed "less restrictive" alternatives to be unavailing because they were not effective in meeting the municipality's compel-

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ling interests.[FN85] Alternatives to the PCA which are less restrictive are therefore not bars to the constitutionality of the legislation *unless such alternatives are effective* in meeting the state's compelling interests.

FN84. 91 P.3d 252 (Alaska 2004).

FN85. *Id.* at 267.

***596** Today's opinion repeatedly proffers the alternative of parental notification rather than parental consent, (an approach followed by only fifteen state legislatures FN86 in comparison to the twenty-six state legislatures [FN87] that have adopted consent statutes [FN88]).

FN86. COLO.REV.STAT. ANN. §§ 12-37.5-101 to 107 (West 2007); DEL.CODE ANN. tit. 24, §§ 1780 to 1789B; FLA. STAT. § 390.01114 (West 2007); GA.CODE ANN. §§ 15-11-110 to 118 (West 2007); 750 ILL. COMP. STAT.ANN. 70/1 to 99 (West 2007); IOWA CODE ANN. § 135L.3 (West 2007); KAN. STAT. ANN. §§ 65-6701 to 6709; MD.CODE ANN., HEALTH-GEN. § 20-103; MINN.STAT. § 144.343; MONT.CODE ANN. §§ 50-20-201 to 215; NEB.REV.STAT. §§ 71-6901 to 6908; NEV.REV.STAT. 442.255; N.J. STAT. ANN. § 9:17A-1.1 to 1.12 (West 2007); S.D. CODIFIED LAWS § 34-23A-7; W. VA.CODE §§ 16-2F-1 to 9 (2006). Oklahoma, Texas, and Utah, not counted here, require both notification and consent. OKLA. STAT. ANN. tit. 63, § 1-740.2 (West 2006); TEX. FAM.CODE ANN. §§ 33.001 to .011; TEX. OCC.CODE ANN. § 164.052(a)(19); UTAH CODE ANN. §§ 76-7-304, 76-7-304.5 (West 2006).

FN87. ALA.CODE §§ 26-21-1 to 8 (1992); ARIZ.REV.STAT. ANN. § 36-2152 (2006); ARK.CODE ANN. §§ 20-16-801 to 810 (West 2006); CAL. HEALTH & SAFETY CODE § 123450 (West 2007); IDAHO CODE ANN. § 18-609A (West 2007); IND.CODE § 16-34-2-4 (West 2006); KY.REV.STAT. ANN. §§ 311.720, 311.732 (West 2006); LA. STAT. ANN. § 40:1299.35.5 (2006); ME.REV.STAT. ANN. tit. 22, § 1597-A (2006); MASS. GEN. LAWS ch. 112, § 12S (2004); MICH. COMP. LAWS ANN. §§ 722.901 to 722.909 (West 2006); MISS.CODE ANN. § 41-41-53 (West 2006); MO. ANN. STAT. § 188.028 (West 2006); N.C. GEN.STAT. ANN. §§ 90-21.6 to 90.21.10 (West 2006); N.D. CENT.CODE § 14-02.1 to 03.1 (2005); OHIO REV.CODE ANN. § 2919.121 (West 2006); OKLA. STAT. ANN. tit. 63, § 1-740.2 (West 2006); 18 PA. CONS.STAT. ANN. § 3206 (West 2006); R.I. GEN. LAWS § 23-4.7-6 (2006); S.C. CODE ANN. § 44-41-31 (2006); TENN.CODE ANN. §§ 37-10-301 to 308 (2005); TEX. FAM.CODE ANN. §§ 33.001 to .011; TEX. OCC.CODE ANN § 164.052(a)(19); UTAH CODE ANN. §§ 76-7-304, 76-7-304.5; VA.CODE ANN. § 16.1-241(V) (West 2006); WIS. STAT. ANN. § 48.375 (West 2005); WYO. STAT. ANN. § 35-6-118 (2006).

FN88. Three states, Oklahoma,

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Texas, and Utah, have adopted both consent and notification statutes.

But every one of these parental notification statutes that lacks exceptions for seventeen-year-olds and other mature minors is *more* restrictive than Alaska's PCA.FN89More importantly, such parental notification statutes fail to achieve the same goals as consent laws, as discussed below.

FN89. *See Treacy*, 91 P.3d at 267.

The majority enthusiastically adopts the notion that a notice statute is less restrictive than the PCA because it does not give parents a "veto power." But as shown above, the PCA does not create a veto power because it includes a judicial bypass provision. Moreover, the United States Supreme Court has upheld a parental consent statute containing a judicial bypass procedure but fewer statutory exceptions than those included in Alaska's PCA.[FN90]Indeed, as Justice Matthews noted in *Planned Parenthood I*,"[c]urrently it appears that all members of the United States Supreme Court believe that a judicial authorization procedure that meets the conditions of the second *Bellotti* case"-as the PCA does-"is constitutional." [FN91] In *Akron II*, which today's opinion cites to support its conclusion that notice statutes are less restrictive than consent statutes, the Court limited its distinction between consent and notification statutes to the central requirement that "in order to prevent another person from having an absolute veto power over a minor's decision to have an abortion, a State must provide some sort of bypass procedure if it elects to require parental consent." [FN92] The PCA provides such a procedure: judicial bypass.

FN90. *See Planned Parenthood Ass'n of Kansas City, Mo., Inc. v. Ashcroft*, 462 U.S. 476, 493-94, 103 S.Ct. 2517, 76 L.Ed.2d 733 (1983).

FN91. 35 P.3d at 51 (Matthews, J., dissenting). It should be noted that since those words were written, Chief Justice John Roberts and Justice Samuel Alito have replaced Chief Justice William Rehnquist and Justice Sandra Day O'Connor.

FN92. 497 U.S. 502, 510-11, 110 S.Ct. 2972, 111 L.Ed.2d 405 (1990).

Indeed, notification laws may present the worst case scenario by posing all the risks of privacy infringements of a consent/bypass statute with fewer of its mitigating effects. What could be further from the productive and supportive conversation that a consent statute aims to produce than the cold reality of parents receiving (perhaps after the abortion) a note in the mail informing them of their daughter's pregnancy and decision to abort? It is certainly reasonable for a legislature***597** to conclude that consent statutes are more likely to foster actual conversations and parental involvement rather than the one-way, limited flow of information called for in notification statutes. Thus, the existence of notification statutes in a minority of states should not lead to invalidation of Alaska's consent statute unless it is clear that a notification statute would further the state's compelling interests.

3. The legislature could reasonably conclude that "parental notification" statutes are not effective in protecting a pregnant girl against her own immaturity or in protecting her parents' right and duty to aid in her upbringing.

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Despite today's Opinion's rosy assertion that "all [notification statutes] prohibit minors from terminating a pregnancy until their parents have been notified and afforded an appropriate period of time to actively involve themselves in their minor children's decision-making processes," FN93 it is truly questionable whether many notification statutes accomplish *anything* in the way of meaningful parental notification. Many do not even require that a parent be notified.

FN93. Opinion at 583.

Thus, Delaware, identified by the majority opinion as a "notification" state, allows notification of a licensed mental health professional to substitute for parental notification.FN94 Maryland, ostensibly another "notification" state, allows the physician performing the abortion to dispense with notification to the child's parent if in the physician's judgment the child is mature and capable of giving informed consent or if notification would not be in her best interests.FN95 West Virginia, another "notification" state, allows the physician performing the abortion to dispense with notification if another doctor finds the child mature enough to make the decision for herself or that notification would not be in her best interests.FN96 In all states the "waiting period" is so short that in many instances it will be largely meaningless.FN97 Can it really be said that a requirement that written notification be sent to a child's parent, along with the presumption that "notice is effective upon mailing" and no waiting period (*e.g.*, Maryland FN98) or a twenty-four hour waiting period (*e.g.*, West Virginia with actual notice FN99) or even a forty-eight hour waiting period (*e.g.*, West Virginia with constructive notice FN100), would in any way further the state's interest in protecting the child against her immaturity and lack of judgment or protect the parents' role in helping to raise their child? It often will be, in truth, little more than a note sent into the night.

FN94. DEL.CODE. ANN. tit. 24 § 1783(a).

FN95. MD.CODE. ANN., HEALTH-GEN. § 20-103(c)(1)(ii), (iii).

FN96. W. VA.CODE § 16-2F-3(c).

FN97. The waiting periods range between twenty-four hours (Delaware, West Virginia (twenty-four hours after actual notice), Georgia, Kansas, and Utah) and forty-eight hours (West Virginia (forty-eight hours after mailing notice), Iowa, Colorado, Illinois, Minnesota, Nebraska, South Dakota, Texas, Montana).

FN98. MD.CODE. ANN., HEALTH-GEN. § 20-103.

FN99. W. VA.CODE. § 16-2F-3(a).

FN100. *Id.*

The court asserts that the state's compelling interests (it refers to them only as "legislative goals") "are no less likely to accompany parental notification than parental 'veto power.' "FN101 Of course, as we have seen, there is no veto power in the PCA. But more importantly, only wishful thinking supports that conclusion. How can a statute that does not even require that parents be notified-as in Delaware, which allows notification of a mental health professional-"enhance the potential for parental consultation"? Or a statute that deems

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notice to be effective upon mailing and requires no waiting period or only a twenty-four hour waiting period? The court optimistically talks of "giving [parents] notice and time to consult with and guide their daughters through this important decision." FN102 but this is not what notification statutes do. The longest waiting ***598** period in any current notification statute-measured from the time of mailing of the notice-is seventy-two hours.[FN103] Most are substantially shorter.[FN104] Under these circumstances, to conclude, as today's Opinion does, that a notification statute provides a better chance than a consent statute that parents will "engage in a constructive and ongoing conversation with their minor children about the important medical, philosophical, and moral issues surrounding abortion" [FN105] is truly wishful thinking. At least under a consent statute, where the child opts not to seek judicial bypass, there must be a conversation. Under a notification statute, where the child opts not to seek judicial bypass, there is only a mailing. There is little reason to believe that notification statutes are effective in protecting minors from their own immaturity or effective in protecting parents' rights (and duties) to help their children negotiate the difficult path to adulthood.

FN101. Opinion at 585.

FN102. *Id.* at 584.

FN103. *See* GA.CODE ANN. § 15-11-112(a) (written notice deemed delivered forty-eight hours after mailing; abortion may be performed twenty-fours hours after).

FN104. *See, e.g.*, DEL.CODE ANN. tit. 24 § 1783; GA.CODE ANN. § 15-11-112(a)(1)(B); UTAH CODE ANN. § 76-7-304(3); W. VA.CODE ANN. § 16-25-3(a) (all requiring a waiting period of only twenty-four hours).

FN105. Opinion at 585.

We should heed our admonition in *Treacy*: In analyzing the argument that a legislative solution is not the "least restrictive" one, courts must take care to require the challenger to demonstrate that the supposedly less restrictive alternative is actually effective in protecting the state's (and parents') compelling interests. The court today fails to show that a notification statute "will achieve the State's compelling interests."This is because, as we have seen, notification laws are ineffective in so many ways in protecting children from their immaturity and in protecting parents' rights and obligations to guide their children's upbringing. And today's opinion declines even to say whether a parental notification approach would be constitutional.

IV. Conclusion

The Alaska Legislature carefully balanced the constitutional right of an underage pregnant girl to privacy and the state's compelling interests in protecting children against their own immaturity and protecting parents' constitutional right (and duty) to guide their children to maturity. Because the PCA is the least restrictive alternative which will effectively advance the state's compelling interests while protecting the child's constitutional right, we should hold that the superior court erred in invalidating it. I respectfully dissent.

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U.S. Supreme Court

BELLOTTI v. BAIRD, 443 U.S. 622 (1979)

443 U.S. 622

BELLOTTI, ATTORNEY GENERAL OF MASSACHUSETTS, ET AL. v. BAIRD ET AL. APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS
No. 78-329.

Argued February 27, 1979.
Decided July 2, 1979.*

[Footnote *] Together with No. 78-330, Hunerwadel v. Baird et al., also on appeal from the same court.

A Massachusetts statute requires parental consent before an abortion can be performed on an unmarried woman under the age of 18. If one or both parents refuse such consent, however, the abortion may be obtained by order of a judge of the superior court "for good cause shown." In appellees' class action challenging the constitutionality of the statute, a three-judge District Court held it unconstitutional. Subsequently, this Court vacated the District Court's judgment, Bellotti v. Baird, 428 U.S. 132, holding that the District Court should have abstained and certified to the Massachusetts Supreme Judicial Court appropriate questions concerning the meaning of the statute. On remand, the District Court certified several questions to the Supreme Judicial Court. Among the questions certified was whether the statute permits any minors - mature or immature - to obtain judicial consent to an abortion without any parental consultation whatsoever. The Supreme Judicial Court answered that, in general, it does not; that consent must be obtained for every nonemergency abortion unless no parent is available; and that an available parent must be given notice of any judicial proceedings brought by a minor to obtain consent for an abortion. Another question certified was whether, if the superior court finds that the minor is capable of making, and has, in fact, made and adhered to, an informed and reasonable decision to have an abortion, the court may refuse its consent on a finding that a parent's, or its own, contrary decision is a better one. The Supreme Judicial Court answered in the affirmative. Following the Supreme Judicial Court's judgment, the District Court again declared the statute unconstitutional and enjoined its enforcement.

Held:

The judgment is affirmed. Pp 633-651; 652-656.

450 F. Supp. 997, affirmed.

MR. JUSTICE POWELL, joined by MR. CHIEF JUSTICE BURGER, MR. JUSTICE STEWART, and MR. JUSTICE REHNQUIST, concluded that:

1. There are three reasons justifying the conclusion that the constitutional [443 U.S. 622, 623] rights of children cannot be equated with those of adults: the peculiar vulnerability of children; their inability to make critical decisions in an informed, mature manner; and the importance of the guiding role of parents in the upbringing of their children. Pp. 633-639.

2. The abortion decision differs in important ways from other decisions facing minors, and the State is required to act with particular sensitivity when it legislates to foster parental involvement

in this matter. Pp. 639-642.

3. If a State decides to require a pregnant minor to obtain one or both parents' consent to an abortion, it also must provide an alternative procedure whereby authorization for the abortion can be obtained. A pregnant minor is entitled in such a proceeding to show either that she is mature enough and well enough informed to make her abortion decision, in consultation with her physician, independently of her parents' wishes, or that even if she is not able to make this decision independently, the desired abortion would be in her best interests. Such a procedure must ensure that the provision requiring parental consent does not in fact amount to an impermissible "absolute, and possibly arbitrary, veto." Planned Parenthood of Central Missouri v. Danforth, 428 U.S. 52, 74. Pp. 642-644.

4. The Massachusetts statute, as authoritatively interpreted by the Supreme Judicial Court, unduly burdens the right to seek an abortion. The statute falls short of constitutional standards in two respects. First, it permits judicial authorization for an abortion to be withheld from a minor who is found by the superior court to be mature and fully competent to make this decision independently. Second, it requires parental consultation or notification in every instance, whether or not in the pregnant minor's best interests, without affording her an opportunity to receive an independent judicial determination that she is mature enough to consent or that an abortion would be in her best interests. Pp. 644-651.

MR. JUSTICE STEVENS, joined by MR. JUSTICE BRENNAN, MR. JUSTICE MARSHALL, and MR. JUSTICE BLACKMUN, concluded that the Massachusetts statute is unconstitutional because under the statute, as written and as construed by the Massachusetts Supreme Judicial Court, no minor, no matter how mature and capable of informed decisionmaking, may receive an abortion without the consent of either both parents or a superior court judge, thus making the minor's abortion decision subject in every instance to an absolute third-party veto. Planned Parenthood of Central Missouri v. Danforth, 428 U.S. 52, controlling. Pp. 652-656.

POWELL, J., announced the judgment of the Court and delivered an opinion, in which BURGER, C. J., and STEWART and REHNQUIST, JJ., joined. [443 U.S. 622, 624] REHNQUIST, J., filed a concurring opinion, post, p. 651. STEVENS, J., filed an opinion concurring in the judgment, in which BRENNAN, MARSHALL, and BLACKMUN, JJ., joined, post, p. 652. WHITE, J., filed a dissenting opinion, post, p 656.

Garrick F. Cole, Assistant Attorney General of Massachusetts, argued the cause for appellants in No. 78-329. With him on the briefs were Francis X. Bellotti, Attorney General, pro se, and Michael B. Meyer and Thomas R. Kiley, Assistant Attorneys General. Brian A. Riley argued the cause for appellant in No. 78-330. With him on the brief was Thomas P. Russell.

Joseph J. Balliro argued the cause for appellees in both cases. With him on the brief was Joan C. Schmidt. John H. Henn also argued the cause for appellees in both cases. With him on the brief were Scott C. Moriearty, Sandra L. Lynch, Loyd M. Starrett, and John Reinstein.Fn

Fn [443 U.S. 622, 624] Stuart D. Hubbell and Robert A. Destro filed a brief for the Catholic League for Religious and Civil Rights et al. as amici curiae urging reversal in No. 78-329. Eve W. Paul, Harriet F. Pilpel, and Sylvia A. Law filed a brief for the Planned Parenthood Federation of America, Inc., et al. as amici curiae urging affirmance in both cases. Briefs of amici curiae were filed by Victor G. Rosenblum, Dennis J. Horan, and John D. Gorby in both cases for Americans United for Life, Inc., et al.; and by George E. Reed and Patrick F. Geary in No. 78-329 for the United States Catholic Conference.

MR. JUSTICE POWELL announced the judgment of the Court and delivered an opinion, in which THE CHIEF JUSTICE, MR. JUSTICE STEWART, and MR. JUSTICE REHNQUIST joined.

These appeals present a challenge to the constitutionality of a state statute regulating the access of minors to abortions. They require us to continue the inquiry we began in Planned Parenthood of Central Missouri v. Danforth, 428 U.S. 52 (1976), and Bellotti v. Baird, 428 U.S. 132 (1976). [443 U.S. 622, 625]

I

A

On August 2, 1974, the Legislature of the Commonwealth of Massachusetts passed, over the Governor's veto, an Act pertaining to abortions performed within the State. 1974 Mass. Acts, ch. 706. According to its title, the statute was intended to regulate abortions "within present constitutional limits." Shortly before the Act was to go into effect, the class action from which these appeals arise was commenced in the District Court[1] to enjoin, as unconstitutional, the provision of the Act now codified as Mass. Gen. Laws Ann., ch. 112, 12S (West Supp. 1979).[2]

Section 12S provides in part:

> "If the mother is less than eighteen years of age and has not married, the consent of both the mother and her parents [to an abortion to be performed on the mother] is required. If one or both of the mother's parents refuse such consent, consent may be obtained by order of a judge of the superior court for good cause shown, after such hearing as he deems necessary. Such a hearing will not require the appointment of a guardian for the mother. If one of the parents has died or has deserted his or her family, consent by the remaining parent is sufficient. If both parents have died or have deserted their family, consent of the mother's guardian or other [443 U.S. 622, 626] person having duties similar to a guardian, or any person who had assumed the care and custody of the mother is sufficient. The commissioner of public health shall prescribe a written form for such consent. Such form shall be signed by the proper person or persons and given to the physician performing the abortion who shall maintain it in his permanent files."

Physicians performing abortions in the absence of the consent required by 12S are subject to injunctions and criminal penalties. See Mass. Gen. Laws Ann., ch. 112, 12Q, 12T, and 12U (West Supp. 1979).

A three-judge District Court was convened to hear the case pursuant to 28 U.S.C. 2281 (1970 ed.), repealed by Pub. L. 94-381, 1, 90 Stat. 1119.[3] Plaintiffs in the suit, appellees in both the cases before us now, were William Baird; Parents Aid Society, Inc. (Parents Aid), of which Baird is founder and director; Gerald Zupnick, M. D., who regularly performs abortions at the Parents Aid clinic; and an unmarried minor, identified by the pseudonym "Mary Moe," who, at the commencement of the suit, was pregnant, residing at home with her parents, and desirous of obtaining an abortion without informing them.[4]

Mary Moe was permitted to represent the "class of unmarried minors in Massachusetts who have adequate capacity to give a valid and informed consent [to abortion], and who do not wish to involve their parents." Baird v. Bellotti, 393 F. Supp. 847, 850 (Mass. 1975) (Baird I). Initially there was some confusion whether the rights of minors who wish abortions without parental involvement but who lack "adequate capacity" to give such consent also could be adjudicated in [443 U.S. 622, 627] the suit. The District Court ultimately determined that Dr. Zupnick was entitled to assert the rights of these minors. See Baird v. Bellotti, 450 F. Supp. 997, 1001, and n. 6 (Mass. 1978).[5]

Planned Parenthood League of Massachusetts and Crittenton Hastings House & Clinic, both organizations that provide counselling to pregnant adolescents, and Phillip Stubblefield, M. D. (intervenors),6 appeared as amici curiae on behalf of the plaintiffs. The District Court "accepted [this group] in a status something more than amici because of reservations about the adequacy of plaintiffs' representation [of the plaintiff classes in the suit]." Id., at 999 n. 3.

Defendants in the suit, appellants here in No. 78-329, were the Attorney General of Massachusetts and the District Attorneys of all counties in the State. Jane Hunerwadel was permitted to intervene as a defendant and representative of the class of Massachusetts parents having unmarried minor daughters who then were, or might become, pregnant. She and the class she represents are appellants in No. 78-330.7

Following three days of testimony, the District Court issued an opinion invalidating 12S. Baird I, supra. The court rejected appellees' argument that all minors capable of becoming pregnant also are capable of giving informed consent [443 U.S. 622, 628] to an abortion, or that it always is in the best interests of a minor who desires an abortion to have one. See 393 F. Supp., at 854. But the court was convinced that "a substantial number of females under the age of 18 are capable of forming a valid consent," id., at 855, and "that a significant number of [these] are unwilling to tell their parents." Id., at 853.

In its analysis of the relevant constitutional principles, the court stated that "there can be no doubt but that a female's constitutional right to an abortion in the first trimester does not depend upon her calendar age." Id., at 855-856. The court found no justification for the parental consent limitation placed on that right by 12S, since it concluded that the statute was "cast not in terms of protecting the minor, . . . but in recognizing independent rights of parents." Id., at 856. The "independent" parental rights protected by 12S, as the court understood them, were wholly distinct from the best interests of the minor.8

B

Appellants sought review in this Court, and we noted probable jurisdiction. Bellotti v. Baird, 423 U.S. 982 (1975). After briefing and oral argument, it became apparent that 12S was susceptible of a construction that "would avoid or substantially modify the federal constitutional challenge to the statute." Bellotti v. Baird, 428 U.S. 132, 148 (1976) (Bellotti I). We therefore vacated the judgment of the District Court, concluding that it should have abstained and certified to the Supreme Judicial Court of Massachusetts appropriate questions concerning the meaning of 12S, pursuant to existing [443 U.S. 622, 629] procedure in that State. See Mass. Sup. Jud. Ct. Rule 3:21.

On remand, the District Court certified nine questions to the Supreme Judicial Court.9 These were answered in an [443 U.S. 622, 630] opinion styled Baird v. Attorney General, 371 Mass. 741, 360 N. E. 2d 288 (1977) (Attorney General). Among the more important aspects of 12S, as authoritatively construed by the Supreme Judicial Court, are the following:

1. In deciding whether to grant consent to their daughter's abortion, parents are required by 12S to consider exclusively what will serve her best interests. See id., at 746-747, 360 N. E. 2d, at 292-293.

2. The provision in 12S that judicial consent for an abortion shall be granted, parental objections notwithstanding, "for good cause shown" means that such consent shall be granted if found to be in the minor's best interests. The judge "must disregard all parental objections, and other considerations, which are not based exclusively" on that standard. Id., at 748, 360 N. E. 2d, at 293.

3. Even if the judge in a 12S proceeding finds "that the minor is capable of making, and has made, an

informed and reasonable decision to have an abortion," he is entitled to withhold consent "in circumstances where he determines that the best interests of the minor will not be served by an abortion." Ibid., 360 N. E. 2d, at 293.

4. As a general rule, a minor who desires an abortion may not obtain judicial consent without first seeking both parents' consent. Exceptions to the rule exist when a parent is not available or when the need for the abortion constitutes "'an emergency requiring immediate action.'"10 Id., at 750, 360 N. E. 2d, at 294. Unless a parent is not available, he must be notified of any judicial proceedings brought under 12S. Id., at 755-756, 360 N. E. 2d, at 297. [443 U.S. 622, 631]

5. The resolution of 12S cases and any appeals that follow can be expected to be prompt. The name of the minor and her parents may be held in confidence. If need be, the Supreme Judicial Court and the superior courts can promulgate rules or issue orders to ensure that such proceedings are handled expeditiously. Id., at 756-758, 360 N. E. 2d, at 297-298.

6. Massachusetts Gen. Laws Ann., ch. 112, 12F (west Supp. 1979), which provides, inter alia, that certain classes of minors may consent to most kinds of medical care without parental approval, does not apply to abortions, except as to minors who are married, widowed, or divorced. See 371 Mass., at 758-762, 360 N. E. 2d, at 298-300. Nor does the State's common-law "mature minor rule" create an exception to 12S. Id., at 749-750, 360 N. E. 2d, at 294. See n. 27, infra.

C

Following the judgment of the Supreme Judicial Court, appellees returned to the District Court and obtained a stay of the enforcement of 12S until its constitutionality could be determined. Baird v. Bellotti, 428 F. Supp. 854 (Mass. 1977) (Baird II). After permitting discovery by both sides, holding a pretrial conference, and conducting further hearings, the District Court again declared 12S unconstitutional and enjoined its enforcement. Baird v. Bellotti, 450 F. Supp. 997 (Mass. 1978) (Baird III). The court identified three particular aspects of the statute which, in its view, rendered it unconstitutional.

First, as construed by the Supreme Judicial Court, 12S requires parental notice in virtually every case where the parent is available. The court believed that the evidence warranted a finding "that many, perhaps a large majority of 17-year olds are capable of informed consent, as are a not insubstantial number of 16-year olds, and some even younger." Id., at 1001. In addition, the court concluded that it would not be in [443 U.S. 622, 632] the best interests of some "immature" minors - those incapable of giving informed consent - even to inform their parents of their intended abortions. Although the court declined to decide whether the burden of requiring a minor to take her parents to court was, per se, an impermissible burden on her right to seek an abortion, it concluded that Massachusetts could not constitutionally insist that parental permission be sought or notice given "in those cases where a court, if given free rein, would find that it was to the minor's best interests that one or both of her parents not be informed . . . ." Id., at 1002.

Second, the District Court held that 12S was defective in permitting a judge to veto the abortion decision of a minor found to be capable of giving informed consent. The court reasoned that upon a finding of maturity and informed consent, the State no longer was entitled to impose legal restrictions upon this decision. Id., at 1003. Given such a finding, the court could see "no reasonable basis" for distinguishing between a minor and an adult, and it therefore concluded that 12S was not only "an undue burden in the due process sense, [but] a discriminatory denial of equal protection [as well]." Id., at 1004.

Finally, the court decided that 12S suffered from what it termed "formal overbreadth," ibid., because the statute failed explicitly to inform parents that they must consider only the minor's best interests in deciding whether to grant consent. The court believed that, despite the Supreme Judicial Court's construction of 12S, parents naturally would infer from the statute that they were entitled to withhold consent for other, impermissible reasons. This was thought to create a "chilling effect" by enhancing the possibility that parental consent would be denied wrongfully and that the minor would have to proceed in court.

Having identified these flaws in 12S, the District Court considered whether it should engage in "judicial repair." Id., at 1005. It declined either to sever the statute or to give [443 U.S. 622, 633] it a construction different from that set out by the Supreme Judicial Court, as that tribunal arguably had invited it to do. See Attorney General, 371 Mass., at 745-746, 360 N. E. 2d, at 292. The District Court therefore adhered to its previous position, declaring 12S unconstitutional and permanently enjoining its enforcement.11 Appellants sought review in this Court a second time, and we again noted probable jurisdiction. 439 U.S. 925 (1978).

II

A child, merely on account of his minority, is not beyond the protection of the Constitution. As the Court said in In re Gault, 387 U.S. 1, 13 (1967), "whatever may be their precise impact, neither the Fourteenth Amendment nor the Bill of Rights is for adults alone."12 This observation, of course, is but the beginning of the analysis. The Court long has recognized that the status of minors under the law is unique in many respects. As Mr. Justice Frankfurter aptly put it: "Children have a very special place in life which law should reflect. Legal theories and their phrasing in other cases readily lead to fallacious reasoning if uncritically transferred to determination [443 U.S. 622, 634] of a State's duty towards children." May v. Anderson, 345 U.S. 528, 536 (1953) (concurring opinion). The unique role in our society of the family, the institution by which "we inculcate and pass down many of our most cherished values, moral and cultural," Moore v. East Cleveland, 431 U.S. 494, 503-504 (1977) (plurality opinion), requires that constitutional principles be applied with sensitivity and flexibility to the special needs of parents and children. We have recognized three reasons justifying the conclusion that the constitutional rights of children cannot be equated with those of adults: the peculiar vulnerability of children; their inability to make critical decisions in an informed, mature manner; and the importance of the parental role in child rearing.

A

The Court's concern for the vulnerability of children is demonstrated in its decisions dealing with minors' claims to constitutional protection against deprivations of liberty or property interests by the State. With respect to many of these claims, we have concluded that the child's right is virtually coextensive with that of an adult. For example, the Court has held that the Fourteenth Amendment's guarantee against the deprivation of liberty without due process of law is applicable to children in juvenile delinquency proceedings. In re Gault, supra. In particular, minors involved in such proceedings are entitled to adequate notice, the assistance of counsel, and the opportunity to confront their accusers. They can be found guilty only upon proof beyond a reasonable doubt, and they may assert the privilege against compulsory self-incrimination. In re Winship, 397 U.S. 358 (1970); In re Gault, supra. See also Ingraham v. Wright, 430 U.S. 651, 674 (1977) (corporal punishment of schoolchildren implicates constitutionally protected liberty interest); cf. Breed v. Jones, 421 U.S. 519 (1975) (Double Jeopardy Clause prohibits prosecuting juvenile as an adult after an adjudicatory finding in juvenile court that he had violated a criminal statute). [443 U.S. 622, 635] Similarly, in Goss v. Lopez, 419 U.S. 565 (1975), the Court held that children may not be deprived of certain property interests without due process.

These rulings have not been made on the uncritical assumption that the constitutional rights of children are indistinguishable from those of adults. Indeed, our acceptance of juvenile courts distinct from the adult criminal justice system assumes that juvenile offenders constitutionally may be treated differently from adults. In order to preserve this separate avenue for dealing with minors, the Court has said that hearings in juvenile delinquency cases need not necessarily "'conform with all of the requirements of a criminal trial or even of the usual administrative hearing.'" In re Gault, supra, at 30, quoting Kent v. United States, 383 U.S. 541, 562 (1966). Thus, juveniles are not constitutionally entitled to trial by jury in delinquency adjudications. McKeiver v. Pennsylvania, 403 U.S. 528 (1971). Viewed together, our cases show that although children generally are protected by the same constitutional guarantees against governmental deprivations as are adults, the State is entitled to adjust its legal system to account for children's vulnerability and their needs for "concern, . . . sympathy, and . . . paternal attention." Id., at 550 (plurality opinion).

B

Second, the Court has held that the States validly may limit the freedom of children to choose for themselves in the making of important, affirmative choices with potentially serious consequences. These rulings have been grounded in the recognition that, during the formative years of childhood and adolescence, minors often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them.13 [443 U.S. 622, 636]

Ginsberg v. New York, 390 U.S. 629 (1968), illustrates well the Court's concern over the inability of children to make mature choices, as the First Amendment rights involved are clear examples of constitutionally protected freedoms of choice. At issue was a criminal conviction for selling sexually oriented magazines to a minor under the age of 17 in violation of a New York state law. It was conceded that the conviction could not have stood under the First Amendment if based upon a sale of the same material to an adult. Id., at 634. Notwithstanding the importance the Court always has attached to First Amendment rights, it concluded that "even where there is an invasion of protected freedoms 'the power of the state to control the conduct of children reaches beyond the scope of its authority over adults . . .,'" id., at 638, quoting Prince v. Massachusetts, 321 U.S. 158, 170 (1944).14 The Court was convinced that the New York Legislature rationally could conclude that the sale to children of the magazines in question presented a danger against which they should be guarded. Ginsberg, supra, at 641. It therefore rejected the [443 U.S. 622, 637] argument that the New York law violated the constitutional rights of minors.15

C

Third, the guiding role of parents in the upbringing of their children justifies limitations on the freedoms of minors. The State commonly protects its youth from adverse governmental action and from their own immaturity by requiring parental consent to or involvement in important decisions by minors.16 But an additional and more important justification for state deference to parental control over children is that "[t]he child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations." Pierce v. Society of Sisters, 268 U.S. 510, 535 (1925). "The duty to prepare the child for 'additional obligations' . . . [443 U.S. 622, 638] must be read to include the inculcation of moral standards, religious beliefs, and elements of good citizenship." Wisconsin v. Yoder, 406 U.S. 205, 233 (1972). This affirmative process of teaching, guiding, and inspiring by precept and example is essential to the growth of young people into mature, socially responsible citizens.

We have believed in this country that this process, in large part, is beyond the competence of impersonal political institutions. Indeed, affirmative sponsorship of particular ethical, religious, or political beliefs is

something we expect the State not to attempt in a society constitutionally committed to the ideal of individual liberty and freedom of choice. Thus, "[i]t is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder." Prince v. Massachusetts, supra, at 166 (emphasis added).

Unquestionably, there are many competing theories about the most effective way for parents to fulfill their central role in assisting their children on the way to responsible adulthood. While we do not pretend any special wisdom on this subject, we cannot ignore that central to many of these theories, and deeply rooted in our Nation's history and tradition, is the belief that the parental role implies a substantial measure of authority over one's children. Indeed, "constitutional interpretation has consistently recognized that the parents' claim to authority in their own household to direct the rearing of their children is basic in the structure of our society." Ginsberg v. New York, supra, at 639.

Properly understood, then, the tradition of parental authority is not inconsistent with our tradition of individual liberty; rather, the former is one of the basic presuppositions of the latter. Legal restrictions on minors, especially those supportive of the parental role, may be important to the child's chances for the full growth and maturity that make eventual [443 U.S. 622, 639] participation in a free society meaningful and rewarding.17 Under the Constitution, the State can "properly conclude that parents and others, teachers for example, who have [the] primary responsibility for children's well-being are entitled to the support of laws designed to aid discharge of that responsibility." Ginsberg v. New York, 390 U.S., at 639.18

III

With these principles in mind, we consider the specific constitutional questions presented by these appeals. In 12S, Massachusetts has attempted to reconcile the constitutional right of a woman, in consultation with her physician, to choose to terminate her pregnancy as established by Roe v. Wade, 410 U.S. 113 (1973), and Doe v. Bolton, 410 U.S. 179 (1973), with the special interest of the State in encouraging an unmarried pregnant minor to seek the advice of her parents in making the important decision whether or not to bear a child. As noted above, 12S was before us in Bellotti I, 428 U.S. 132 (1976), where we remanded the case for interpretation of its provisions by the Supreme Judicial Court of Massachusetts. We previously had held in Planned Parenthood of Central Missouri v. Danforth, 428 U.S. 52 (1976), that a State could not lawfully authorize an absolute parental veto over the decision of a minor to terminate her pregnancy. Id., at 74. In [443 U.S. 622, 640] Bellotti I, supra, we recognized that 12S could be read as "fundamentally different from a statute that creates a 'parental veto,'" 428 U.S., at 145, thus "avoid[ing] or substantially modify[ing] the federal constitutional challenge to the statute." Id., at 148. The question before us - in light of what we have said in the prior cases - is whether 12S, as authoritatively interpreted by the Supreme Judicial Court, provides for parental notice and consent in a manner that does not unduly burden the right to seek an abortion. See id., at 147.

Appellees and intervenors contend that even as interpreted by the Supreme Judicial Court of Massachusetts 12S does unduly burden this right. They suggest, for example, that the mere requirement of parental notice constitutes such a burden. As stated in Part II above, however, parental notice and consent are qualifications that typically may be imposed by the State on a minor's right to make important decisions. As immature minors often lack the ability to make fully informed choices that take account of both immediate and long-range consequences, a State reasonably may determine that parental consultation often is desirable and in the best interest of the minor.19 It may further determine, as a general proposition, that such consultation is particularly desirable with respect to the abortion decision - one that for some people raises profound moral and religious concerns.20 As MR. JUSTICE STEWART

wrote in concurrence in Planned Parenthood of Central Missouri v. Danforth, supra, at 91:

> "There can be little doubt that the State furthers a constitutionally permissible end by encouraging an unmarried [443 U.S. 622, 641] pregnant minor to seek the help and advice of her parents in making the very important decision whether or not to bear a child. That is a grave decision, and a girl of tender years, under emotional stress, may be ill-equipped to make it without mature advice and emotional support. It seems unlikely that she will obtain adequate counsel and support from the attending physician at an abortion clinic, where abortions for pregnant minors frequently take place." (Footnote omitted.)21 [443 U.S. 622, 642]

But we are concerned here with a constitutional right to seek an abortion. The abortion decision differs in important ways from other decisions that may be made during minority. The need to preserve the constitutional right and the unique nature of the abortion decision, especially when made by a minor, require a State to act with particular sensitivity when it legislates to foster parental involvement in this matter.

A

The pregnant minor's options are much different from those facing a minor in other situations, such as deciding whether to marry. A minor not permitted to marry before the age of majority is required simply to postpone her decision. She and her intended spouse may preserve the opportunity for later marriage should they continue to desire it. A pregnant adolescent, however, cannot preserve for long the possibility of aborting, which effectively expires in a matter of weeks from the onset of pregnancy.

Moreover, the potentially severe detriment facing a pregnant woman, see Roe v. Wade, 410 U.S., at 153, is not mitigated by her minority. Indeed, considering her probable education, employment skills, financial resources, and emotional maturity, unwanted motherhood may be exceptionally burdensome for a minor. In addition, the fact of having a child brings with it adult legal responsibility, for parenthood, like attainment of the age of majority, is one of the traditional criteria for the termination of the legal disabilities of minority. In sum, there are few situations in which denying a minor the right to make an important decision will have consequences so grave and indelible.

Yet, an abortion may not be the best choice for the minor. The circumstances in which this issue arises will vary widely. In a given case, alternatives to abortion, such as marriage to the father of the child, arranging for its adoption, or assuming the responsibilities of motherhood with the assured support of [443 U.S. 622, 643] family, may be feasible and relevant to the minor's best interests. Nonetheless, the abortion decision is one that simply cannot be postponed, or it will be made by default with far-reaching consequences.

For these reasons, as we held in Planned Parenthood of Central Missouri v. Danforth, 428 U.S., at 74, "the State may not impose a blanket provision . . . requiring the consent of a parent or person in loco parentis as a condition for abortion of an unmarried minor during the first 12 weeks of her pregnancy." Although, as stated in Part II, supra, such deference to parents may be permissible with respect to other choices facing a minor, the unique nature and consequences of the abortion decision make it inappropriate "to give a third party an absolute, and possibly arbitrary, veto over the decision of the physician and his patient to terminate the patient's pregnancy, regardless of the reason for withholding the consent." 428 U.S., at 74. We therefore conclude that if the State decides to require a pregnant minor to obtain one or both parents' consent to an abortion, it also must provide an alternative procedure22 whereby authorization for the abortion can be obtained.

A pregnant minor is entitled in such a proceeding to show either: (1) that she is mature enough and well enough informed to make her abortion decision, in consultation with her physician, independently of her parents' wishes;23 or [443 U.S. 622, 644] (2) that even if she is not able to make this decision independently, the desired abortion would be in her best interests. The proceeding in which this showing is made must assure that a resolution of the issue, and any appeals that may follow, will be completed with anonymity and sufficient expedition to provide an effective opportunity for an abortion to be obtained. In sum, the procedure must ensure that the provision requiring parental consent does not in fact amount to the "absolute, and possibly arbitrary, veto" that was found impermissible in Danforth. Ibid.

B

It is against these requirements that 12S must be tested. We observe initially that as authoritatively construed by the highest court of the State, the statute satisfies some of the concerns that require special treatment of a minor's abortion decision. It provides that if parental consent is refused, authorization may be "obtained by order of a judge of the superior court for good cause shown, after such hearing as he deems necessary." A superior court judge presiding over a 12S proceeding "must disregard all parental objections, and other considerations, which are not based exclusively on what would serve the minor's best interests."24 Attorney General, [443 U.S. 622, 645] 371 Mass., at 748, 360 N. E. 2d, at 293. The Supreme Judicial Court also stated: "Prompt resolution of a [12S] proceeding may be expected. . . . The proceeding need not be brought in the minor's name and steps may be taken, by impoundment or otherwise, to preserve confidentiality as to the minor and her parents. . . . [W]e believe that an early hearing and decision on appeal from a judgment of a Superior Court judge may also be achieved." Id., at 757-758, 360 N. E. 2d, at 298. The court added that if these expectations were not met, either the superior court, in the exercise of its rulemaking power, or the Supreme Judicial Court would be willing to eliminate any undue burdens by rule or order. Ibid.25

Despite these safeguards, which avoid much of what was objectionable in the statute successfully challenged in Danforth, 12S falls short of constitutional standards in certain respects. We now consider these. [443 U.S. 622, 646]

(1)

Among the questions certified to the Supreme Judicial Court was whether 12S permits any minors - mature or immature - to obtain judicial consent to an abortion without any parental consultation whatsoever. See n. 9, supra. The state court answered that, in general, it does not. "[T]he consent required by [12S must] be obtained for every nonemergency abortion where the mother is less than eighteen years of age and unmarried." Attorney General, supra, at 750, 360 N. E. 2d, at 294. The text of 12S itself states an exception to this rule, making consent unnecessary from any parent who has "died or has deserted his or her family."26 The Supreme Judicial Court construed the statute as containing an additional exception: Consent need not be obtained "where no parent (or statutory substitute) is available." 371 Mass., at 750, 360 N. E. 2d, at 294. The court also ruled that an available parent must be given notice of any judicial proceedings brought by a minor to obtain consent for an abortion.27 Id., at 755-756, 360 N. E. 2d, at 297. [443 U.S. 622, 647]

We think that, construed in this manner, 12S would impose an undue burden upon the exercise by minors of the right to seek an abortion. As the District Court recognized, "there are parents who would obstruct, and perhaps altogether prevent, the minor's right to go to court." Baird III, 450 F. Supp., at 1001. There is no reason to believe that this would be so in the majority of cases where consent is withheld. But many parents hold strong views on the subject of abortion, and young pregnant minors, especially those living at home, are particularly vulnerable to their parents' efforts to obstruct both an abortion and their access

to court. It would be unrealistic, therefore, to assume that the mere existence of a legal right to seek relief in superior court provides an effective avenue of relief for some of those who need it the most.

We conclude, therefore, that under state regulation such as that undertaken by Massachusetts, every minor must have the opportunity - if she so desires - to go directly to a court without first consulting or notifying her parents. If she satisfies the court that she is mature and well enough informed to make intelligently the abortion decision on her own, the court must authorize her to act without parental consultation or consent. If she fails to satisfy the court that she is competent to make this decision independently, she must be permitted to show that an abortion nevertheless would be in her [443 U.S. 622, 648] best interests. If the court is persuaded that it is, the court must authorize the abortion. If, however, the court is not persuaded by the minor that she is mature or that the abortion would be in her best interests, it may decline to sanction the operation.

There is, however, an important state interest in encouraging a family rather than a judicial resolution of a minor's abortion decision. Also, as we have observed above, parents naturally take an interest in the welfare of their children - an interest that is particularly strong where a normal family relationship exists and where the child is living with one or both parents. These factors properly may be taken into account by a court called upon to determine whether an abortion in fact is in a minor's best interests. If, all things considered, the court determines that an abortion is in the minor's best interests, she is entitled to court authorization without any parental involvement. On the other hand, the court may deny the abortion request of an immature minor in the absence of parental consultation if it concludes that her best interests would be served thereby, or the court may in such a case defer decision until there is parental consultation in which the court may participate. But this is the full extent to which parental involvement may be required.28 For the reasons stated above, the constitutional right to seek an abortion may not be unduly burdened by state-imposed conditions upon initial access to court.

(2)

Section 12S requires that both parents consent to a minor's abortion. The District Court found it to be "custom" to perform other medical and surgical procedures on minors with the consent of only one parent, and it concluded that "nothing about abortions . . . requires the minor's interest to be treated [443 U.S. 622, 649] differently." Baird I, 393 F. Supp., at 852. See Baird III, supra, at 1004 n. 9.

We are not persuaded that, as a general rule, the requirement of obtaining both parents' consent unconstitutionally burdens a minor's right to seek an abortion. The abortion decision has implications far broader than those associated with most other kinds of medical treatment. At least when the parents are together and the pregnant minor is living at home, both the father and mother have an interest - one normally supportive - in helping to determine the course that is in the best interests of a daughter. Consent and involvement by parents in important decisions by minors long have been recognized as protective of their immaturity. In the case of the abortion decision, for reasons we have stated, the focus of the parents' inquiry should be the best interests of their daughter. As every pregnant minor is entitled in the first instance to go directly to the court for a judicial determination without prior parental notice, consultation, or consent, the general rule with respect to parental consent does not unduly burden the constitutional right. Moreover, where the pregnant minor goes to her parents and consent is denied, she still must have recourse to a prompt judicial determination of her maturity or best interests.29

(3)

Another of the questions certified by the District Court to the Supreme Judicial Court was the following: "If the superior court finds that the minor is capable [of making], and has, in fact, made and adhered to,

an informed and reasonable decision to have an abortion, may the court refuse its consent based on a finding that a parent's, or its own, contrary decision [443 U.S. 622, 650] is a better one?" Attorney General, 371 Mass., at 747 n. 5, 360 N. E. 2d, at 293 n. 5. To this the state court answered:

> "[W]e do not view the judge's role as limited to a determination that the minor is capable of making, and has made, an informed and reasonable decision to have an abortion. Certainly the judge must make a determination of those circumstances, but, if the statutory role of the judge to determine the best interests of the minor is to be carried out, he must make a finding on the basis of all relevant views presented to him. We suspect that the judge will give great weight to the minor's determination, if informed and reasonable, but in circumstances where he determines that the best interests of the minor will not be served by an abortion, the judge's determination should prevail, assuming that his conclusion is supported by the evidence and adequate findings of fact." Id., at 748, 360 N. E. 2d, at 293.

The Supreme Judicial Court's statement reflects the general rule that a State may require a minor to wait until the age of majority before being permitted to exercise legal rights independently. See n. 23, supra. But we are concerned here with the exercise of a constitutional right of unique character. See supra, at 642-643. As stated above, if the minor satisfies a court that she has attained sufficient maturity to make a fully informed decision, she then is entitled to make her abortion decision independently. We therefore agree with the District Court that 12S cannot constitutionally permit judicial disregard of the abortion decision of a minor who has been determined to be mature and fully competent to assess the implications of the choice she has made.30 [443 U.S. 622, 651]

IV

Although it satisfies constitutional standards in large part, 12S falls short of them in two respects: First, it permits judicial authorization for an abortion to be withheld from a minor who is found by the superior court to be mature and fully competent to make this decision independently. Second, it requires parental consultation or notification in every instance, without affording the pregnant minor an opportunity to receive an independent judicial determination that she is mature enough to consent or that an abortion would be in her best interests.31 Accordingly, we affirm the judgment of the District Court insofar as it invalidates this statute and enjoins its enforcement.32

Affirmed.

Footnotes

[Footnote 1] The court promptly issued a restraining order which remained in effect until its decision on the merits. Subsequent stays of enforcement were issued during the complex course of this litigation, with the result that Mass. Gen. Laws Ann., ch. 112, 12S (West Supp. 1979), never has been enforced by Massachusetts.

[Footnote 2] As originally enacted, 12S was designated as 12P of chapter 112. In 1977, the provision was renumbered as 12S, and the numbering of subdivisions within the section was eliminated. No changes of substance were made. We shall refer to the section as 12S throughout this opinion.

[Footnote 3] The proceedings before the court and the substance of its opinion are described in detail in Bellotti v. Baird, 428 U.S. 132, 136-143 (1976).

[Footnote 4] Three other minors in similar circumstances were named in the complaint, but the complaint

was dismissed as to them for want of proof of standing. That decision has not been challenged on appeal.

[Footnote 5] Appellants argue that these "immature" minors never were before the District Court and that the court's remedy should have been tailored to grant relief only to the class of "mature" minors. It is apparent from the District Court's opinions, however, that it considered the constitutionality of 12S as applied to all pregnant minors who might be affected by it. We accept that the rights of this entire category of minors properly were subject to adjudication.

[Footnote 6] In 1978, the District Court permitted postjudgment intervention by these parties, who now appear jointly before this Court as intervenor-appellees.

[Footnote 7] As their positions are closely aligned, if not identical, appellants in Nos. 78-329 and 78-330 are herein..fter referred to collecti\ 'y as appellants.

[Footnote 8] One member of the three-judge court dissented, arguing that the decision of the majority to allow Mary Moe to proceed in the case without notice to her parents denied them their parental rights without due process of law, and that 12S was consistent with the decisions of this Court recognizing the propriety of parental control over the conduct of children. See 393 F. Supp., at 857-865.

[Footnote 9] The nine questions certified by the District Court, with footnotes omitted, are as follows: "1. What s'andards, if any, does the statute establish for a parent to apply when considering whether or not to grant consent? "a) Is the parent to consider 'exclusively . . . what will serve the child's best interest'? "b) If the parent is not limited to considering exclusively the minor's best interests, can the parent take into consideration the 'long-term co~sequences to the family and her parents' marriage relationship'? "c) Other? "2. What standard or standards is the superior court to apply? "a) Is the superior court to disregard all parental objections that are not based exclusively on what would serve the minor's best interests? "b) If the superior court finds at the minor is capable, and has, in fact, made and adhered to, an informed and reasonable decision to have an abortion, may the court refuse its consent based on a finding that a parent's, or its own, contrary decision is a better one? "c) Other? "3. Does the Massachusetts law permit a minor (a) 'capable of giving informed consent,' or (b) 'incapable of giving 'nformed consent,' 'to obtain [a court] order without parental consultation'? "4. If the court answers any of question 3 in the affirmative, may the superior court, for good cause shown, enter an order authorizing an abortion, (a), without prior notification to the parents, and (b), without subsequent notification? "5. Will the Supreme Judicial Court prescribe a set of procedures to implement c. 112, [12S] which will expedite the application, hearing and decision phases of the superior court proceeding provided thereunder? Appeal? "6. To what degree do the standards and procedures set forth in c. 112, 12F (Stat. 1975, c. 564), authorizing minors to give consent to medical and dental care in specified circumstances, parallel the grounds and procedures for showing good cause under c. 112, [12S]? "7. May a minor, upon a showing of indigency, have court-appointed counsel? "8. Is it a defense to his criminal prosecution if a physician performs an abortion solely with the minor's own, valid, consent, that he reasonably, [443 U.S. 622, 630] and in good faith, though erroneously, believed that she was eighteen or more years old or had been married? "9. Will the Court make any other comments about the statute which, in its opinion, might assist us in determining whet' er it infringes the United States Constitution?"

[Footnote 10] Section 12S itself dispenses with the need for the consent of any parent who "has died or has deserted his or her family."

[Footnote 11] The dissenting judge agreed that the State could not permit a judge to override the decision of a minor found to be mature and capable of giving informed consent to an abortion. He disagreed with the remainder of the court's conclusions: the best-interests limitation on the withholding of parental

consent in the Supreme Judicial Court's opinion, he argued, must be treated as if part of the statutory language itself; and he read the evidentiary record as proving that only rarely would a pregnant minor's interests be disserved by consulting with her parents about a desired abortion. He also noted the value to a judge in a 12S proceeding of having the parents before him as a source of evidence as to the minor's maturity and what course would serve her best interests. See Baird III, 450 F. Supp., at 1006-1020.

[Footnote 12] Similarly, the Court said in Planned Parenthood of Central Missouri v. Danforth, 428 U.S. 52, 74 (1976): "Constitutional rights do not mature and come into being magically only when one attains the state-defined age of majority. Minors, as well as adults, are protected by the Constitution and possess constitutional rights."

[Footnote 13] As MR. JUSTICE STEWART wrote of the exercise by minors of the First Amendment rights that "secur[e] . . . the liberty of each man to [443 U.S. 622, 636] decide for himself what he will read and to what he will listen," Ginsberg v. New York, 390 U.S. 629, 649 (1968) (concurring in result): "[A]t least in some precisely delineated areas, a child - like someone in a captive audience - is not possessed of that full capacity for individual choice which is the presupposition of First Amendment guarantees. It is only upon such a premise, I should suppose, that a State may deprive children of other rights - the right to marry, for example, or the right to vote - deprivations that would be constitutionally intolerable for adults." Id., at 649-650 (footnotes omitted).

[Footnote 14] In Prince an adult had permitted a child in her custody to sell religious literature on a public street in violation of a state child-labor statute. The child had been permitted to engage in this activity upon her own sincere request. 321 U.S., at 162. In upholding the adult's conviction under the statute, we found that "the interests of society to protect the welfare of children" and to give them "opportunities for growth into free and independent well-developed men and citizens," id., at 165, permitted the State to enforce its statute, which "[c]oncededly . . . would be invalid," id., at 167, if made applicable to adults.

[Footnote 15] Although the State has considerable latitude in enacting laws affecting minors on the basis of their lesser capacity for mature, affirmative choice, Tinker v. Des Moines School Dist., 393 U.S. 503 (1969), illustrates that it may not arbitrarily deprive them of their freedom of action altogether. The Court held in Tinker that a schoolchild's First Amendment freedom of expression entitled him, contrary to school policy, to attend school wearing a black armband as a silent protest against American involvement in the hostilities in Vietnam. The Court acknowledged that the State was permitted to prohibit conduct otherwise shielded by the Constitution that "for any reason - whether it stems from time, place, or type of behavior - materially disrupts classwork or involves substantial disorder or invasion of the rights of others." Id., at 513. It upheld the First Amendment right of the schoolchildren in that case, however, not only because it found no evidence in the record that their wearing of black armbands threatened any substantial interference with the proper objectives of the school district, but also because it appeared that the challenged policy was intended primarily to stifle any debate whatsoever - even nondisruptive discussions - on important political and moral issues. See id., at 510.

[Footnote 16] See, e. g., Mass. Gen. Laws Ann., ch. 207 7, 24, 25, 33, 33A (West 1958 and Supp. 1979) (parental consent required for marriage of person under 18); Mass. Gen. Laws Ann., ch. 119, 55A (West Supp. 1979) (waiver of counsel by minor in juvenile delinquency proceedings must be made through parent or guardian).

[Footnote 17] See Hafen, Children's Liberation and the New Egalitarianism: Some Reservations About Abandoning Children to Their "Rights," 1976 B. Y. U. L. Rev. 605.

[Footnote 18] The Court's opinions discussed in the text above - Pierce, Yoder, Prince, and Ginsberg - all have contributed to a line of decisions suggesting the existence of a constitutional parental right against undue, adverse interference by the State. See also Smith v. Organization of Foster Families, 431 U.S. 816, 842-844 (1977); Carey v. Population Services International, 431 U.S. 678, 708 (1977) (opinion of POWELL, J.); Moore v. East Cleveland, 431 U.S. 494 (1977) (plurality opinion); Stanley v. Illinois, 405 U.S. 645, 651 (1972); Meyer v. Nebraska, 262 U.S. 390, 399 (1923). Cf. Parham v. J. R., 442 U.S. 584 (1979); id., at 621 (STEWART, J., concurring in result).

[Footnote 19] In Planned Parenthood of Central Missouri v. Danforth, 428 U.S., at 75, "[w]e emphasize [d] that our holding . . . [did] not suggest that every minor, regardless of age or maturity, may give effective consent for termination of her pregnancy."

[Footnote 20] The expert testimony at the hearings in the District Court uniformly was to the effect that parental involvement in a minor's abortion decision, if compassionate and supportive, was highly desirable. The findings of the court reflect this consensus. See Baird I, 393 F. Supp., at 853.

[Footnote 21] MR. JUSTICE STEWART'S concurring opinion in Danforth underscored the need for parental involvement in minors' abortion decisions by describing the procedures followed at the clinic operated by the Parents Aid Society and Dr. Gerald Zupnick: "The counseling . . . occurs entirely on the day the abortion is to be performed . . . . It lasts for two hours and takes place in groups that include both minors and adults who are strangers to one another . . . . The physician takes no part in this counseling process . . . . Counseling is typically limited to a description of abortion procedures, possible complications, and birth control techniques . . . . "The abortion itself takes five to seven minutes . . . . The physician has no prior contact with the minor, and on the days that abortions are being performed at the [clinic], the physician . . . may be performing abortions on many other adults and minors . . . . On busy days patients are scheduled in separate groups, consisting usually of five patients . . . . After the abortion [the physician] spends a brief period with the minor and others in the group in the recovery room . . . ." 428 U.S., at 91-92, n. 2, quoting Brief for Appellants in Bellotti I, O. T. 1975, No. 75-73, pp. 43-44. In Roe v. Wade, 410 U.S. 113 (1973), and Doe v. Bolton, 410 U.S. 179 (1973), we emphasized the importance of the role of the attending physician. Those cases involved adult women presumably capable of selecting and obtaining a competent physician. In this case, however, we are concerned only with minors who, according to the record, may range in age from children of 12 years to 17-year-old teenagers. Even the latter are less likely than adults to know or be able to recognize ethical, qualified physicians, or to have the means to engage such professionals. Many minors who bypass their parents probably will resort to an abortion clinic, without being able to distinguish the competent and ethical from those that are incompetent or unethical.

[Footnote 22] As 12S provides for involvement of the state superior court in minors' abortion decisions, we discuss the alternative procedure described in the text in terms of judicial proceedings. We do not suggest, however, that a State choosing to require parental consent could not delegate the alternative procedure to a juvenile court or an administrative agency or officer. Indeed, much can be said for employing procedures and a forum less formal than those associated with a court of general jurisdiction.

[Footnote 23] The nature of both the State's interest in fostering parental authority and the problem of determining "maturity" makes clear why the State generally may resort to objective, though inevitably arbitrary, criteria such as age limits, marital status, or membership in the Armed Forces for lifting some or all of the legal disabilities of minority. Not only is it difficult to [443 U.S. 622, 644] define, let alone determine, maturity, but also the fact that a minor may be very much an adult in some respects does not mean that his or her need and opportunity for growth under parental guidance and discipline have ended. As discussed in the text, however, the peculiar nature of the abortion decision requires the opportunity for case-by-case evaluations of the maturity of pregnant minors.

[Footnote 24] The Supreme Judicial Court held that 12S imposed this standard on the superior court in large part because it construed the statute as containing the same restriction on parents. See supra, at 630. The court concluded that the judge should not be entitled "to exercise his authority on a standard broader than that to which a parent must adhere." Attorney General, 371 Mass., at 748, 360 N. E. 2d, at 293. Intervenors argue that, assuming state-supported parental involvement in the minor's abortion decision is permissible, the State may not endorse [443 U.S. 622, 645] the withholding of parental consent for any reason not believed to be in the minor's best interests. They agree with the District Court that, even though 12S was construed by the highest state court to impose this restriction, the statute is flawed because the restriction is not apparent on its face. Intervenors thus concur in the District Court's assumption that the statute will encourage parents to withhold consent for impermissible reasons. See Baird III, 450 F. Supp., at 1004-1005; Baird II, 428 F. Supp. 854, 855-856 (Mass. 1977). There is no basis for this assertion. As a general rule, the interpretation of a state statute by the State's highest court "is as though written into the ordinance itself," Poulos v. New Hampshire, 345 U.S. 395, 402 (1953), and we are obliged to view the restriction on the parental-consent requirement "as if [12S] had been so amended by the [Massachusetts] legislature." Winters v. New York, 333 U.S. 507, 514 (1948).

[Footnote 25] Intervenors take issue with the Supreme Judicial Court's assurances that judicial proceedings will provide the necessary confidentiality, lack of procedural burden, and speed of resolution. In the absence of any evidence as to the operation of judicial proceedings under 12S - and there is none, since appellees successfully sought to enjoin Massachusetts from putting it into effect - we must assume that the Supreme Judicial Court's judgment is correct.

[Footnote 26] The statute also provides that "[i]f both parents have died or have deserted their family, consent of the mother's guardian or other person having duties similar to a guardian, or any person who had assumed the care and custody of the mother is sufficient."

[Footnote 27] This reading of the statute requires parental consultation and consent more strictly than appellants themselves previously believed was necessary. In their first argument before this Court, and again before the Supreme Judicial Court, appellants argued that 12S was not intended to abrogate Massachusetts' common-law "mature minor" rule as it applies to abortions. See 428 U.S., at 144. They also suggested that, under some circumstances, 12S might permit even immature minors to obtain judicial approval for an abortion without any parental consultation. See 428 U.S., at 145; Attorney General, supra, at 751, 360 N. E. 2d, at 294. The Supreme Judicial Court sketched the outlines of the mature minor rule that would apply in the absence of 12S: "The mature minor rule calls for an analysis of the nature of the operation, its likely benefit, and the capacity of the particular minor to understand fully what the medical procedure involves. . . . Judicial intervention is not required. If [443 U.S. 622, 647] judicial approval is obtained. however, the doctor is protected from a subsequent claim that the circumstances did not warrant his reliance on the mature minor rule, and, of course, the minor patient is afforded advance protection against a misapplication of the rule." Id., at 752, 360 N. E. 2d, at 295. "We conclude that, apart from statutory limitations which are constitutional, where the best interests of a minor will be served by not notifying his or her parents of intended medical treatment and where the minor is capable of giving informed consent to that treatment, the mature minor rule applies in this Commonwealth." Id., at 754, 360 N. E. 2d, at 296. The Supreme Judicial Court held that the common-law mature minor rule was inapplicable to abortions because it had been legislatively superseded by 12S.

[Footnote 28] Of course, if the minor consults with her parents voluntarily and they withhold consent, she is free to seek judicial authorization for the abortion immediately.

[Footnote 29] There will be cases where the pregnant minor has received approval of the abortion decision by one parent. In that event, the parent can support the daughter's request for a prompt judicial determination, and the parent's support should be given great, if not dispositive, weight.

[Footnote 30] Appellees and intervenors have argued that 12S violates the Equal Protection Clause of the Fourteenth Amendment. As we have concluded that the statute is constitutionally infirm for other reasons, there is no need to consider this question.

[Footnote 31] Section 12S evidently applies to all nonemergency abortions performed on minors, without regard to the period in pregnancy during which the procedure occurs. As the court below recognized, most abortions are performed during the early stages of pregnancy, before the end of the first trimester. See Baird III, 450 F. Supp., at 1001; Baird I, 393 F. Supp., at 853. This coincides approximately with the pre-viability period during which a pregnant woman's right to decide, in consultation with her physician, to have an abortion is most immune to state intervention. See Roe v. Wade, 410 U.S., at 164-165. The propriety of parental involvement in a minor's abortion decision does not diminish as the pregnancy progresses and legitimate concerns for the pregnant minor's health increase. Furthermore, the opportunity for direct access to court which we have described is adequate to safeguard throughout pregnancy the constitutionally protected interests of a minor in the abortion decision. Thus, although a significant number of abortions within the scope of 12S might be performed during the later stages of pregnancy, we do not believe a different analysis of the statute is required for them.

[Footnote 32] The opinion of MR. JUSTICE STEVENS, concurring in the judgment, joined by three Members of the Court, characterizes this opinion as "advisory" [443 U.S. 622, 652] and the questions it addresses as "hypothetical." Apparently, this is criticism of our attempt to provide some guidance as to how a State constitutionally may provide for adult involvement - either by parents or a state official such as a judge - in the abortion decisions of minors. In view of the importance of the issue raised, and the protracted litigation to which these parties already have been subjected, we think it would be irresponsible simply to invalidate 12S without stating our views as to the controlling principles. The statute before us today is the same one that was here in Bellotti I. The issues it presents were not then deemed "hypothetical." In a unanimous opinion, we remanded the case with directions that appropriate questions be certified to the Supreme Judicial Court of Massachusetts "concerning the meaning of [12S] and the procedure it imposes." 428 U.S., at 151. We directed that this be done because, as stated in the opinion, we thought the construction of 12S urged by appellants would "avoid or substantially modify the federal constitutional challenge to the statute." Id., at 148. The central feature of 12S was its provision that a state-court judge could make the ultimate decision, when necessary, as to the exercise by a minor of the right to an abortion. See id., at 145. We held that this "would be fundamentally different from a statute that creates a 'parental veto' [of the kind rejected in Danforth.]" Ibid. (footnote omitted). Thus, all Members of the Court agreed that providing for decisionmaking authority in a judge was not the kind of veto power held invalid in Danforth. The basic issues that were before us in Bellotti I remain in the case, sharpened by the construction of 12S by the Supreme Judicial Court.

MR. JUSTICE REHNQUIST, concurring.

I join the opinion of MR. JUSTICE POWELL and the judgment of the Court. At such time as this Court is willing to [443 U.S. 622, 652] reconsider its earlier decision in Planned Parenthood of Central Missouri v. Danforth, 428 U.S. 52 (1976), in which I joined the opinion of MR. JUSTICE WHITE, dissenting in part, I shall be more than willing to participate in that task. But unless and until that time comes, literally thousands of judges cannot be left with nothing more than the guidance offered by a truly fragmented holding of this Court.

MR. JUSTICE STEVENS, with whom MR. JUSTICE BRENNAN, MR. JUSTICE MARSHALL, and MR. JUSTICE BLACKMUN join, concurring in the judgment.

In Roe v. Wade, 410 U.S. 113, the Court held that a woman's right to decide whether to terminate a pregnancy is [443 U.S. 622, 653] entitled to constitutional protection. In Planned Parenthood of Central

Missouri v. Danforth, 428 U.S. 52, 72-75, the Court held that a pregnant minor's right to make the abortion decision may not be conditioned on the consent of one parent. I am persuaded that these decisions require affirmance of the District Court's holding that the Massachusetts statute is unconstitutional.

The Massachusetts statute is, on its face, simple and straightforward. It provides that every woman under 18 who has not married must secure the consent of both her parents before receiving an abortion. "If one or both of the mother's parents refuse such consent, consent may be obtained by order of a judge of the superior court for good cause shown." Mass. Gen. Laws Ann., ch. 112, 12S (West Supp. 1979).

Whatever confusion or uncertainty might have existed as to how this statute was to operate, see Bellotti v. Baird, 428 U.S. 132, has been eliminated by the authoritative construction of its provisions by the Massachusetts Supreme Judicial Court. See Baird v. Attorney General, 371 Mass. 741, 360 N. E. 2d 288 (1977). The statute was construed to require that every minor who wishes an abortion must first seek the consent of both parents, unless a parent is not available or unless the need for the abortion constitutes "'an emergency requiring immediate action.'" Id., at 750, 360 N. E. 2d, at 294. Both parents, so long as they are available, must also receive notice of judicial proceedings brought under the statute by the minor. In those proceedings, the task of the judge is to determine whether the best interests of the minor will be served by an abortion. The decision is his to make, even if he finds "that the minor is capable of making, and has made, an informed and reasonable decision to have an abortion." Id., at 748, 360 N. E. 2d, at 293. Thus, no minor in Massachusetts, no matter how mature and capable of informed decisionmaking, may receive an abortion without the consent [443 U.S. 622, 654] of either both her parents or a superior court judge. In every instance, the minor's decision to secure an abortion is subject to an absolute third-party veto.1

In Planned Parenthood of Central Missouri v. Danforth, supra, this Court invalidated statutory provisions requiring the consent of the husband of a married woman and of one parent of a pregnant minor to an abortion. As to the spousal consent, the Court concluded that "we cannot hold that the State has the constitutional authority to give the spouse unilaterally the ability to prohibit the wife from terminating her pregnancy, when the State itself lacks that right." 428 U.S., at 70. And as to the parental consent, the Court held that "[j]ust as with the requirement of consent from the spouse, so here, the State does not have the constitutional authority to give a third party an absolute, and possibly arbitrary, veto over the decision of the physician and his patient to terminate the patient's pregnancy, regardless of the reason for withholding the consent." Id., at 74. These holdings, I think, equally apply to the Massachusetts statute. The differences between the two statutes are few. Unlike the Missouri statute, Massachusetts requires the consent of both of the woman's parents. It does, of course, provide an alternative in the form of a suit initiated by the woman in superior court. But in that proceeding, the judge is afforded an absolute veto over the minor's decisions, based on his judgment of her best interests. In Massachusetts, then, as in Missouri, the State has imposed an "absolute limitation on the minor's right to obtain an abortion." id., at 90 (STEWART, J., concurring), applicable to every pregnant minor in the State who has not married. [443 U.S. 622, 655]

The provision of an absolute veto to a judge - or, potentially, to an appointed administrator2 - is to me particularly troubling. The constitutional right to make the abortion decision affords protection to both of the privacy interests recognized in this Court's cases: "One is the individual interest in avoiding disclosure of personal matters, and another is the interest in independence in making certain kinds of important decisions." Whalen v. Roe, 429 U.S. 589, 599-600 (footnotes omitted). It is inherent in the right to make the abortion decision that the right may be exercised without public scrutiny and in defiance of the contrary opinion of the sovereign or other third parties. In Massachusetts, however, every minor who cannot secure the consent of both her parents - which under Danforth cannot be an absolute prerequisite to an abortion - is required to secure the consent of the sovereign. As a practical matter, I

would suppose that the need to commence judicial proceedings in order to obtain a legal abortion would impose a burden at least as great as, and probably greater than, that imposed on the minor child by the need to obtain the consent of a parent.3 Moreover, once this burden is met, the only standard provided for the judge's decision is the best interest of the minor. That standard provides little real guidance to the judge, and his decision must necessarily reflect personal and societal values and mores whose enforcement upon the minor - particularly when contrary to her own informed and reasonable decision - is fundamentally at odds [443 U.S. 622, 656] with privacy interests underlying the constitutional protection afforded to her decision.

In short, it seems to me that this litigation is governed by Danforth; to the extent this statute differs from that in Danforth, it is potentially even more restrictive of the constitutional right to decide whether or not to terminate a pregnancy. Because the statute has been once authoritatively construed by the Massachusetts Supreme Judicial Court, and because it is clear that the statute as written and construed is not constitutional, I agree with MR. JUSTICE POWELL that the District Court's judgment should be affirmed. Because his opinion goes further, however, and addresses the constitutionality of an abortion statute that Massachusetts has not enacted, I decline to join his opinion.4

[Footnote 1] By affording such a veto, the Massachusetts statute does far more than simply provide for notice to the parents. See post, at 657 (WHITE, J., dissenting). Neither Danforth nor this case determines the constitutionality of a statute which does no more than require notice to the parents, without affording them or any other third party an absolute veto.

[Footnote 2] See ante, at 643 n. 22.

[Footnote 3] A minor may secure the assistance of counsel in filing and prosecuting her suit, but that is not guaranteed. The Massachusetts Supreme Judicial Court in response to the question whether a minor, upon a showing of indigency, may have court-appointed counsel, "construe[d] the statutes of the Commonwealth to authorize the appointment of counsel or a guardian ad litem for an indigent minor at public expense, if necessary, if the judge, in his discretion, concludes that the best interests of the minor would be served by such an appointment." Baird v. Attorney General, 371 Mass. 741, 764, 360 N. E. 2d 288, 301 (1977) (emphasis added).

[Footnote 4] Until and unless Massachusetts or another State enacts a less restrictive statutory scheme, this Court has no occasion to render an advisory opinion on the constitutionality of such a scheme. A real statute - rather than a mere outline of a possible statute - and a real case or controversy may well present questions that appear quite different from the hypothetical questions MR. JUSTICE POWELL has elected to address. Indeed, there is a certain irony in his suggestion that a statute that is intended to vindicate "the special interest of the State in encouraging an unmarried pregnant minor to seek the advice of her parents in making the important decision whether or not to bear a child," see ante, at 639, need not require notice to the parents of the minor's intended decision. That irony makes me wonder whether any legislature concerned with parental consultation would, in the absence of today's advisory opinion, have enacted a statute comparable to the one my Brethren have discussed.

MR. JUSTICE WHITE, dissenting.

I was in dissent in Planned Parenthood of Central Missouri v. Danforth, 428 U.S. 52, 94-95 (1976), on the issue of the validity of requiring the consent of a parent when an unmarried woman under 18 years of age seeks an abortion. I continue to have the views I expressed there and also agree with much of what MR. JUSTICE STEVENS said in dissent in that [443 U.S. 622, 657] case. Id., at 101-105. I would not, therefore, strike down this Massachusetts law.

But even if a parental consent requirement of the kind involved in Danforth must be deemed invalid, that does not condemn the Massachusetts law, which, when the parents object, authorizes a judge to permit an abortion if he concludes that an abortion is in the best interests of the child. Going beyond Danforth, the Court now holds it unconstitutional for a State to require that in all cases parents receive notice that their daughter seeks an abortion and, if they object to the abortion, an opportunity to participate in a hearing that will determine whether it is in the "best interests" of the child to undergo the surgery. Until now, I would have thought inconceivable a holding that the United States Constitution forbids even notice to parents when their minor child who seeks surgery objects to such notice and is able to convince a judge that the parents should be denied participation in the decision.

With all due respect, I dissent. [443 U.S. 622, 658]

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Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM February 27, 2008

SUBJECT: Parental Notice and Consent for an Abortion
(HB 364; Work Order No. 25-LS1406\C)

TO: Representative Lindsey Holmes
Attn: James Waldo

FROM: Jean M. Mischel
Legislative Counsel

You have asked whether HB 364, if enacted, may be found unconstitutional under the recent Alaska Supreme Court decision that invalidated the parental consent act in current law. HB 364 amends the current parental consent act, AS 18.16.010 - 18.16.035, to, among other things, add a parental notification provision and to create monthly reporting requirements. The bill retains but amends the judicial bypass procedure for a minor to obtain an abortion without parental notice or consent.

In my opinion, there is substantial reason to believe that a state court in Alaska would invalidate at least the consent requirements under HB 364 both on *res judicata* and on constitutional grounds.

The Alaska Supreme Court in *State v. Planned Parenthood*, 171 P.3d 577 (Alaska 2007) invalidated the parental consent act passed by the legislature in 1997 as a violation of a person's express constitutional right to privacy. Even though the court found the state's interest in protecting minors from their own immaturity and aiding parents in fulfilling their parental responsibilities to be compelling, the court weighed those interests against competing privacy and equal protection concerns and held that the least restrictive means for advancing that interest must be used. The court found that parental notification, not consent, was the least restrictive alternative.

While a parental consent requirement for a minor's abortion has been upheld under the federal constitution when a judicial by-pass procedure is included, other states in addition to Alaska have invalidated, under the states' constitutions, a similar parental consent requirement with judicial bypass procedure. Like the Alaska Supreme Court, the courts in those states based their decisions on the explicit privacy clauses in their state constitutions that offer broader protection than the federal constitution.[1]

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[1] For example, parental consent has been found unconstitutional by the Supreme Court of Florida under its state constitution *In re T.W., a minor*, 551 So.2d 1186 (Florida 1989),

DISCUSSION

HB 364 requires the consent of a parent, guardian, or custodian before the performance of an abortion for a minor unless the minor successfully petitions for court approval of the performance of the abortion without the consent of a parent, guardian, or custodian. The court process is known as a "judicial bypass" procedure. The procedure described in HB 364 is arguably more burdensome than that under the original statute being amended by the bill.

Parental consent for an abortion with a less detailed judicial bypass provision has been upheld by the United States Supreme Court under the federal constitution. *Planned Parenthood Association of Kansas City, Missouri, Inc. v. Ashcroft*, 462 U.S. 476 (1983).

Interpreting the Alaska Constitution's more restrictive and express constitutional right to privacy, the Alaska Supreme Court in 2007 found, in *State v. Planned Parenthood*, that parental consent for an abortion, even with a judicial bypass procedure, violates a minor's fundamental right to privacy and reproductive choice by shifting the choice to her parents. While agreeing with the United States Supreme Court that parents have the

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The Florida court considered whether the parental consent requirement advanced maternal health or fetal health, protected the minor, or preserved the family unit. The Florida court held

> The challenged statute fails because it intrudes upon the privacy of the pregnant minor from conception to birth. Such a substantial invasion of a pregnant female's privacy by the state for the full term of the pregnancy is not necessary for the preservation of maternal health or the potentiality of life...[The] additional state interests -- protection of the immature minor and preservation of the family unit...[are not] sufficiently compelling under Florida law to override Florida's privacy amendment.

In contrast, parental consent judicial by-pass procedures have been upheld in other states such as California even though that state's constitution also has greater privacy protections than the federal constitution. *American Academy of Pediatrics v. Lungren*, 940 P.2d 797(Cal. 1997). In the *Lungren* case, the California Supreme Court reversed earlier rulings by the California district court and the California Court of Appeal, which had both found the parental consent requirement to be unconstitutional. The pivotal point was whether the court was convinced that the evidence showed that the state had a compelling state interest that outweighed the minor's privacy interest. The Supreme Court of California found that minors' rights of privacy are more limited than adults' and concluded that the law being reviewed appropriately balanced the interest of parents in controlling their children's development and the state's interest in limiting parental control when it might harm a child.

"primary responsibility for children's well-being [and] are entitled to the support of laws designed to aid in the discharge of that responsibility"[2] the court also agreed with other United States Supreme Court precedent that "there exists a less burdensome and widely used means of actively involving parents in their minor children's abortion decisions. parental notification."[3]

Noting that the United States Supreme Court has recognized, in a different context, that "notice statutes are not equivalent to consent statutes because they do not give anyone a veto power over a minor's abortion decision,"[4] the Alaska court invalidated the parental consent act (PCA). The court explained:

> By prohibiting minors from terminating a pregnancy without the consent of their parents, the PCA bestows upon parents what has been described as a "veto power" over their minor children's abortion decisions. This "veto power" does not merely restrict minors' right to choose whether and when to have children, but effectively shift a portion of that right from minors to parents. In practice, under the PCA, it is no longer the pregnant minor who ultimately chooses to exercise her right to terminate her pregnancy, but that minor's parents.

Planned Parenthood, at 580.

The court found that the current judicial bypass procedure, containing a five day decision time frame and broad judicial discretion, did not "relieve a girl of the burden of parental consent" and its affect on her fundamental right to privacy. The court adopted the trial court's findings on that point that included (1) a built in delay that may be detrimental to the physical health of the minor, particularly in rural Alaska; and (2) an increase in other burdens faced by a minor seeking an abortion and the probability that the minor may not receive a safe and legal abortion. The court also found that "not all minors possess the wherewithal to embark upon a formal legal adjudication during a time of crisis."

HB 364 retains parental consent as a prerequisite to obtaining an abortion. The bill also retains a judicial bypass procedure but shortens the time period from five to three days and adds evidentiary standards for victims of sexual assault or other abuse, among other things. The bill does not, in my opinion, alter the applicability of Supreme Court precedent that already invalidated parental consent including a more permissive, though slightly longer, bypass procedure as a violation of the right to privacy.

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[2] Quoting *Bellotti v. Baird*, 443 U.S. 622, 639 (1979).

[3] Quoting *Ohio v. Akron Ctr. for Reproductive Health*, 497 U.S. 502, 511 (1990).

[4] *Id.*

Additional issues not yet resolved by the Supreme Court may also be raised in a challenge to HB 364 and, since the bill treats minors differently and affects rural residents and abuse victims differently, an equal protection challenge may also be successful. Another, and less obvious, issue presented is whether a court would uphold HB 364's express restriction on who attempts to notify the parent of a minor's request for an abortion. In the context of obtaining informed consent, our courts have frowned upon limiting a physician's usual practice by requiring the physician, not a staff member, to provide the notification.

One final potentially unconstitutional provision in this bill deserves mention. The bill, at sec. 2, modifies the term "medical emergency" for purposes of a defense to prosecution of a physician under the parental consent act that is very restrictive. The delay in providing an abortion must create a serious risk of causing a minor's medical condition to be medically unstable that is itself caused by a substantial and irreversible impairment of a major bodily function. In other words, the new exception not only requires a permanent and substantial impairment to the minor but a medical instability. I am not aware of any other state in which such a restrictive definition of medical emergency exists and may not survive constitutional scrutiny under our express constitutional protections.

If I may be of further assistance, please advise.

JMM:med
08-140.med

Sec. 25.20.025. Examination and treatment of minors.

(a) Except as prohibited under AS 18.16.010(a)(3),

(1) a minor who is living apart from the minor's parents or legal guardian and who is managing the minor's own financial affairs, regardless of the source or extent of income, may give consent for medical and dental services for the minor;

(2) a minor may give consent for medical and dental services if the parent or legal guardian of the minor cannot be contacted or, if contacted, is unwilling either to grant or withhold consent; however, where the parent or legal guardian cannot be contacted or, if contacted, is unwilling either to grant or to withhold consent, the provider of medical or dental services shall counsel the minor keeping in mind not only the valid interests of the minor but also the valid interests of the parent or guardian and the family unit as best the provider presumes them;

(3) a minor who is the parent of a child may give consent to medical and dental services for the minor or the child;

(4) a minor may give consent for diagnosis, prevention or treatment of pregnancy, and for diagnosis and treatment of venereal disease;

(5) the parent or guardian of the minor is relieved of all financial obligation to the provider of the service under this section.

(b) The consent of a minor who represents that the minor may give consent under this section is considered valid if the person rendering the medical or dental service relied in good faith upon the representations of the minor.

(c) Nothing in this section may be construed to remove liability of the person performing the examination or treatment for failure to meet the standards of care common throughout the health professions in the state or for intentional misconduct.

Sec. 25.20.030. Duty of parent and child to maintain each other.

Each parent is bound to maintain the parent's children when poor and unable to work to maintain themselves. Each child is bound to maintain the child's parents in like circumstances.

Sec. 25.20.040. Maintenance and education of minor out of income of the minor's property.

Title 25. MARITAL AND DOMESTIC RELATIONS
Chapter 25.20. PARENT AND CHILD

Patty Krueger

From: Lynette Phillips [lmp@gci.net]
Sent: Sunday, March 02, 2008 5:04 PM
To: Rep. Jay Ramras
Subject: HB364

Hi Representative Ramras,

I am writing to ask for your support of HB364. Parents of minor children do have the right and the responsibility, to oversee the health of their children; including whether or not those children are making the life altering decision of having an abortion. HB364 would uphold parental rights and would be in the best interest of Alaskan families.

Thank-you for your time in this very important matter.

Lynette Phillips
lmp@gci.net
3407 corvus place
Anchorage, AK 99504

From: Timothy Davis [chapeltim@gci.net]
Sent: Saturday, March 01, 2008 3:59 PM
To: Rep. Jay Ramras
Subject: HB364

Dear Representative Ramras,

I am writing to urge you in the strongest possible way to stand for family values in our state by supporting HB364. Families are foundational to the health and well-being of our nation and of our state. By allowing a judge's decision to stand unchallenged we are in essence undermining all healthy, supportive and loving families. It is indefensible to allow a child to undergo radical surgery without parental permission and at the same time make it illegal for a school nurse without parental permission to give them an aspirin for a headache.

Secondly, to allow this judicial ruling to stand, you are in effect abdicating your rolls as law makers to a rogue activist set of judges. Please support HB 364

Sincerely,

Timothy J. Davis
davist@gci.net

From: Leona Oberts [cornerstone@alaska.net]

Sent: Thursday, February 28, 2008 11:33 AM

To: Rep. Jay Ramras

Subject: HB 364

Dear Rep. Ramras,

I wholeheartedly support HB 364. It is the parent's responsibility to look out for the welfare of their children; not that of the government. The government should not take away the parent's rights to be informed and to make decisions for the health of their minor children, especially regarding abortion. I urge passage of HB 364.

Sincerely,

Leona Oberts
209 W. Katmai Ave.
Soldotna, AK 99669

Wk.# 907-260-8443 Home# 907-260-4767

From: Mrs. Smith [misses@mtaonline.net]
Sent: Wednesday, February 27, 2008 4:05 PM
To: Rep. Jay Ramras
Subject: HB 364

Hello,

Regarding House Bill (HB364)

I **strongly** support this bill and urge you to fight for it. It needs to pass.

Murder is murder no matter how old the person is. Parents need to know if their child is going to try it on their own body. Parents need to have the legal right to perform their duty as parents in protecting their children from dangerous and deadly things.

Parents need to have the option to refuse consent in the best interest of their own child they are bound to protect as a parent.

I can not be there in person to publicly comment as the public process allows. I am sending this email in place of my personal appearance. Please make sure this gets in there as a HB364 supporting public comment.

Thankyou,
Nicole Smith
Palmer, Farm Loop area

From: Kenneth Thompson [kthompson@tvcclinic.com]
Sent: Thursday, February 28, 2008 8:03 AM
To: Rep. Jay Ramras
Subject: HB 364

I am totally in support of the bill. I have two daughters ages 12 and 15. I cannot believe our courts would give a 13 year old permission to take a life, period.

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From: Jerad McClure [jeradlainak@gmail.com]
Sent: Wednesday, February 27, 2008 10:36 PM
To: Rep. Jay Ramras
Subject: HB364

Dear Representative Ramras,

I'm writing to inform you of my support of HB364. The Alaska Supreme Court decision denying parents the right to be involved in their teenage daughter's decision to have an abortion was wrong.

Thanks for your time,

Jerad McClure

From: Bonnie Lenamond [bonnie@alaska.com]
Sent: Wednesday, February 27, 2008 10:27 PM
To: Rep. Jay Ramras
Subject: HB364

Representative Ramras:

I strongly urge you to reinstate parental involvement in the decisions an underage girl must make when she becomes pregnant. For any other medical issue, I have to sign all kinds of documents, for a school to even give my child basic medications, so I can not understand the rational for dis- ngaging parents in the life altering decisions surrounding pregnancy and an abortion. A the law stands now, it seems very contradictory on this issue. Although, a teen pregnancy can be a difficult time for a parent child relationship, I believe that parents are the best ones to aid their child and coming grandchild during this time.

Bonnie Lenamond
Mother of three girls
Anchorage, AK
258-1398

From: Paul Verhagen [paulverhagen@prodigy.net]

Sent: Thursday, February 28, 2008 1:07 AM

To: Rep. Jay Ramras; Rep. Nancy Dahlstrom; Rep. John Coghill; Rep. Bob Lynn; Rep. Ralph Samuels; Rep. Max Gruenberg; Rep. Lindsey Holmes

Subject: *****SPAM***** Parental Right to be involved in decisions regarding their daughter and grandchild

Dear Representative,

It is wrong that a parent be denied the right to be involved in what may be one of the most important decisions that a young woman makes in her life when considering what to do about an unplanned pregnancy.

I urge you to vote to correct this situation by restoring and protecting this right of parents.

Thank You,

Paul Verhagen

Dear Representative Jay Ramras,

Please restore the rights to parents to have the input regarding the welfare of their own child(ren) during any and all medical procedures.

I have seen the personal effects that this has had on a mother who recently experienced the current status of the law. This mother was very distraught to know that her child was having a medical procedure without her watchful care. In this particular instance the mother did find out the day before the procedure and tried to help her child see the effects that might come in regards to this type of procedure. This mother gave support then and is still giving this child support as she recovers from the effects that the abortion has had for her. This mother chose to let this young lady make the decision, to which she did go through with the abortion, but the mother was able to stand by her side and help her child cope.

I would certain give my support to ending abortion all together in this state. Many times I have seen young women very distraught, come looking for assistance to overcome the traumatic experience that an abortion had on their own personal life, even to the point of suicidal tendencies. This is another reason why the parental consent is important to be aware of and watchful with your own child to intervene in such a situation arising from an abortion experience.

Please do not take away the right for the parent to come along side, during any type of medical procedure, and offer the emotional, physical, and spiritual assistance needed in such a time of crisis.

Sincerely,

Kristi Pine

From: Wendy Cloyd [wendy_cloyd@hotmail.com]
Sent: Wednesday, February 27, 2008 4:57 PM
To: Rep. Jay Ramras
Subject: HB 364 - Notice and Consent for Minor's Abortion

Rep. Ramras -- please support HB 364 - Notice and Consent for Minor's Abortion

I grew up in Fairbanks and now I am raising my family here. I have two teenaged daughters -- one in junior high and one in high school. When the Alaska Supreme Court overturned the parental consent law, I was utterly floored than anyone could possibly think that was a good idea. The nurse at West Valley called me just the other day to ask if my daughter could have Tylenol. I can't even fathom the idea that she could walk out of school, go to a local abortion clinic, have a life-altering surgical procedure -- and no one has to inform me.

Not only does this fit no pattern of good parenting that I can fathom, it doesn't make sense for **anyone involved.** Girls/women who have abortions are at risk -- high risk -- for life-long psychological ramifications...guilt, depression, anxiety and more. Many require extensive medical care to deal with the "after shock" of killing their own preborn child. And a girl who thinks it would be just too hard to admit a pregnancy to her parents is often not mature enough to really know what her parents would do...because more often than not parents rally to the occasion and support their daughters (and sons) through such a situation. And those who don't still deserve to know. Carrying such a secret can only further harm any relationship between a child and her parents.

Good grief, if my daughter has an unexcused absence from 7th grade at Ryan Middle School, the office calls to make sure I know. Please support a law that makes sure I will know if she is seeking an abortion.

Sincerely,

Wendy Cloyd
Fairbanks

Need to know the score, the latest news, or you need your Hotmail®-get your "fix". Check it out.

From: Sue Renkert [suerenkert@gci.net]
Sent: Thursday, February 28, 2008 10:[illegible] AM
To: Rep. Jay Ramras; Rep. Nancy Dahlstrom; Rep. Lindsey Holmes
Cc: Rep. Bob Lynn; Rep. Ralph Samuels; Rep. Max Gruenberg
Subject: PLEASE support HB364!

PLEASE support HB364 to allow parents to have their God-given right to be involved in important decisions regarding their children's lives.

Thank you!!!

Sue Renkert
Fairbanks

From: Greg Van Thiel [gdvanthiel@mtaonline.net]
Sent: Thursday, February 28, 2008 10:49 AM
To: Rep. Jay Ramras
Subject: HB364 Hearing

Dear Representative Ramras,

The state law passed in 1997 clearly expressed the wishes of the people of Alaska regarding parental rights involved with their minor daughter's health care decisions. I believe the court's decision last year to declare this law unconstitutional was based improperly on giving excess weight to the girl's right to privacy and the state's obligation to protect her interests.

I think the parents' right and duty to protect their minor daughter's interests supercedes the state's duty. I believe the parents' right to counsel their daughter regarding this psychologically challenging and potentially damaging life changing decision during a period of life that is already confusing enough in matters of far less import, and their right to influence the future of their unborn grandchild outweigh all other considerations.

I am asking that the committee act to reverse this decision and restore the balanced legal and moral environment sought by the people of Alaska in 1997 in which everyone's rights and well being are considered.

Thank you.

Sincerely,
Gregory J. Van Thiel

From: Haase, Donald J. [HaaseDJ@alyeska-pipeline.com]

Sent: Monday, February 25, 2008 9:48 AM

To: Rep. Jay Ramras; Rep. Nancy Dahlstrom; Rep. John Coghill; Rep. Bob Lynn; Rep. Ralph Samuels; Rep. Max Gruenberg; Rep. Lindsey Holmes

Members of the Judiciary Committee,

I urge you to support passage of HB364, Parental Consent for Abortion when it comes before your committee. As the father of 4 daughters, this issue is very important to my family.

A doctor is not allowed to set a broken bone without my permission when one of my children is injured at a friend's house or on the school playground. They cannot be given an aspirin for a headache at their girl scout meeting. I would think at least as much consideration should be given for such an invasive and potentially life-threatening procedure as abortion. I fear to think what would happen should one of my daughters be injured by an abortionist without my wife and me knowing of the injury. How could we take proper medical care of our daughter under this circumstance?

Sincerely,

Don Haase
Box 3423
Valdez AK 99686
(907)834-7359

From: L. B. [cmclb@email.com]
Sent: Sunday, February 24, 2008 11:28 PM
To: Rep. Jay Ramras
Subject: Y' S for HB364

Dear Representative Ramras,

Please vote YES for HB364. As parents we would want to know if our child was obtaining an abortion. A minor child needs her parents to help her make the best decision for her. No young woman should consider abortion without proper counseling. Please vote YES and give parents back their legal rights over their minor children.

Sincerely,

Mr. and Mrs. Barnes
Fairbanks, AK

John 15:18-21 - "If the world hate you, ye know that it hated me before it hated you

If following Jesus means I'm not "politically correct" then so be it! I believe in

--
Want an e-mail address like mine?
Get a **free e-mail** account today at www.mail.com!

From: Julie Thomas [juliesnowgirl1000@yahoo.com]
Sent: Friday, February 29, 2008 9:37 AM
To: Rep. Nancy Dahlstrom
Subject: Parental Rights

Dear Representative,

I am 19 years old, and I attend UAA. I am witting to ask you to please vote in favor of HB364.

This is important to me because teenage pregnancy is one of the most difficult things that a young girl can face. She needs her parents more that ever!!! Often times she won't go to them on her own because she is so unsure of so many things. I can not over emphasize the importance of HB364. Once again please vote in favor of it. Thank you!

~Julie

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In favor of HB 564
Rep. Jon Coghill

Parental Consent

I am amazed at the Alaska Supreme Court for choosing to remove parental consent for a medical procedure for a minor. We as parents are responsible for our children's behavior, health, and financial well-being until they are adults—which I understand to be 18 years of age. At that point, they are granted full medical privacy from their parents along with full responsibility for their actions.

In regard to abortion—a medical procedure with potential physical and emotional complications—it makes no sense to afford a minor complete privacy and full authority to make such an important decision concerning their health and future well-being. They are not equipped to make that decision completely on their own. Parental guidance is needed in regard to an unplanned pregnancy of a minor. Either the girl became pregnant by her own choice to be involved sexually, or it was forced upon her.

If sex was forced upon the girl and she is seeking an abortion without her parent's knowledge, she is trying to hide the fact that a crime was committed against her. She will experience an abrupt change in her mental/emotional health, and her parents will not know why. Often when you add a secretive abortion on top of an unexposed rape you will compound the emotional struggles that the young woman will face—even to the point of suicide. You may drive the initial emotional upheaval into the ground, but within a matter of time those issues will sprout up and show themselves later on. An abortion does not erase the fact that the rape happened or that there was a pregnancy. Parents need to be given the opportunity to help their child deal with the emotional responses that they will experience in regard to the trauma they have undergone.

If the teen girl was having sex consensually then as a parent we should be aware of that. They are engaging in very risky behavior and are opening themselves up to contracting STDs and further unwanted pregnancies. This is a behavior that parents need to be aware of in order to "parent" their teen and guide them in their decision-making process.

From my understanding of the law, it is illegal to have sex until you are 16 years of age. There should be no reason whatsoever that a child under the age of 16 should be allowed to keep their sexual activity a secret from their

FEB-23-2006 THU 09:40 AM MH-SU LIO FAX NO. 9073766180 P. 01

parents. Are we going to protect children who are caught drinking or taking drugs from telling their parents just so that they don't have any family conflict? I think the only reason a teen doesn't want to tell her parents about her sexual activity is because she doesn't want to "get in trouble" or "disappoint her parents". We should not have laws that protect teens from getting in trouble for breaking the rules of their house. You are taking away the rights of parents to parent their teens.

Also, without parental consent an abortionist could be performing "fake" abortions on young girls—telling them they are pregnant and need an abortion, when in fact, they aren't pregnant. This is a potential scam that, if a parent were to be involved, would be less likely to happen. Adults understand more about medical terms and pregnancy—especially mothers—because they have already been through at least one pregnancy themselves.

Personally I am against abortion, but even if I was for it, I would want to know that my daughter was going in for an abortion and would want to be a part of the decision-making process and be there for the medical procedure.

Please reverse this most affronting law, and restore parental consent to the state of Alaska in regard to abortion. Not only am I asking for a reversal of the law, but I am also asking that parental consent be enforced more strongly than it was before.

I have seen the agony caused first-hand already by this fateful decision last November. I hope to never see it again, and I hope that my own teenagers would never take advantage of this heinous law themselves. The Supreme Court has taken away a basic parental right from me that shocks me and makes me shutter to the core. Please restore our rights as parents and protect the guiding, nurturing relationship that parents must have with their teenagers to raise them the healthiest way possible.

Thanks for your time.

Kim Ford
3232 Naomi Ave.
Wasilla, AK 99654

FEB-23-2006 FRI 09:40 AM TMI-SU LIU FAX NO. 9073766180 P. 02

Testimony not given at today's teleconference. After waiting for 2 1/2 hours I was disconnected at my time to share with the House Judiciary Committee regarding HB364

First of all, thank you for allowing me to share my testimony with the House Judiciary Committee. I am Eileen Becker, Director, Pregnancy Care Center of Homer, active in pro-life activities for the past 21 years. I am a parent to 5 grown children and grandma to 5 more children.

The main purpose of this bill is to make sure parent's rights are protect. With this protection, we as parents can protect our children. This is the bottom line of this bill. The decision to have an abortion is very difficult for even an adult. This decision for a young person is beyond their ability to made a rational choice. A young teen-age girl is so very vulnerable and susceptible to making a quick, ill advised decision. She needs the wisdom of a caring, loving adult and in most case would be her parents. To take away the parents rights would end up with decisions made by herself or someone who also wants a quick fix to the problem or money to be made. Peer pressure, pressure from an uncaring boyfriend or the pressure to cover-up bad choices, will someday come back to haunt. This is not a state mandated law....it is instead a law that is rightly given to us as parents. To take away our parental rights to our underage children leave them totally exposed to decision making that will eventually end up with deep pain and huge regrets. The number of true caring parents certainly outweighs the non-caring self indulgent parents. I deal with adult women that totally regret their decision to have an abortion. National statistic tell us that over 70% or women interview share their regret or remorse for their decision. An immature girl, 13-16 years old would have a life time of regret..

Parents have all the responsibility of raising children until they are 18. Why should a medical procure like an abortion be any less important than having their wisdom teeth pulled? I would really like to see where leading medical providers agree to abortions being the good decision for teen-agers to make on their own. Seems to me their are asking for substantial law suits.

To allow a certain group or the courts to take away more of our rights and responsibilities leave the teen-ager with less sense of value. They will feel that no one really cares what they do. No law or rule is ever going to be perfect. All the concerns of the groups like Planned Parenthood that were presented today are very shallow compared to the good and positive results that this bill will provide. Parent's rights and responsibilities must be preserved. The family unit must be protected. Thank you very much for considering my perspective.

Questions???? Cell # 399-1534

February 28th, 2008

PUBLIC TESTIMONY REGARDING HB364
PRESENTED TO HOUSE JUDICIARY COMMITTEE

Chairman Ramras, Vice-Chair Dahlstrom and the remaining members of the House Judiciary Committee ..

Thank you for this opportunity to testify in **support** of **House Bill 364**,

My name is Jim Minnery and I am the President of the Alaska Family Council, a statewide public policy organization representing thousands of Alaskans interested in strengthening and protecting our families.

The Alaska Supreme Court decision declaring the Alaska Parental Consent Act as unconstitutional stripped away our **fundamental right** as parents to oversee our children's health. Denying parents the opportunity to be involved in a life-altering experience such as an abortion encourages alienation and isolation between parent and child when the child is in perhaps their greatest need for guidance and support.

If there is no bill that creates better family communication, according to an earlier testimony from Planned Parenthood...then why ...

In Alaska, **without parental consent**, children cannot...

- **Become licensed drivers**
- **Get an aspirin at school**
- **Lift weights at a local gym**
- **Get their ears pierced**
- **Go on field trips**
- **Join sports teams**
- **Get a tattoo**
- **Go to R-rated movies**

...but they **can** get an **abortion**. Parents and teens must now communicate on these issues in order for the desired outcome to occur. The State has determined that communication can and must occur regarding many life circumstances.

Someone also earlier said that the teens that don't talk to their parents about abortion...don't do so for a good reason...**I guess it depends on your definition of good.**

In the **Opening Brief** of the State of Alaska vs. Panned Parenthood of Alaska...a study is cited and... in the study of some 490 girls **pursuing parental bypass** in Massachusetts, 50% of the girls reported they had positive relationships with their parents. Yet, despite these positive parent/child relationships, the girls were seeking to bypass parental involvement in their abortions. Of these girls, 22.4% were trying to avoid parental involvement simply to avoid loss of parental trust, parental disappointment, or loss of parental respect. Another 22.2% of these girls wanted to avoid parental involvement simply because their parents held ideological views about abortion. Only **3 of the 490 girls (.006%)** reported that they feared possible physical harm from their parents. Source - Page 25 - Opening Brief - State of Alaska vs. Planned Parenthood of Alaska and Jane Whitefield M.D. Brief of Appellant State of Alaska

Ultimately...this is **not** a pro-choice vs. pro-life debate. Had the late U.S. Supreme Court Justice Harry Blackmun, the author of Roe v. Wade, been involved, he would have likely upheld the Alaska Parental Consent Act as constitutional. The court of his era consistently upheld parental involvement laws as long as they included a judicial bypass as this law did. The Alaska Legislature, as Justice Carpeneti noted in his dissenting opinion, went out of its way in crafting the bill to accommodate the unique circumstances of our state in its judicial by-pass provision. It's one of the strongest in the country.

The last time, in fact, that the U.S. Supreme Court considered a parental consent statute, it ruled **9 to 0** that the law was constitutional. Concurring on that opinion was Ruth Bader Ginsburg...one of the U.S. Supreme Court's more adamantly pro-choice Justices.

Here in Alaska, a local physician who provided abortions in Palmer and who was the medical director of Planned Parenthood of Alaska at the time, has stated **on record** that she didn't provide medical abortions to girls ages 16 and younger because she didn't believe they could handle the process without parental or other adult supervision. She also acknowledged the potential psychological consequences and refers **100 percent** of her abortion patients to counseling.

Most Alaskans should be **outraged** that the court has thrown away the rights of parents to determine whether their daughters as young as 13 can undergo an **invasive**, **irreversible** surgical procedure that **undeniably** takes the life of their own pre-born grandchildren.

The Alaska Family Council **URGES** you to support **HB364** and restore the rights of parents to oversee the health decisions of their children.

Thank you so much for this opportunity.

Patty Krueger

From: Alaska Family Council [info@alaskafamilycouncil.ccsend.com] on behalf of Alaska Family Council [jim@alaskafamilycouncil.org]

Sent: Wednesday, February 27, 2008 3:49 PM

To: Rep. Jay Ramras

Subject: Take A Stand Now for Parental Rights

alaska **family** *council*

Strengthening and Protecting Alaskan Families

February 27th, 2008

- Franklin Graham Joins Governor Palin at Prayer Breakfast
- Please Take Action To Restore Parental Rights !
- IMPORTANT FACTS TO KNOW ABOUT THIS ISSUE
- Partnering for Families

Please Take Action To Restore Parental Rights !

HB364, a bill introduced by Rep. John Coghill (R) North Pole to restore the rights of parents to oversee the health decisions of their children, is being heard by the House Judiciary Committee **tomorrow, February 28th at 1:00pm**. The Alaska Family Council urges you to let your voice be heard on this important public policy matter. There are a number of ways to speak out on this issue.

CALL IN BY TELECONFERENCE - You can testify by phone by calling 1-888-295-4546. Call a few minutes before 1:00pm and let them know you would like to testify in favor of HB364.

TESTIFY IN PERSON - Go to your local Legislative Information Office (LIO) and sign up early to testify in favor of HB364. Click here to find a listing of a local LIO in your area.

CONTACT HOUSE JUDICIARY MEMBERS - Legislators need to hear personally from as many Alaskans as possible that the Alaska Supreme Court decision denying parents the right to be involved in their teenage daughter's decision to have an abortion was wrong. You can fax, phone or e-mail each member of the House Judiciary

Franklin Graham Joins Governor Palin at Prayer Breakfast

[illegible] **Alaska Governors Prayer Breakfast** [illegible] **FRANKLIN GRAHAM**

[illegible] **Saturday, March 22, 2008** [illegible]

[illegible]

Committee at your convenience sometime before tomorrow at 1:00pm. Click here for contact info for each member of the House Judiciary Committee.

ENCOURAGE YOUR FRIENDS FAMILY AND ASSOCIATES TO TAKE ACTION - We are confident that Planned Parenthood, the ACLU and other groups will be out in force regarding this issue. Our message needs to come across loud and clear in order to make a difference !

Click here for an Alaska Family Council article on the parental rights decision

IMPORTANT FACTS TO KNOW ABOUT THIS ISSUE

In November of 2007 the Alaska Supreme Court ruled that a state law the legislature overwhelmingly passed back in 1997 allowing parents the right to agree or deny abortions their minor teenager daughters might be considering was unconstitutional. Children in Alaska can now have abortions without the guidance or consent of their parents.

Denying parents the opportunity to be involved in a life-altering experience such as an abortion encourages alienation and isolation between parent and child when the child is in perhaps their greatest need for guidance and support. The Alaska Family Council fully supports the dissenting opinion of Justice Walter Carpeneti who stated "... *faced with competing interests of the highest constitutional level - an underage pregnant girl's constitutional right to privacy in deciding whether to terminate her pregnancy, her parents' constitutional right (and duty) to protect her best interests, and the state's compelling interests in protecting the children against their own immaturity - the Alaska Legislature carefully crafted the Alaska Parental Consent Act in an effort to recognize and protect all of these interests. That law is fully consistent with United States Supreme Court precedent, yet today's opinion strikes it down. Because this court's rejection of the legislature's thoughtful balance is inconsistent with our own case law and unnecessarily dismissive of the legislature's role in expressing the will of the people, I respectfully dissent.*"

In Alaska, a local physician who provided abortions in Palmer and who was the medical director of Planned Parenthood of Alaska has stated on record that she doesn't provide medical abortions to girls ages 16 and younger because she doesn't believe they can handle the process without parental or other adult supervision. She acknowledged the potential psychological consequences and refers 100% of her abortion patients to counseling.

Most Alaskans should be outraged that the court has thrown away the rights of parents to determine whether their daughters as young as 13 can have an invasive, irreversible surgical procedure that takes the life of their pre-born grandchildren.

AFC agrees with Governor Palin who said "*It is outrageous that a minor girl can get an abortion without parental consent. The State Supreme Court has failed Alaskans by* [illegible]"

Click here for more info on this issue from the Alaska Family Council

Partnering for Families

As always... your prayers, willingness to volunteer and financial investments in our ministry are truly appreciated.

Prayer Breakfast is to reaffirm and promote in a Christ-like manner the idea that God has a purpose for and authority over human events. As commanded by the Holy Scripture, it seeks to solicit the Christian community to pray for those individuals in authority, in particular the Governor of Alaska. In furtherance of this goal it engages in civic, charitable, and religious endeavors such as an annual public prayer breakfast.

The Alaska Governors Prayer Breakfast is non-profit and non-political. It does not seek to influence legislation nor does it involve itself in political activities of any form.

Click here for more info and to purchase tickets

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Jim Minnery - *President*
Alaska Family Council

email: jim@alaskafamiiycouncil.org
phone: 907-317-7268
web. http://www.alaskafamilycouncil.org

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alaska family council

Position Papers

PARENTAL CONSENT FOR ABORTION

ISSUE

In November of 2007, the Alaska Supreme Court ruled that a state law the legislature overwhelmingly passed back in 1997 allowing parents the right to agree or deny abortions their minor teenager daughters might be considering was unconstitutional. Children in Alaska can now have abortions without the guidance or consent of their parents.

ALASKA FAMILY COUNCIL POSITION

Denying parents the opportunity to be involved in a life-altering experience such as an abortion encourages alienation and isolation between parent and child when the child is in perhaps their greatest need for guidance and support. The Alaska Family Council fully supports the dissenting opinion of Justice Walter Carpeneti who stated, *"In 1997, faced with competing interests of the highest constitutional level – an underage pregnant girl's constitutional right to privacy in deciding whether to terminate her pregnancy, her parents' constitutional right (and duty) to protect her best interests, and the state's compelling interests in protecting the children against their own immaturity – the Alaska Legislature carefully crafted the Alaska Parental Consent Act in an effort to recognize and protect all of these interests. That law is fully consistent with United States Supreme Court precedent, yet today's opinion strikes it down. Because this court's rejection of the legislature's thoughtful balance is inconsistent with our own case law and unnecessarily dismissive of the legislature's role in expressing the will of the people, I respectfully dissent."*

IMPORTANT FACTS

In Alaska, a local physician who provided abortions in Palmer and who was the medical director of Planned Parenthood of Alaska, has stated on record that she doesn't provide medical abortions to girls ages 16 and younger because she doesn't believe they can handle the process without parental or other adult supervision. She acknowledged the potential psychological consequences and refers 100 % of her abortion patients to counseling.

Most Alaskans should be outraged that the court has thrown away the rights of parents to determine whether their daughters as young as 13 can have an invasive, irreversible surgical procedure that takes the life of their pre-born grandchildren.

The U.S. Supreme Court has consistently upheld parental involvement laws on nine separate occasions. Even the late U.S. Supreme Court Justice Harry Blackmun, the author of Roe v. Wade, found parental consent laws to be constitutional as long as they included judicial bypasses as the Alaska Parental Consent Act did.

In Alaska, **without parental consent**, children cannot...

- **Become licensed drivers**
- **Go on field trips**
- **Get an aspirin at school**
- **Join sports teams**
- **Lift weights at a local gym**
- **Get a tattoo**
- **Get their ears pierced**
- **Go to R-rated movies**

...but they can get an **abortion**.

PROBLEM

A 2007 Alaska Supreme Court ruling gives teens the right to have an abortion without parental consent.

FACTS

Alaska is now one of only a handful of states that have struck down parental involvement laws under their state's constitutions. Twenty six (26) states currently have parental consent laws in place while fourteen (14) others have parental notification laws on the books.

AFC agrees with Governor Palin who said *"It is outrageous that a minor girl can get an abortion without parental consent. The State Supreme Court has failed Alaska by separating parents from their children during such a critical decision, moving in the exact opposite direction from the law's intent. Our court is out of step with mainstream judicial decisions and our citizens. This decision is clearly a case of legislating from the bench."*

SOLUTION

Rep. John Coghill (R) from North Pole has introduced a bill that answers the concerns of the AK Supreme Court while also restoring the rights of parents to oversee the health decisions of their children.

ACTION ITEM
SUPPORT HB364

Alaska Family Council PO Box 231425 Anchorage, Alaska 99523
www.alaskafamilycouncil.org 907-317-7268

Dear Esteemed Members of the House Judiciary Committee,

I want to add my voice to what I am assuming is the rising tide of opposition to HB 364. My name is Janet Steinhauser. I have lived and worked in Alaska for 18 years. I was a seventh grade English teacher for 13 years, an educator in the Bush for three years and I'm now a professor in the College of Education. I am a mentor/Auntie to a young Yup'ik Native woman from Chuauthbaluk. For almost 20 years, every day I have had conversations with adolescents from many different backgrounds. Some of my students have more than enough resources to thrive and many of my students think about survival every day. I have been blessed to walk next to them as a teacher, mentor and guide. I listen deeply to what they say.

I have never testified about a bill before. I have chosen to put my energy into the communities and families in which I work and live, but this bill has inspired me to speak out. I feel you are undermining the work that we are doing out in the field to support families. In my experience, family members sometimes struggle to communicate with each other, but for the most part, with the big issues, girls and boys do talk to their parents or a trusted adult about the big decisions they may face, like whether or not to continue an unplanned pregnancy. If you let HB 364 move forward, you are trying to mandate conversations that are already happening. For those students whose parents are unavailable for such conversations, a law requiring parental consent will not change that fact.

The focus of the legislature should be on finding the funds to support students, families and organizations who are trying to improve health and sex education access for all.

My foster daughter is trying to start a new life and break the cycle of alcoholism, poverty and violence of her early life. If she became pregnant today, she would be hard-pressed to find her parents, much less obtain permission to obtain an abortion. I can't imagine her standing in front of a judge to go against her parents' wishes or the beliefs of her family members, who might shun her for a choice they couldn't understand. If she forced herself to have that child, she would be doomed to a life of poverty and failure. The label of failure would be hers, not mine, because she dreams of a real home in Anchorage, with a professional job and sober friends and acquaintances. I've seen the same unwanted pregnancy/poverty scenario play out several times with her friends and neighbors and my students. Don't be naïve about the consequences of this potential law.

Sincerely,

Janet Steinhauser
Assistant Professor/MAT/COE/UAA
907.786.4465
3211 Providence Drive
Anchorage, AK 99508
Jan@uaa.alaska.edu

The illiterate of the 21st Century will not be those who cannot read and write, but those who cannot learn, unlearn, and relearn.
Alvin Toffler

Patty Krueger

From: B. Gamble [manuoku@yahoo.com]
Sent: Tuesday, February 26, 2008 4:05 PM
To: Sen. Joe Thomas; Rep. David Guttenberg
Cc: Rep. John Coghill; Rep. Bob Lynn; Rep. Ralph Samuels; Rep. Max Gruenberg; Rep. Lindsey Holmes; Rep. Jay Ramras; Rep. Nancy Dahlstrom
Subject: *****SPAM***** I oppose House Bill 364

To my representatives and members of the Judiciary Committee: I write this e-mail because I will not be able to call in and testify.
These talking points (below) were not written by me, but I wholeheartedly agree. Please oppose HB 364!

I oppose House Bill 364 because:

HB 364 is unconstitutional.
A similar bill to HB 364 was found unconstitutional by the Alaska State Supreme Court in November 2007. We should not continue wasting the legislature's time on this issue

Good family communication can't be mandated by government.
The best way to protect our teenagers is for parents to begin talking about responsible sexual behavior from the time they are young and foster an atmosphere of trust, respect, and compassion that assures teens they can come to them with problems or questions. The government should not be intruding into personal family situations.

Keeping teenagers safe should be the top priority.
Parents want their teenagers to be safe. It is more important for teens to be safe than the government passing laws to force them to talk to their parents. This bill will scare them away from seeking help, away from getting counseling, and toward other desperate measures, such as an illegal abortion. Parents know their teenagers may not always come to them when faced with an unintended pregnancy, but they want them to be safe. Despite the intention to protect – mandatory notification and consent will result in a teen delaying speaking to anyone about a pregnancy and delay seeking medical services. Teens in troubled families are truly at risk.

It is impractical to think that a teenager will take her case before a judge.
We need to be real about this issue and its implications. A pregnant teenager is not going to be marching into a courtroom to see a judge. She's alone. She's afraid. She doesn't know where to go or how to get the services that she needs. How likely is it that she'll walk into a courtroom and ask to see a judge? And what if she is from rural Alaska? Will she wait to see a local judge that knows her or her family? Will she try to get to Anchorage or Fairbanks?

Sincerely,
Jennifer Brook Gamble
324 Yana Court
Fairbanks, AK 99709
(907) 456-3775

Patty Krueger

From: paigeh@alaska.net

Sent: Monday, February 25, 2008 6:19 PM

To: Rep. Jay Ramras; Rep. Nancy Dahlstrom; Rep. John Coghill; Rep. Lindsey Holmes; Rep. Max Gruenberg; Rep. Ralph Samuels; Rep. Bob Lynn

Subject: *****SPAM***** HB 364=Another parental consent and notification attempt?

Dear House Judiciary Committee Members:

Why are we wasting legislative time and tax-payers dollars on an issue that has involved only 3/1000th's of our state's population? (In 2006 there were 1,923 abortions, with an entire state population of 670,000, that math is 1,923/670,000 = .003). Out of those 1,923 abortions, 126 involved teens under the age of 17. Let's do that math: 126/670,000 = .00002 or 2/10,000th's of the state's population.

Folks, this should not warrant any legislative time, and I am not very happy as a constituent that it is.

I urge you not to allow this bill to continue. It is another attempt to deceive the voters of the State of Alaska into thinking this has some broad compelling state interest.
The numbers simply belie this notion. This is nothing more than the promotion of certain legislators religious beliefs, and the attempts of those individuals to ram those beliefs down women's throats.

If you have never been a teenage girl--let alone a scared, pregnant teenage girl, you have no inkling of what this is all about.
Let me make this even a little broader. If you are not a woman, let alone a woman who has been pregnant and given birth, you have no inkling of what this is about.
If you'd like to try to put yourself in someone else's shoes for a minute, below is a list of the actual risks of pregnancy and childbirth*

I have been a teenage girl, and am also the daughter of one right now. As wonderful a relationship as I had with my mother, I would not likely have gone to her if I found out I was pregnant. I hope that my daughter would feel she could talk to me about this, but truthfully, even the best kids with good parental relationships are very afraid of disappointing their parents. I would far prefer she get the medical attention she needed in a timely manner, for her best interests. I currently coach a teen sports team and work with teen girls every day. Not one of those girls is savvy or sophisticated or mature enough to navigate a court system to get a judicial bypass, and you all know it.

Should minor teen girls be having sex? Of course not. But until the legislature finds a way to keep that from happening, then don't presume to know what is best once that mistake has been made. This decision is between the girl and her doctor. Period. If she wants to include her parents in the process, wonderful, but that's not your call.

I don't see you legislating parental notification about whether a girl can get a pelvic exam, whether the doctor should tell the parents if she is no longer a virgin, whether she can get treatment for STDs, whether she can get a prescription for birth control pills, etc. This information would be helpful to me as a parent when talking to my child, but I also love my child and respect her enough that I acknowledge that by the time she is a teen she has a right to privacy about very intimate body issues.

So this isn't about what is best for the teenager or involving parents in making sure their teens get good medical/sexual health information so they will make better decisions about their bodies. This is about individual legislators feelings about abortion.

Don't put the smoke screens of parental rights and what's best for the teenage girl up in front of this bill. If this was what was best for teenage girls you would be working harder to fund domestic violence programs to keep kids out of controlling and abusive relationships that often lead to underage sex, keeping religious-based

abstinence only sex education out of our schools, funding real-world sex education which involves talking about the use of condoms and other forms of birth control when kids do make the dumb "decision" to have underage sex, and listening to kids when they do report sexual abuse by a family member. Because let's get right down to it--the kids that need their privacy the most in these situations are the ones that are at risk of more emotional, mental, verbal, physical and sexual abuse if their abusive parents or partners find o t she is pregnant.

You might want to check DFYS/OCS history about how they sometimes "reunify" molesting family members with their victims. It will make you sick. That's where you could make a difference in a child's life--funding and fixing OCS and investigating their training practices. Or maybe getting our Superior court some better information and mandatory domestic violence/sexual abuse training about how fathers do sometimes sexually molest their own children so they won't order those same kids into joint custody or sole custody arrangements with their abuser when their protective mom tries to leave the abuser. Because that is happening too.

Women are not just receptacles. Pregnancy and childbirth is not easy, so please don't attempt to tell me how easy it is for women and girls to simply... have the baby...and give it up for adoption.
First of all, I have worked with abused and neglected children, and let me tell you, there is no big line of people ready to adopt children should these particular teens and their supposed "involved" parents bring a less-than-perfect child into the world. And we all know how great foster care is for kids, right?

The Alaska Supreme Court has already ruled on this issue once, and I frankly think it is irresponsible to be revisiting it again, which is all that HB 364 is.

The first passage of this type of act in 1997 was an attempt to undermine Roe v. Wade by chipping away at it bit by bit.
I was not easily fooled as an informed voter then and I am not now.

The legislature and the governor's office was told then by the Superior Court that this was unconstitutional, but did the legislature and the state stop? No, the legislature and the state wasted taxpayer dollars on appeals and endless attempted end-runs around the court's rulings for 10+ years.

I expect more from my legislature. There are far better ways to be spending your time.

Respectfully,

Paige R. Hodson, SRA
903 W. Northern Lights Blvd., Suite 220
Anchorage, AK 99503
(907) 274-8258 phone; (907) 274-8259 fax
paigeh@alaska.net

Normal, frequent or expectable temporary side effects of pregnancy:

- exhaustion (weariness common from first weeks)
- altered appetite and senses of taste and smell
- nausea and vomiting (50% of women, first trimester)
- heartburn and indigestion
- constipation
- weight gain
- dizziness and light-headedness
- bloating, swelling, fluid retention
- hemorrhoids
- abdominal cramps
- yeast infections

- congested, bloody nose
- acne and mild skin disorders
- skin discoloration (chloasma, face and abdomen)
- mild to severe backache and strain
- increased headaches
- difficulty sleeping, and discomfort while sleeping
- increased urination and incontinence
- bleeding gums
- pica
- breast pain and discharge
- swelling of joints, leg cramps, joint pain
- difficulty sitting, standing in later pregnancy
- inability to take regular medications
- shortness of breath
- higher blood pressure
- hair loss
- tendency to anemia
- curtailment of ability to participate in some sports and activities
- infection including from serious and potentially fatal disease (pregnant women are immune suppressed compared with non-pregnant women, and are more susceptible to fungal and certain other diseases)
- extreme pain on delivery
- hormonal mood changes, including normal post-partum depression
- continued post-partum exhaustion and recovery period (exacerbated if a c-section -- major surgery -- is required, sometimes taking up to a full year to fully recover)

Normal, expectable, or frequent PERMANENT side effects of pregnancy:

- stretch marks (worse in younger women)
- loose skin
- permanent weight gain or redistribution
- abdominal and vaginal muscle weakness
- pelvic floor disorder (occurring in as many as 35% of middle-aged former child-bearers and 50% of elderly former child-bearers, associated with urinary and rectal incontinence, discomfort and reduced quality of life)
- changes to breasts
- varicose veins
- scarring from episiotomy or c-section
- other permanent aesthetic changes to the body (all of these are downplayed by women, because the culture values youth and beauty)
- increased proclivity for hemorrhoids
- loss of dental and bone calcium (cavities and osteoporosis)

Occasional complications and side effects:

- hyperemesis gravidarum
- temporary and permanent injury to back
- severe scarring requiring later surgery (especially after additional pregnancies)
- dropped (prolapsed) uterus (especially after additional pregnancies, and other pelvic floor weaknesses -- 11% of women, including cystocele, rectocele, and enterocele)
- pre-eclampsia (edema and hypertension, the most common complication of pregnancy, associated with eclampsia, and affecting 7 - 10% of pregnancies)

- eclampsia (convulsions, coma during pregnancy or labor, high risk of death)
- gestational diabetes
- placenta previa
- anemia (which can be life-threatening)
- thrombocytopenic purpura
- severe cramping
- embolism (blood clots)
- medical disability requiring full bed rest (frequently ordered during part of many pregnancies varying from days to months for health of either mother or baby)
- diastasis recti, also torn abdominal muscles
- mitral valve stenosis (most common cardiac complication)
- serious infection and disease (e.g. increased risk of tuberculosis)
- hormonal imbalance
- ectopic pregnancy (risk of death)
- broken bones (ribcage, "tail bone")
- hemorrhage and
- numerous other complications of delivery
- refractory gastroesophageal reflux disease
- aggravation of pre-pregnancy diseases and conditions (e.g. epilepsy is present in .5% of pregnant women, and the pregnancy alters drug metabolism and treatment prospects all the while it increases the number and frequency of seizures)
- severe post-partum depression and psychosis
- research now indicates a possible link between ovarian cancer and female fertility treatments, including "egg harvesting" from infertile women and donors
- research also now indicates correlations between lower breast cancer survival rates and proximity in time to onset of cancer of last pregnancy
- research also indicates a correlation between having six or more pregnancies and a risk of coronary and cardiovascular disease

Less common (but serious) complications:

- peripartum cardiomyopathy
- cardiopulmonary arrest
- magnesium toxicity
- severe hypoxemia/acidosis
- massive embolism
- increased intracranial pressure, brainstem infarction
- molar pregnancy, gestational trophoblastic disease (like a pregnancy-induced cancer)
- malignant arrhythmia
- circulatory collapse
- placental abruption
- obstetric fistulae

More permanent side effects:

- future infertility
- permanent disability
- death

ALASKA PUBLIC HEALTH ASSOCIATION

Committed To Advancing Alaska's Public Health Since 1978

ALPHA

February 25, 2008

Representative_Jay_RAMRAS@legis.state.ak.us

Dear Representative Ramras:

The Alaska Public Health Association (ALPHA) represents 245 Alaskan public health professionals. The vision of the Alaska Public Health Association is that Alaskans shall have the knowledge and the means to live free of preventable illness and injury.

At the ALPHA annual meeting December 4, 2007 ALPHA passed Resolution 7-2007 Protecting and Enhancing Women's Ability to Obtain Safe, Legal Abortion Services.
http://www.alaskapublichealth.org/pdf/resolution/7-2007LateBreakerSafeLegalAbortion.pdf

ALPHA opposes HB 364 Notice and Consent for Minor's Abortion. ALPHA strongly opposes state laws that in any way limit access to safe, legal abortion services, including, but not limited to: a. mandatory delays and information/counseling that is not science-based, bans on specific abortion procedures, parental consent or notification requirements, targeted regulation of abortion providers, and limits for advanced practice clinicians in providing abortion services.

HB 364 is similar to the law mandating parental consent that was recently struck down by the Alaska Supreme Court in November 2007. Sending this issue through the legislature again uses up resources in a time-strapped legislative session. HB 364 raises serious issues about notification documentation and levies an unjustified burden on physicians who are described as the sole agents able to obtain consent and notification. Despite the intention to protect – mandatory notification and consent may result in a teen delaying speaking to anyone about a pregnancy and delay seeking medical services.

Cc: Representative_Nancy_DAHLSTROM@legis.state.ak.us
Representative_John_Coghill@legis.state.ak.us
Representative_Bob_LYNN@legis.state.ak.us
Representative_Ralph_SAMUELS@legis.state.ak.us
Representative_Max_GRUENBERG@legis.state.ak.us
Representative_Lindsey_HOLMES@legis.state.ak.us

P.O. Box 9-1825 Anchorage, AK 99509 907/332-1030 e-mail: publichealth@alaska.net www.alaskapublichealth.org

ALPHA Statement of Purpose: "The Alaska Public Health Association shall promote the advancement of public health to improve health and quality of life for all Alaskans. To this end, ALPHA will exercise leadership with public health professionals and the general public in developing sound health policy, reducing health disparities and improving health outcomes for Alaskans."

From: Mako Haggerty [Mako@xyz.net]
Sent: Thursday, February 28, 2008 9:27 AM
To: Rep. Jay Ramras
Subject: Re HB 364

Dear Rep. Ramras

I oppose HB 364

I'm a lucky guy. I have good relationship with my kids. My friends are lucky, too. They also have good relationships with their kids. We talk. We keep those lines of communications open. But as we all know there are those who aren't so lucky. And it is those kids that this bill is aimed at, kids who are in trouble and have no one to turn to. This bill only abuses them further.
In fact I believe that a teenage girl that's in trouble may be one of the loneliest and weakest members of our society, and this bill beats them up.
If you want to outlaw abortion then do so across the board, but don't pick on the weakest of us. In fact I grew up believing that the government's responsibility was to protect the weaker members of our society.

HB 364 is a bully tactic. Shame on those who support it.

Mako Haggerty
Homer

Rep. Lindsey Holmes

From: James Waldo
Sent: Thursday, February 28, 2008 8:34 AM
To: Rep. Lindsey Holmes
Subject: FW: New Pom:HB 364 Notice & Consent For Minor's Abortion

---

From: Shay Wilson
Sent: Thursday, February 28, 2008 7:58 AM
To: James Waldo
Subject: New Pom:HB 364 Notice & Consent For Minor's Abortion

Cynthia Toohey
2647 Forest Park Dr

Anchorage 99517-1326,

Gentlemen, I am amazed at how short your memories are. This issue was defeated in 2007 by the State Supreme court, shame on you!
Cynthia Toohey.

2/29/08

To: House Judiciary Committee

From: Jan Whitefield, MD, PhD

Madams and Sirs,

I felt it necessary to make comments on House Bill No. 364. I understand this is in committee now and discussion is underway. As a physician, and not a lawyer, I apologize if my comments seem naïve. The legal language does not read easily for non-legal individuals. Some observations follow.

Page 2, lines 13-19, the section for defense of or claim for violation:

This states that I may use my clinical judgment regarding a concern for "immediate threat of serious risk to the life or physical health of the pregnant minor ..."

-Many providers would feel that psychological or psychiatric issues fall under the definition of "physical health" and might consider this in deciding on whether or not to do an abortion on a patient. If that occurs and a case is brought against the physician by a parent or the state, who decides whether the physician exercised appropriate judgment? Two equally qualified physicians may use their judgments and arrive at different conclusions.

-If found guilty of failing to properly apply this statute, what are the penalties? Presumably this becomes a criminal act, not malpractice. Are there fines? Loss of License? Is there threat of imprisonment?

Page 3, lines 19-28 involving documentation of physical abuse.

Requires corroboration of the minor's testimony from one of five possible sources – a sibling over 21, a law enforcement officer, someone from DHSS, a grand parent of a stepparent. By very nature abuse is often silent, hidden, and the abused person is afraid to come forth about these issues. This is perhaps even more so for the less than 17 year old. Furthermore many will not have the presence of any of these in their lives. Is the teen who is abused and can't meet these requirements then not able to exercise this judicial by-pass?

Page 4, regarding notice to a parent:

For proper notification to a parent, one requirement is that a physician must place not less than five calls not less than 2 hours apart. If the first call is at 8:00 AM then I would call at 8,10,12,2,4 o'clock. This is a very onerous task to perform on a very busy day at the office, and not very realistic. The requirements placed on verification of telephone numbers and addresses to try to determine authenticity is even more onerous even though this may be delegated to other support persons. There is not a SINGLE OTHER MEDICAL PROCEEDUE that requires this much due diligence. It is easier would be take someone off of a ventilator for appropriate reasons than it would be to fulfill appropriate notification through phone calls and certified mailing.

Page 5, lines 15-18 – demonstration of maturation

"...complainant is sufficiently mature and well enough informed to decide intelligently whether to have an abortion without ..." How is this determination made? Is it by the court? How can the courts counsel the complainant about abortion when the court is not in the medical business, and may not know the risk themselves? Why is this judgment made by the court better than the judgment of the physician who understands the procedures with the risks and benefits? Will the courts hire what it may consider "appropriate" screeners to make this determination?

Page 5 through 6, judicial bypass.

Consider the teen who decides to exercise judicial bypass and comes completely prepared to file a complaint. The time from the initial filing through final decision of the Supreme Court, if that is required, can take as long as 11 working days. Considering that 11 working days can span NO LESS than two weekends, it would take 15 calendar days to complete the process. THEN the teen could schedule an abortion. This will inherently cause delays. These teens would therefore be getting procedures at later times in pregnancy, increasing risk, and pushing more into the second trimester. Our data shows that the teens are usually later in pregnancy when they face up to the situation and seek termination. This would compound these delays.

As a physician I see this law as chilling. The risk of making an "error in judgment" carries an unknown penalty, and the standards to which I am held are ambiguous.

I think the burden of supplying corroboration by the teen are onerous, and would in many cases be impossible.

Notification is a time consuming process and chilling enough to prevent most providers from undertaking the process. Which of you will first verify a number then – PERSONALLY – get on the phone five times at specified intervals in a day call someone to attempt to accomplish something in your normal course of work? The notification process alone is sufficiently onerous to limit access for this group of individuals.

The by-pass process is onerous for a sophisticated adult, and more so for a mature, thinking, yet in-experienced teen. The risk of delays is excessive from a medical point of view, and will lead to increase risk of the procedure for any one who successfully navigates these hurdles.

As a practitioner I see this bill effectively preventing anyone under 17 from getting an abortion unless accompanied by a parent. Most teens who comes to use are accompanied by a parent. If they aren't, there is probably a very good reason they haven't involved a parent. For those accompanied by a parent this bill is irrelevant. For the ones without a parent, this bill will essentially exclude abortion as an option for them considering this above issue.

Thank you for your time,

Jan Whitefield, MD, PhD
Alaska Women's Health.

Rep. Lindsey Holmes

From: Joyce Bamberger [danjoyce@gci.net]

Sent: Thursday, February 28, 2008 4:13 PM

To: Rep. Jay Ramras

Cc: Rep. Nancy Dahlstrom; Rep. John Coghill; Rep. Bob Lynn; Rep. Ralph Samuels; Rep. Max Gruenberg; Rep. Lindsey Holmes

Subject: Parental consent/notice bill

As you requested, enclosed please find information regarding the legal status of the Alan Guttmacher Institute. As I mentioned to you in my hearing testimony, this Institute issued a public policy study on how harmful legislation such as this proposed bill is to woman's health based on scientific research and expert medical opinion. See, http://www.guttmacher.org/pubs/tgr/08/4/gr080406.html. Particularly persuasive are the position papers of the major medical organizations opposing this type of legislation.

Statements on Teen Access to Confidential Care

American Academy of Family Physicians: "Concerns about confidentiality may discourage adolescents from seeking necessary medical care and counseling, and may create barriers to open communication between patient and physician. Protection of confidentiality is needed to appropriately address issues such as...unintended pregnancy." (**Adolescent Health Care, 2001**)

American Academy of Pediatrics: "Health care professionals have an ethical obligation to provide the best possible care and counseling to respond to the needs of their adolescent patients...This obligation includes every reasonable effort to encourage the adolescent to involve parents, whose support can, in many circumstances, increase the potential for dealing with the adolescent's problems on a continuing basis....At the time providers establish an independent relationship with adolescents as patients, the provider should make...clear to parents and adolescents [that]...confidentiality will be preserved between the adolescent patient and the provider." (**Confidentiality in Adolescent Health Care, 2004**)

American College of Obstetricians and Gynecologists: "The potential health risks to adolescents if they are unable to obtain reproductive health services are so compelling that legal barriers and deference to parental involvement should not stand in the way of needed health care for patients who request confidentiality. Therefore, laws and regulations that are unduly restrictive of adolescents' confidential access to reproductive health care should be revised." (**Access to Reproductive Health Care for Adolescents, 2003**)

American College of Physicians: "In the care of the adolescent patient, family support is important. However, this support must be balanced with confidentiality and respect for the adolescent's autonomy in health care decisions and in relationships with health care providers. Physicians should be knowledgeable about state laws governing the right of adolescent patients to confidentiality and the adolescent's legal right to consent to treatment." (**Ethics Manual: Fourth Edition, 1998**)

American Medical Association: "Our AMA...reaffirms that confidential care for adolescents is critical to improving their health....When in the opinion of the physician, parental involvement would not be beneficial, parental consent or notification should not be a barrier to care." (**Confidential Health Services for Adolescents, 2004**)

Society for Adolescent Medicine: "Confidentiality protection is an essential component of health care for adolescents because it is consistent with their development of maturity and autonomy and without it, some adolescents will forgo care....Health care professionals should support effective communication between adolescents and their parents or other caretakers. Participation of parents in the health care of their adolescents should usually be encouraged, but should not be mandated....Laws that allow minors to give their own consent for all or some types of health care and that protect the confidentiality of adolescents' health care information are fundamentally necessary to allow health care professionals to provide appropriate health care to adolescents and should be maintained." (**Confidential Health Care for Adolescents: Position Paper of the Society for Adolescent Medicine, 2004**)

The Better Business Bureau website reports that the Guttmacher Institute is a non-profit 501(c)(3) corporation with no affiliation to Planned Parenthood. See, http://charityreports.bbb.org/public/Report.aspx?CharityID=2583.

Thank you for your consideration of these matters. Best wishes, Joyce Bamberger, 1036 West 22nd Street, Anchorage, Alaska 99503

Rep. Lindsey Holmes

From: Lynn Hartz [lhartz@alaska.com]
Sent: Thursday, February 28, 2008 2:48 PM
To: Rep. Lindsey Holmes
Subject: Testiimony HB 364

Dear Representative Holmes,
I am not in favor of HB 364. This bill is still in conflict with the state Supreme Court Ruling and will cost state money if passed in another unsuccessful trip through the courts. The health and well-being of children would be better and more surely served by fully funding Denali KidCare. Please do not pass HB 364 out of your committee.

Lynn Hartz MSN, ANP
3104 Brookside Drive
Anchorage, AK 99517
ph 907-248-4877
fax 907-222-1498

Rep. Lindsey Holmes

From: L J [jeanne9632541@yahoo.com]
Sent: Thursday, February 28, 2008 12:12 PM
To: Rep. Lindsey Holmes
Subject: *****SPAM***** HB 364

Dear Rep. Holmes,

I rarely write to legislators but I strongly object to HB 364.

I oppose House Bill 364 because...

Teenagers *are* talking to their parents.
In Alaska, teenagers are talking to their parents and including them in their pregnancy decisions. Only in very rare cases have teens not involved a parent. We are not talking about young teens seeking abortion services without the support of their parents. The state numbers do not back any of those theories.

Good family communication *can't* be mandated by government.
The best way to protect our teenagers is for parents to begin talking about responsible sexual behavior from the time they are young and foster an atmosphere of trust, respect, and compassion that assures teens they can come to them with problems or questions. The government should not be intruding into personal family situations.

Keeping teenagers safe *should be* the top priority.
Parents want their teenagers to be safe. It is more important for teens to be safe than the government passing laws to force them to talk to their parents. This bill will scare them away from seeking help, away from getting counseling, and toward other desperate measures, such as an illegal abortion. Parents know their teenagers may not always come to them when faced with an unintended pregnancy, but they want them to be safe. Despite the intention to protect – mandatory notification and consent will result in a teen delaying speaking to anyone about a pregnancy and delay seeking medical services. Teens in troubled families are truly at risk.

It is impractical to think that a teenager will take her case before a judge.
We need to be real about this issue and its implications. A pregnant teenager is not going to be marching into a courtroom to see a judge. She's alone. She's afraid. She doesn't know where to go or how to get the services that she needs. How likely is it that she'll walk into a courtroom and ask to see a judge? And what if she is from rural Alaska? Will she wait to see a local judge that knows her or her family? Will she try to get to Anchorage or Fairbanks?

HB 364 is unconstitutional.
A similar bill to HB 364 was found unconstitutional by the Alaska State Supreme Court in November 2007. We should not continue wasting the legislature's time on this issue.

I urge you to vote against this bill.

Sincerely,
Linda Luper
784 Chena Hills Drive
Fairbanks, AK 99709
907-457-7356

Be a better friend, newshound, and know-it-all with Yahoo! Mobile. Try it now.

Rep. Lindsey Holmes

From: Mako Haggerty [Mako@xyz.net]
Sent: Thursday, February 28, 2008 9:33 AM
To: Rep. Lindsey Holmes
Subject: Re: HB 364

Dear Rep Holmes

I oppose HB 364

I'm a lucky guy. I have good relationship with my kids. My friends are lucky, too. They also have good relationships with their kids. We talk. We keep those lines of communications open. But as we all know there are those who aren't so lucky. And it is those kids that this bill is aimed at, kids who are in trouble and have no one to turn to. This bill only abuses them further.
In fact I believe that a teenage girl that's in trouble may be one of the loneliest and weakest members of our society, and this bill beats them up.
If you want to outlaw abortion then do so across the board, but don't pick on the weakest of us. In fact I grew up believing that the government's responsibility was to protect the weaker members of our society.

HB 364 is a bully tactic. Shame on those who support it.

Mako Haggerty
Homer

Rep. Lindsey Holmes

From: Julie Barry [jabarry1@yahoo.com]
Sent: Wednesday, February 27, 2008 7:52 PM
To: Rep. Lindsey Holmes
Subject: Vote Against HB364!

Hello Representative Holmes,
I live in your district, 26, in Anchorage. I'd like to urge you to vote AGAINST HB364.

This bill attempts to legislate good family communication. While I wish that all teens lived in loving, supportive families, the fact is that not all do. Some teens have a reasonable fear of danger or homelessness if they were to approach their parents for permission to undertake a pregnancy termination.

I'm sure you're aware that data from other states that have implemented a parental notification and consent law have actually seen their abortion rate rise, or for those states who had been in a decline, the rate has declined more slowly. Parental notification and consent laws do not decrease instances of abortion, they increase them!

While doing so, they put the lives of young mothers and babies at risk as those young women delay getting medical attention.

This bill not only infringes upon the rights off teens to seek medical care, but it also wastes the valuable time of our legislators and our courts. A similar bill was found unconstitutional in November of 2007. Why wast everyone's time again?

Thank you,
Julie Barry

Looking for last minute shopping deals? Find them fast with Yahoo! Search.

Rep. Lindsey Holmes

From: Sharon [janibear@acsalaska.net]
Sent: Wednesday, February 27, 2008 1:02 PM
To: Rep. Lindsey Holmes
Subject: Re HB 364

This bill is a basic denial of the constitutional right of Choice.
While we think about parental consent being a positive model, and, surely, for the most part, we believe it is; there are so many circumstances that do not follow this "model" for underaged young women.

Think about the daughter(s) of "Papa" Pilgrim. How would the daughter ask her father for consent after he sexually molested her over and over?

With the population in Alaska, this is not an isolated incident. We have too few checks on the health and well-being of our children as it is. These kids are not emotionally able to talk to a judge, it's an impossible situation they find themselves in. And, legislation like this only makes it harder.

Must we continue to waste money on bills that are unconstitutional?
Please, do not pass HB 364.

Sharon and Richard Waisanen
44932 Eddy Hill Drive
Soldotna, AK 99669

262.6298

Rep. Lindsey Holmes

From: Valerie Anne Demming [vademming@acsalaska.net]
Sent: Wednesday, February 27, 2008 10:32 AM
To: Rep. Bob Lynn; Rep. Ralph Samuels; Rep. Max Gruenberg; Rep. Lindsey Holmes
Subject: HB 364

I oppose House Bill 364 because...

Teenagers are talking to their parents.
In Alaska, teenagers are talking to their parents and including them in their pregnancy decisions. Only in very rare cases have teens not involved a parent. We are not talking about young teens seeking abortion services without the support of their parents. The state numbers do not back any of those theories.

Good family communication can't be mandated by government.
The best way to protect our teenagers is for parents to begin talking about responsible sexual behavior from the time they are young and foster an atmosphere of trust, respect, and compassion that assures teens they can come to them with problems or questions. The government should not be intruding into personal family situations.

Keeping teenagers safe should be the top priority.
Parents want their teenagers to be safe. It is more important for teens to be safe than the government passing laws to force them to talk to their parents. This bill will scare them away from seeking help, away from getting counseling, and toward other desperate measures, such as an illegal abortion. Parents know their teenagers may not always come to them when faced with an unintended pregnancy, but they want them to be safe. Despite the intention to protect – mandatory notification and consent will result in a teen delaying speaking to anyone about a pregnancy and delay seeking medical services. Teens in troubled families are truly at risk.

It is impractical to think that a teenager will take her case before a judge.
We need to be real about this issue and its implications. A pregnant teenager is not going to be marching into a courtroom to see a judge. She's alone. She's afraid. She doesn't know where to go or how to get the services that she needs. How likely is it that she'll walk into a courtroom and ask to see a judge? And what if she is from rural Alaska? Will she wait to see a local judge that knows her or her family? Will she try to get to Anchorage or Fairbanks?

HB 364 is unconstitutional.
A similar bill to HB 364 was found unconstitutional by the Alaska State Supreme Court in November 200[illegible]. We should not continue wasting the legislature's time on this issue.

Valerie Anne Demming M. Ed. L.P.C.

Rep. Lindsey Holmes

From: Perry Reeve [perryreeve@mac.com]
Sent: Wednesday, February 27, 2008 8:00 AM
To: Rep. Lindsey Holmes
Subject: Oppose h.b.364

As a past child therapist I am opposed to house bill 364. Those from supportive homes would reach out for family help. This bill is meant mainly for the "at risk" population. It is unfortunate but children are occasionally exposed to relations who take advantage of them and they end up in "the family way." It is important that these victims are able to regain their life as undamaged as possible and not be subjected to further shame and possible ostracization by family members. You may be dealing with unsympathetic parents who say: "You made your bed, now sleep in it." Hopefully school counselors and health clinic providers are trained to be supportive and good advisers to those in need directing them to supportive options.

Perry Aiken Reeve

Rep. Lindsey Holmes

From: B. Gamble [manuoku@yahoo.com]

Sent: Tuesday, February 26, 2008 4:05 PM

To: Sen. Joe Thomas; Rep. David Guttenberg

Cc: Rep. John Coghill; Rep. Bob Lynn; Rep. Ralph Samuels; Rep. Max Gruenberg; Rep. Lindsey Holmes; Rep. Jay Ramras; Rep. Nancy Dahlstrom

Subject: *****SPAM***** I oppose House Bill 364

To my representatives and members of the Judiciary Committee: I write this e-mail because I will not be able to call in and testify.
These talking points (below) were not written by me, but I wholeheartedly agree. Please oppose HB 364!

I oppose House Bill 364 because:

HB 364 is unconstitutional.
A similar bill to HB 364 was found unconstitutional by the Alaska State Supreme Court in November 2007. We should not continue wasting the legislature's time on this issue.

Good family communication can't be mandated by government.
The best way to protect our teenagers is for parents to begin talking about responsible sexual behavior from the time they are young and foster an atmosphere of trust, respect, and compassion that assures teens they can come to them with problems or questions. The government should not be intruding into personal family situations.

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Sincerely,
Jennifer Brook Gamble
324 Yana Court
Fairbanks, AK 99709
(907) 456-3775

Rep. Lindsey Holmes

From: Laura L Stats [lstats@bartletthospital.org]
Sent: Tuesday, February 26, 2008 9:57 AM
To: Rep. Lindsey Holmes; Rep. John Coghill; Rep. Ralph Samuels; Rep. Max Gruenberg
Subject: opposing house bill 364

Dear Members of the Alaska State House Judiciary Committee;

Thank you for your work in the Alaska State Legislature this year.

I would like to share my view on House Bill 364 as a emergency room nurse for over 25 years and a mother of 3 teens. I am in opposition of the bill because:

Teenagers are talking to their parents.
In Alaska, teenagers are talking to their parents and including them in their pregnancy decisions. Only in very rare cases have teens not involved a parent. We are not talking about young teens seeking abortion services without the support of their parents. The state numbers do not back any of those theories.

Good family communication can't be mandated by government.
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HB 364 is unconstitutional.
A similar bill to HB 364 was found unconstitutional by the Alaska State Supreme Court in

November 2007. We should not continue wasting the legislature's time on this issue.

Best regards,
Laura Stats R.N. CEN

Laura Stats, RN, CEN
Wellness Outreach Coordinator
Bartlett Regional Hospital
3260 Hospital Drive
Juneau, Alaska 99801
Phone 907.796.8918
Fax: 907.463.4919

Rep. Lindsey Holmes

From: Emeraldgal45@aol.com
Sent: Tuesday, February 26, 2008 9:01 AM
To: Rep. Lindsey Holmes
Subject: (no subject)

I oppose House Bill 364 because...

Teenagers *are* talking to their parents.
In Alaska, teenagers are talking to their parents and including them in their pregnancy decisions. Only in very rare cases have teens not involved a parent. We are not talking about young teens seeking abortion services without the support of their parents. The state numbers do not back any of those theories.

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Delicious ideas to please the pickiest eaters. Watch the video on AOL Living.

Rep. Lindsey Holmes

From: Sam Rose, D.C. [samrose@gci.net]
Sent: Monday, February 25, 2008 4:34 PM
To: Rep. Lindsey Holmes
Subject: Please oppose HB 364

Hi Lindsey,
I am asking you to oppose HB 364 which mandates parental consent and notification for abortion. I know this is a tough one politically but I think you know the reasons why this bill should be nixed. I assume Planned Parenthood has lobbied you on this bill and I know you were aware of this issue before you ran for office.
Thanks for all your hard work.

Sincerely,

Sam Rose.
3420 W. 30th Ave.
Anchorage, AK
99517
907-223-5324 (cell)
907-277-6361 (home)

Rep. Lindsey Holmes

From: Tracy Moore [tracyelmore@yahoo.com]

Sent: Monday, February 25, 2008 4:22 PM

To: Rep. John Coghill; Rep. Lindsey Holmes; Rep. Bob Lynn; Rep. Ralph Samuels; Rep. Max Gruenberg

Subject: *****SPAM***** HB 364

Stop wasting time on HB 364....I won't go into the myriad of reasons you should do this. I'll just throw this one out and just save some time...

I oppose House Bill 364 because HB 364 is unconstitutional!!!
A similar bill to HB 364 was found unconstitutional by the Alaska State Supreme Court in November 2007.

end of story...move on!!!

February 28th, 2008

Jacqueline Barsis
PO Box 1170
Sterling, AK 99672
(907) 262-0849

To Whom It May Concern:

I am writing to testify against HB 364. I am a mother of three teenagers, two boys and a girl. I find this bill unrealistic, intrusive and dangerous.

If any of my children felt they could not talk to me, I would want them to have someone else to talk to and help them through the difficult times. I would want them to find the resources they need. I would want them have access to safe and legal health care, which would not be available if this bill passes.

I've told my children they can tell me anything and I would help them work it out. However, it's not always easy to talk to your parents for fear of disappointment, so it is possible they would choose not to talk to me. In this case, they would not be able to find professional help or medical care in a timely manner because obtaining a court order is a time consuming process.

Mandating teens to go through the court system if they feel they can't talk to their parents is ridiculous. Teens have a hard enough time getting around, getting appointments and making arrangements. By the time the teen had a court order, their emotional and physical condition could be jeopardized. During the time it takes for a teen to get a court order if necessary, their health care needs have been ignored. The federal government doesn't like any barriers to health care, but in this bill, the courts become a barrier.

When it comes to women's choice, history has shown the woman, or girl in this case, always makes the choice that is right for her. If it is illegal for her to obtain an abortion, due to lack of parental consent, the teen will figure out a way to do it anyway. This bill is frustrating because if it's passed there will be some young women who will have illegal abortions and will die. This just doesn't seem like the right answer any way you look at it.

Thank you,

Jacqueline Barsis

From: Lynn Hartz [lhartz@alaska.com]

Sent: Thursday, February 28, 2008 2:13 PM

To: Rep. Jay Ramras

Subject: Testimony HB 364

Dear Representative Ramras,
I am not in favor of HB 364. This bill is still in conflict with the state Supreme Court Ruling and will cost state money if passed in another unsuccessful trip through the courts. The health and well-being of children would be better served by fully funding Denali KidCare. Please do not pass HB 364 out of your committee.
Thank-you for your consideration of this request.

Lynn Hartz MSN, ANP

3104 Brookside Drive
Anchorage, AK 99517
ph 907-248-4877
fax 907-222-1498

Planned Parenthood
of Alaska

February 28, 2008

Chair Representative Jay Ramras for The Judiciary Committee Per Request of Vice Chair Representative Nancy Dahlstrom

I apologize in advance for the length of some of the documents. We have gone through and highlighted mention of parental consent and abortion. As you can see there is overwhelming agreement within the medical community that a physician should be making this decision with their client, the teen. All of the attached articles agree that parents should be involved when ever possible and parental involvement should be encouraged.

I appreciate your willingness to examine all aspects of this very complex bill. Planned Parenthood of Alaska strives to offer safe, affordable reproductive health care to men and women in Alaska, which in some cases involves abortion but more often is prevention. It is very important to me that parents are involved and participating in the lives of there children. Thank you again for the time you are dedicating to this issue.

Best Regards,

Clover Simon, MSW
CEO Planned Parenthood of Alaska

United Way

This is a summary - articles we could get online are attached.

Adolescents and Parental Notification for Abortion:
What California Can Learn from Health Care Professionals

At least 20 leading medical and health care professional organizations have issued policy statements regarding the importance of confidentiality in protecting the health of adolescents by ensuring their access to health care, including confidential care, and promoting the quality of that care. Health care professionals strongly support the important role of parents and other adults in safeguarding the health of adolescents. They also know that having an opportunity to offer confidential care enables health care professionals to learn to learn what they need to know about adolescents' health and behaviors and to provide careful assessment and counseling. Many medical organizations are opposed to mandatory parental consent or notification laws that would severely restrict teenagers' access to any health care that is essential to protect their health, including abortion and other reproductive health services.

Medical organizations support the important role of parents in adolescent health care

Health care professionals value the support and guidance that a parent can give to an adolescent patient. Many medical organizations have endorsed policy statements that health care providers should encourage their adolescent patients to inform and involve their parents in their health care decisions. Several medical organizations believe that health care providers should help to facilitate family communication as a way to enhance the confidence of both parents and teens as health care decision makers. Medical professionals also understand that some adolescents are not able to talk with their parents about health care decisions and that forcing teens to involve their parents would do more harm than good. Therefore, although voluntary involvement of parents by adolescents is strongly encouraged and desired by medical professionals, they also believe laws or policies mandating parental consent or notification are not in the best interests of adolescent patients.

- Adolescents should be encouraged to inform and involve their parents in their health care decisions and health care professionals should facilitate this communication.
- The importance of parental support should be balanced with confidentiality in health care decisions and health care professionals should facilitate this communication as appropriate.
- Providing confidential care does not preclude working toward the goal of family communication.
- Mandatory parental involvement, consent, and/or notification reduce the likelihood that some adolescents will seek health care.

In the organizations' own words:

"Health professionals have an obligation to provide the best possible care and counseling to respond to the needs of their adolescent patients." (AAP, AAFP, ACOG, and other organizations)[i]

"The AMA encourages physicians to involve parents in the medical care of the adolescent patient, when ... would be in the best interest of the patient. When, in the opinion of the physician, parental involvement would not be beneficial, parental consent or notification should not be a barrier to care." (AMA)[ii]

"Physicians should encourage [parents'] involvement in the [adolescent] patient's health and health care decisions and, when appropriate facilitate communication between the two." (ACOG)[iii]

"When minors request confidential services, physicians should encourage them to involve their parents. This includes making efforts to obtain the minor's reasons for not involving their parents and correcting misconceptions that may be motivating their objections." (AMA)[iv]

"Adolescents should be strongly encouraged to involve their parents and other trusted adults in decisions regarding pregnancy termination, and the majority of them voluntarily do so. (AAP)[v]

"Finally, it is important to acknowledge that some adolescents do not have parents, parental support or any meaningful connection with parents. Some adolescents have experienced abuse or neglect by parents, and have legitimate fears about future abuse, which may include being asked to leave one's home by parents. When clinicians encourage adolescents to communicate openly with their parents, it is important to ask about reasons for any reluctance to do so. There are times when it may be appropriate to identify and engage other trusted adults. (SAM)[vi]

Leading medical organizations whose members provide care for adolescents have policies explicitly supporting the role of parents in adolescent health care. These organizations include:

American Academy of Family Physicians (AAFP)

American Academy of Pediatrics (AAP)

American College of Obstetricians and Gynecologists (ACOG)

American College of Physicians (ACP)

American Medical Association (AMA)

Society for Adolescent Medicine (SAM)

Medical organizations support confidential access for adolescents to medical care that protects their health, including reproductive health services

Many medical organizations reinforce the value of *encouraging* adolescents to involve their parents in their reproductive health care, but recognize that *requiring* parental involvement may not protect the patient's health. Medical organizations recognize that confidentiality in treating adolescents is particularly important for establishing trusting and honest communications that help teens to talk about sensitive topics. Confidentiality protections also encourage young people to seek care on a timely basis. Open communication between the adolescent and health professional is a prerequisite for careful counseling and assessment.

- Concern about confidentiality is one of the primary reasons that adolescents hesitate or delay obtaining reproductive health care, including contraceptive services, care related to sexually transmitted infections, or abortion services.
- Careful counseling and protection of confidentiality are both needed to appropriately address unintended pregnancy.
- Reproductive health services should be available on a confidential basis to adolescents who need them.
- Adolescents must have access to counseling about all options and have access to abortion without legal barriers.

In the organizations' own words:

"Confidential care for adolescents is critical to improving their health." (AMA)[9]

"The issue of confidentiality has been identified by both providers and young people themselves, as a significant access barrier to health care. (AAP, AAFP, ACOG, and other organizations)[2]

"Services for pregnant adolescents [should] include access to safe, legal, and confidential abortion counseling and services, as well as access to affordable, confidential prenatal and postpartum care and contraceptive services." (APHA)[10]

Medical organizations recognize that there are limits to confidentiality for adolescents

Medical organizations recognize that confidentiality is not absolute. Confidentiality must be overridden whenever a health care provider is concerned that the patient is in a life threatening situation and may do serious harm to self or others.

- Patient confidentiality should be protected unless the patient has given consent for disclosure or disclosure is required by law or the health care provider is concerned that the patient may harm himself or others.
- Health care providers should explain the meaning, scope and limitation of confidentiality protections to parents and guardians and to their adolescent patients.
- If breaching confidentiality is necessary, it should be done in a way that minimizes harm to the patient.

In the organizations' own words:

"Although confidentiality is important in adolescent health care, for adolescents at risk to themselves or others, confidentiality must be breached." (AAP)[1]

"The diagnosis [of pregnancy] should not be conveyed to others, including parents, until the [adolescent] patient's consent is obtained, except when there are concerns about suicide, homicide, or abuse." (AAP)[1]

Organizations with Policy Statements Recognizing the Importance of Confidentiality in Adolescent Health Care[13]

American Academy of Child & Adolescent Psychiatry (AACAP)

American Academy of Family Physicians (AAFP)

American Academy of Pediatric Dentistry (AAPD)

American Academy of Pediatrics (AAP)

American College of Emergency Physicians (ACEP)

American College Health Association (ACHA)

American College of Obstetricians and Gynecologists (ACOG)

American College of Physicians (ACP)

American College of Preventive Medicine (ACPM)

American Medical Association (AMA)

American Nurses Association (ANA)

American Psychiatric Association (APA1)

American Psychological Association (APA2)

American Public Health Association (APHA)

American School Health Association (ASHA)

National Assembly on School-Based Health Care (NASBHC)

National Association of Pediatric Nurse Practitioners (NAPNAP)

National Association of School Psychologists (NASP)

National Association of Social Workers (NASW)

Society for Adolescent Medicine (SAM)

Source: Morreale MC, Dowling EC, Stinnett AJ, Policy Compendium on Confidential Health Services for Adolescents, 2nd Edition. Chapel Hill, NC: Center for Adolescent Health & the Law

Medical organizations believe that laws should promote, not impede, adolescents' access to health care

Several medical organizations have endorsed policies stating that mandatory parental involvement should not be legislated. Some organizations recommend that health care providers advocate for public policies that protect adolescents' access to confidential health care and oppose efforts to repeal minor consent laws.

- Laws that allow minors to give their own consent for health care and that protect the confidentiality of adolescents' health information are fundamentally necessary to allow the health care professional to provide appropriate care and should be maintained.
- Efforts to repeal minor consent laws or to place limits on the confidentiality of services for minor patients should be opposed.
- Legal barriers and deference to parental involvement should not impede access to needed health care.
- Federal and state laws should support confidential access to health care for adolescents in any circumstance share limits on confidentiality would impede care.

In the organizations' own words:

"[T]he potential health risks to adolescents if they are unable to obtain reproductive health services are so compelling that legal barriers and deference to parental involvement should not stand in the way of needed health care for patients who request confidentiality." (AAP, AAFP, ACOG, SAM)[1]

"Genuine concern for the best interests of minors argues strongly against mandatory parental consent and notification laws. Although the stated intent of mandatory parental consent laws is to enhance family communication and parental responsibility, there is no supporting evidence that the laws have these effects. No evidence exists that legislation mandating parental involvement against the adolescent's wishes has any added benefit in improving productive family communication or affecting the outcome of the decision. There is evidence that such legislation may have an adverse impact on some families and that it increases the risk of medical and psychological harm to the adolescent. Judicial bypass provisions do not ameliorate the risk." (AAP)[3]

"The AAP holds that public policies can and should encourage voluntary involvement of parents or other mature adults, but specific laws mandating notification of biological parents or legal guardians as a condition of service are counterproductive" (AAP)[3]

"[T]he threat of compelled parental notification is a strong disincentive to an adolescent's seeking professional reproductive health care or advice; and . . . parental involvement laws, whether notification or consent, for adolescent reproductive health care (including contraception, prenatal care, delivery services, postpartum care, or abortion), do not appreciably discourage adolescent sexual activity[.]" (APHA)[4]

"Physicians should not feel or be compelled to require minors to involve their parents before deciding whether to undergo an abortion." (AMA)[5]

"Although prevention of unwanted pregnancy is the highest priority, adolescents must have access to counseling about all options and elective termination of pregnancy as a legal, safe, available alternative to continuing pregnancy . . . Mandatory parental consent or notification should not be required." (SAM)[6]

Leading medical and health care professional organizations whose members provide care for the vast majority of adolescents have policies explicitly opposing mandatory parental notification for adolescents' reproductive health care, including abortion:

American Academy of Family Physicians (AAFP)

American Academy of Pediatrics (AAP)

American College of Obstetricians and Gynecologists (ACOG)

American Medical Association (AMA)

American Public Health Association (APHA)

Society for Adolescent Medicine (SAM)

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September 2005

ALASKA PUBLIC HEALTH ASSOCIATION

Committed To Advancing Alaska's Public Health Since 1978

ALPHA

February 25, 2008

Representative_Jay_RAMRAS@legis.state.ak.us

Dear Representative Ramras:

The Alaska Public Health Association (ALPHA) represents 245 Alaskan public health professionals. The vision of the Alaska Public Health Association is that Alaskans shall have the knowledge and the means to live free of preventable illness and injury.

At the ALPHA annual meeting December 4, 2007 ALPHA passed Resolution 7-2007 Protecting and Enhancing Women's Ability to Obtain Safe, Legal Abortion Services.
http://www.alaskapublichealth.org/pdf/resolution/7-2007LateBreakerSafeLegalAbortion.pdf

ALPHA opposes HB 364 Notice and Consent for Minor's Abortion. ALPHA strongly opposes state laws that in any way limit access to safe, legal abortion services, including, but not limited to: a. mandatory delays and information/counseling that is not science-based, bans on specific abortion procedures, parental consent or notification requirements, targeted regulation of abortion providers, and limits for advanced practice clinicians in providing abortion services.

HB 364 is similar to the law mandating parental consent that was recently struck down by the Alaska Supreme Court in November 2007. Sending this issue through the legislature again uses up resources in a time-strapped legislative session. HB 364 raises serious issues about notification documentation and levies an unjustified burden on physicians who are described as the sole agents able to obtain consent and notification. Despite the intention to protect – mandatory notification and consent may result in a teen delaying speaking to anyone about a pregnancy and delay seeking medical services.

Cc: Representative_Nancy_DAHLSTROM@legis.state.ak.us
Representative_John_Coghill@legis.state.ak.us
Representative_Bob_LYNN@legis.state.ak.us
Representative_Ralph_SAMUELS@legis.state.ak.us
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ALPHA Statement of Purpose: "The Alaska Public Health Association shall promote the advancement of public health to improve health and quality of life for all Alaskans. To this end, ALPHA will exercise leadership with public health professionals and the general public in developing sound health policy, reducing health disparities and improving health outcomes for Alaskans."

Society for Adolescent Medicine Position Statements and Resolutions

Access to Health Care for Adolescents (March 1992)

Position papers summary

- Universal access to a basic level of health care for all adolescents
- Individual communities must decide how and where to provide confidential, appropriate care for their adolescents
- Providers must address the concerns of their adolescent patients and must help guide their development as independent agents with regard to their health
- Far-reaching societal commitments are needed to provide quality care for all adolescents, to improve the health of youth, and to promote well-being into adulthood
- Proposals for health-care reform should be examined for their effect on adolescents using seven developed and adopted criteria: availability, visibility, quality, confidentiality, affordability, flexibility, and coordination

- **Availability**
  age-appropriate services and trained health care providers must be present in all communities
  location of services and hours of operation should consider the demography and activities of the target population

- **Visibility**
  health services must be recognizable, convenient, and should not require extensive or complex planning by parents or adolescents-need for services on a spontaneous basis
  outreach, including education about how to use the system and about the need for preventive care is an important component of adolescent health services

- **Quality**
  a basic level of service must be provided to all youth, and adolescents should be satisfied with care they receive
  health professionals must be able to deal confidently with a broad range of adolescent health concerns and should

demonstrate a basic level of competence

- **Confidentiality**
  adolescents should be encouraged to involve their families in health decisions whenever possible, however, when such involvement is not in the best interest of the adolescent or when parental involvement may prevent the adolescent from seeking care, confidentiality must be assured

- **Affordability**
  employment-based proposal for health insurance reform must cover adolescents either as employees or as dependents
  public and private insurance programs must provide adolescents with preventive services designed to promote healthy behaviors and decrease morbidity and mortality
  provider reimbursement must reflect the additional time and intensity needed to provide appropriate care to adolescents

- **Flexibility**
  services, providers, and delivery sites must consider the cultural, ethnic, and social diversity among adolescents
  providers must be able to assess an individual adolescent's developmental readiness and to assist youth in making the transition between pediatric and adult care

- **Coordination**
  service providers must coordinate the comprehensive services that influence the health behaviors of adolescents
  when services are categorical, mechanisms must exist to help adolescents pay for and obtain necessary care from multiple sites and providers
  providers must understand and facilitate entry to specialized services for those adolescents who require them

top

Firearms and Adolescents (August 1998)

Position papers summary

- Legislative and regulatory strategies to reduce availability of the primary source of firearms (e.g., handguns) injuries among adolescents, including restricting the purchase and possession of handguns by private citizens
- Regulations to reduce the severity of injuries from firearms by reductions in the destructive power of ammunition
- Adolescent health care providers to incorporate regular violence-prevention counseling into their health care activities
- The involvement of adolescent health care providers in public education campaigns about the dangers of guns and the need for gun control
- Participation by providers in the development of strong and active coalitions that bring together community members with diverse perspectives and expertise to promote the development and implementation of multidimensional, scientifically based strategies, interventions, and legislation to reduce firearm violence
- To identify, treat, and make appropriate referrals for youth at high risk for firearm injury, including those with depression, physical fighting, history of weapon-carrying, substance use, or exposure to family violence
- Research on firearm violence, including the scope of the problem on firearm injuries among youth, risk and protective factors for involvement in firearm violence and the effectiveness of intervention strategies to reduce firearm morbidity and mortality

American Academy of Pediatrics
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ADOLESCENT ABORTION: VIEWS OF THE MEMBERSHIP OF THE AMERICAN ACADEMY OF PEDIATRICS

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Pediatrics Volume 91, Number 3 March 1993

Gretchen V. Fleming, PhD, and Karen G. O'Connor

ABSTRACT. To identify the positions held by the American Academy of Pediatrics (AAP) membership on a number of issues that may be topics of legislation regarding abortion, the AAP carried out a survey based on a random sample of 1000 active US members. A total of 785 usable questionnaires were returned. The majority of members surveyed (56.7%) favored access to abortion for adolescents for all the reasons identified in the questionnaire; 35.4% believed abortion should clearly be restricted in some circumstances, and 7.0% believed adolescents should not have access to abortion under any circumstances. For each individual reason for abortion, at least 60% of the membership believed adolescents should have access to abortion services. In addition, most pediatricians supported legal positions that would facilitate access to abortion services for adolescents. Urban, female, and non-self-employed pediatricians were slightly more likely to support access to abortion by adolescents than comparison groups. Discussion focuses on the extent to which pediatricians' views reflect medical concerns, the extent to which their views are reflected in the current laws, and implications for practice and for AAP policy. Pediatrics 1993;91:561-565; adolescence, abortion, American Academy of Pediatrics.

ABBREVIATION. AAP, American Academy of Pediatrics.

Pregnancy among adolescents is one of the most prevalent health concerns for pediatricians. More than 1 million adolescents between the ages of 15 and 19 years have become pregnant each year since 1973; 4 of 10 adolescent women become pregnant at least once in their teens. Abortion is chosen by more than 40% of these women each year. [1]

Adolescent abortion is clearly a controversial issue, and the American Academy of Pediatrics (AAP) has long recognized that its members have diverse views on this topic, as evidenced in communications from and positions endorsed by individual members. Because of recent court decisions regarding abortion, the AAP is frequently asked to join other providers of health care to adolescents to ensure that any further legislation surrounding the issue of abortion reflects the best health care interests of adolescents. In 1990 the AAP surveyed its membership to determine their views on adolescent abortion and, by inference, on what constitutes the best interests of adolescents.

There is evidence that adolescent pregnancy when brought to term is associated with certain risks to both the mother and infant, although the risks are mostly related to social factors associated with adolescent childbearing and not to young age per se. [2-6] However, the greatest age-related effect of adolescent pregnancy is the high frequency of low birth weight infants and the resulting physical and developmental problems that occur in these infants. [7-11] In one study the children born to mothers younger than 18 years developed more slowly than those born to a group of mothers older than 18 who were otherwise matched on a series of social and economic characteristics. [12] Children of teenagers have been shown to be shorter, weigh less, have lower IQs, and be more distractible than those born to

older mothers. [12,13] Young children of teenage mothers have been shown to have higher fatal injury rates [14] and a higher rate of hospital admissions for injuries and gastroenteritis, although not for other illnesses examined. [15,16]

One study also indicated that pregnant teenagers who chose abortion did better on certain follow-up measures of social functioning, such as staying in and finishing high school and self-esteem, than did a group of teenagers who were pregnant and gave birth and another control group of teenagers who had a pregnancy test but were found not to be pregnant. [17]

It has been shown that abortion is safer than childbirth, particularly for adolescents younger than the age of 15. [18-20] Adolescents have similar or lower rates of complications following legal abortions than do older women, although reasons for this finding are not clear. [21] The evidence concerning mental health effects of abortion is generally negative or inconclusive. [22,23]

METHODS

The questions on issues surrounding abortion were included as part of the AAP's Periodic Survey of Fellows. Through this mechanism, the AAP queries a unique random sample of approximately 1000 active US Fellows of the Academy three or four times a year on a variety of topics selected to provide input to AAP programs. The survey on abortion issues was a self-administered six-page questionnaire. An original and four follow-up mailings to recontact the nonrespondents were conducted July through August of 1990. A total of 785 usable questionnaires were returned, with a final response rate of 76.5%. The characteristics of the respondents were consistent with those in previous periodic surveys and are representative of the AAP membership.

We first asked the membership, "Do you believe adolescents should have access to abortion?" We followed that question with a list of specific circumstances. Further questions addressed statements included in an amicus brief signed by the AAP [24] on forthcoming issues in state or federal legislatures. A few questions asked demographics and attributes of practice. In the analysis, where appropriate, Chi^2 tests of significance are used.

RESULTS

Almost all pediatricians in the study believed adolescents should have access to abortion at least under some circumstances. Nearly half of the respondents (48.9%) said they believed adolescents should have access to abortion under all circumstances, 43.8% said abortion for adolescents should be restricted to only some circumstances, and 7.3% indicated they did not believe adolescents should have access to abortion under any circumstances.

However, a group of those respondents who said abortion should be restricted to "some" circumstances also agreed that abortion should be permitted in every circumstance identified in the questionnaire. When they were grouped with those who favored access to abortion under all circumstances, the results indicated that the majority of AAP members (56.7%) favored access to abortion for adolescents for all reasons identified, 35.4% clearly felt abortion should be restricted in some circumstances, and 7.0% believed adolescents should not have access to abortion under any circumstances.

Table 1 presents the circumstances under which an adolescent might be permitted to seek an abortion. An overwhelming majority of members agreed that abortion should be an option for adolescents when it would preserve the physical health or life of the mother (91%) or when pregnancy was the result of rape or incest (88%). Presence of a fetal abnormality and preservation of the mental psychological health of the mother as reasons for abortion were favored by more than three fourths of the membership. Among all the possible circumstances for adolescent abortion, the two that were least favored, undesired pregnancy and socioeconomic hardship, were acceptable to more than 60% of the membership.

Table 2 shows the degree to which pediatricians agreed or disagreed with several controversial issues surrounding abortion legislation/regulation. Pediatricians overwhelmingly agreed (84.6%) that awareness of mandatory parental notification for an abortion would cause some adolescents to delay seeking an abortion. More than one half (56.6%) of pediatricians agreed with the statement that mandatory parental notification of an adolescent's decision to have an abortion jeopardized the patient's right to privacy and confidentiality. The majority of respondents did not support any of the remaining statements, all of which suggested the development of more stringent laws to regulate abortion.

Pediatricians' views on parental notification of an adolescent's intention to seek abortion are further specified in

Table 3. Fifty-one percent of all pediatricians said there should not be laws mandating parental notification when an adolescent seeks an abortion; 48.8% said there should be such laws. With 95% confidence limits of approximately 3.6 percentage points on either side of these percentages, these results are ambiguous with regard to the view of the majority of pediatricians. Among those who think there should be laws mandating parental notification, 52.8% said the law should mandate notification of one biological parent/legal guardian with a provision allowing a judge to rule to bypass notification in cases of a mature minor or where it is not in the adolescent's best interest to notify the parent.

In an effort to understand better some of the personal and practice characteristics that affect pediatricians' opinions about the situations in which abortion should be available to adolescents, we compared responses by rural, small metropolitan, or urban residence; age; gender; and self-employed vs non-self-employed (for those who were in practice). These characteristics were chosen because they have been shown to affect pediatricians' opinions in the past and because they may offer some clues as to how opinions of pediatricians as a whole may shift in the future.

With regard to residence, the urban group was most likely to approve of abortion for adolescents, with 61.9% of the urban group, 55.2% of the small metropolitan, and 52.8% of the rural group supporting adolescents' access to abortion in all instances. The small metropolitan group was most likely to believe adolescents should have access to abortion in no circumstances (9.7% vs 4.5% for the urban group and 7.1% for the rural group). These results were not quite significant at the $P < .05$ level. Results by age, comparing those younger than 45 to those 45 and older, showed no differences. Gender and self-employed vs non-self-employed were also discriminating variables. Female pediatricians were significantly more likely to believe adolescents should have access to abortion in all circumstances (61.5% of female pediatricians supported this view vs 53.7% of male pediatricians) and were also more likely to support the statement that adolescents should have access to abortion under no circumstances (8.7% of female vs 6.1% of male pediatricians). Self-employed pediatricians were significantly less likely to believe adolescents should have access to abortion in all circumstances (50.3%) than were non-self-employed pediatricians (63.4%) and were also slightly more likely to believe adolescents should have access to abortion in no circumstances (8.8% for self-employed and 5.3% for non-self-employed).

Table 4 shows the circumstances under which an adolescent might be permitted an abortion by pediatricians' residence, gender, and self- vs non-self-employed status. For each of the specified circumstances, urban pediatricians and non-self-employed pediatricians were more likely to support adolescent access to abortion than comparison groups, although differences were not significant in many cases. For most circumstances, female pediatricians were more likely to approve of adolescent access to abortion than males, although that pattern did not hold for three of the circumstances. Only one difference in percent by gender was significant.

Table 5 shows differences in members' responses to the items presented in Table 2 by residence, gender, and self- vs non-self-employed status. Note that, for the sake of simplicity, only the percent who agreed with the statement is reported. However, the residual percent was divided between those who were neutral and those who disagreed (see Table 2). In some instances where significance between groups is reported it is due mostly to differences in the percentages who disagreed with the statement.

Patterns similar to those shown in Table 4 emerged. For residence there were no significant differences in the percentages supporting two statements that suggested that problems result from placing restrictions on access to abortion (the two listed first on the table). However, the rural group was generally most likely to support the statements advocating more restrictive laws to control abortion, the small metropolitan group was next most likely to support these statements, and the urban group was least likely to support these statements. By gender, all but one difference was in the direction of female pediatricians' being more likely to support the first two statements and more likely to reject the statements that support more restrictive abortion laws. By direct patient care, in all but one instance the self-employed were more likely to support the more restrictive position regarding adolescent abortion. Although most of these differences were not significant, the consistent trends in direction are unlikely to occur by chance.

DISCUSSION

There is general agreement in the literature that abortion is one of the safest medical procedures, with no clear evidence of long-term negative effects. In addition, although complications of pregnancy are greater for adolescents than for adult women, this is primarily due to social factors related to adolescent pregnancy--in particular, delay in seeking prenatal care. More serious are the developmental problems that are more likely to occur among children of

very young mothers. Given these empirically established facts, it is not surprising that most pediatricians in the AAP support adolescents' access to abortion from a medical point of view.

However, access to abortion is also an issue of personal values. The law can, to a great extent, be viewed as a barometer measuring the dominant values of a society on an issue. Recent United States Supreme Court actions, including the decision that the Pennsylvania law that declared an outright state ban on abortion was illegal, while some restrictions at the state level are still permitted, reflect the ambivalence of this nation regarding the abortion issue. As of this writing, 22 states had laws in effect addressing parental involvement in abortion decisions; 10 other states had such statutes but they had been enjoined or were not currently enforced. [25] Supreme Court decisions have upheld states' laws requiring parental consent or notification, but only if pregnant minors are allowed to go to court without involving their parents and if courts allow mature minors to make their own decisions. [26] This study shows that pediatricians as a group are also ambivalent about requiring parental notification of adolescent abortion, although pediatricians generally recognize the potential of such notification to cause some adolescents to delay in seeking an abortion.

Regardless of their personal views, pediatricians will be bound by the laws in the state in which they practice. To the extent that they provide primary care services to adolescents, they will need to keep abreast of the laws as they change in order to counsel adolescents on their medical options. In addition, as the primary health counselors in these families, they will need to practice skills that facilitate communication within families so that the options available to adolescents will be executed safely and in the best interest of all members of the family.

The majority views of the members of the AAP seem to provide a mandate for the Academy to support legislation facilitating access to abortion services for adolescents. We also explored some of the characteristics of pediatricians and their practices that are related to their views concerning adolescent access to abortion. Because the main purpose of the survey was to document their views overall and not to explain them, a complete model of explanatory variables was not attempted. We were able to learn that pediatricians' views tended to be related to residence and gender and, for practicing pediatricians, whether or not they were self-employed. More needs to be learned about the reasons for these relationships and whether or not they can be expected to be stable in the future.

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TABLE 1. Specific Circumstances Under Which Pediatricians Believe Abortion Should Be an Option for Adolescents (N=782)

Circumstance	%
To preserve the physical health or life of the mother	91.3
Pregnancy as a result of rape	88.1
Pregnancy as a result of incest	87.7
Fetal abnormality	82.2
Mentally retarded or otherwise incompetent mother	75.6
To preserve the mental/psychological health of the mother	74.0
Very young age of the mother (<15)	67.8
Unplanned/undesired pregnancy	62.1
Socioeconomic hardship	61.1

TABLE 2. Pediatricians' Opinions on Debatable Issues Surrounding Abortion (N=779)

Issue	Agree	Neutral	Disagree
Awareness of mandatory parental notification in the decision to have an abortion will cause some adolescents to delay seeking an abortion	84.6%	7.1%	8.3%
Mandatory parental notification of an adolescent's decision to have an abortion jeopardizes the patient's right to privacy and confidentiality	56.6	10.3	33.9
There should be laws to determine the circumstances under which abortion could be performed (rape, incest, etc)	37.5	6.2	56.3
There should be laws regarding physician compliance with parental	36.0	12.9	51.0

consent/notification laws			
There should be laws to require parental consent for abortion for adolescents	30.2	8.1	61.6
There should be laws to regulate abortion facilities to a greater extent than other medical facilities in which procedu s of comparable risk are performed	29.2	13.3	57.5
Notification laws for abortion for pregnant adolescents should include notification of the adolescent's partner	27.8	17.8	54.4
There should be laws to specify when life begins	20.3	14.7	64.9
There should be laws to bar public employees or facilities from performing abortions	17.3	7.5	75.2
There should be laws to withhold public funds from private physicians who perform abortions	15.4	7.4	77.1
There should be government regulations that impose sanctions on physicians performing abortions	12.9	8.8	78.4
There should be laws to require physicians performing abortions to carry additional medical liability insurance	12 3	21.9	65.8

* Combines responses of "agree" and "strongly agree."
** Combines responses of "disagree" and "strongly disagree."

TABLE 3. Pediatricians' Opinions on Mandatory Parental Notification for Adolescent Abortion

	No.	%
Opinion		
Should be laws to mandate notification	381	48.8
Should not be laws to mandate notification	399	51.2
Total	780	100.0
Type of mandatory notification		
Notification of ONE biological parent guardian with provision for	198	52.8

judicial bypass		
Notification of ONE biological parent/guardian with no exceptions	70	18.7
Notification of BOTH biological parents/guardians with provision for judicial bypass	56	14.9
Notification of BOTH biological parents/guardians with no exceptions	51	13.6
Total	375	100.0

TABLE 4. Specific Circumstances Under Which Pediatricians Believe Abortion Should Be an Option for Adolescents by Residence, Gender, and Direct Patient Care Status *

Circumstance	Residence			Gender	
	Urban (n=312)	Small Metro (n=259)	Rural (n=127)	Male (n=507)	Female (n=264)
To preserve the physical health or life of the mother	93.9%	88.8%	91.3%	91.7%	90.5%
Pregnancy as a result of rape	91.7	85.3	87.4	88.6	87.1
Pregnancy as a result of incest	92.0**	84.9	86.6	88.2	86.7
Fetal abnormality	87.2***	77.1	82.7	81.9	82.6
Mentally retarded or otherwise incompetent mother	80.8**	72.5	72.4	73.8	78.8
To preserve the mental/psychological health of the mother	79.5**	70.2	70.9	72.8	75.8
Very young age of the mother (<15)	72.4	64.7	66.9	66.7	69.3
Unplanned/undesired pregnancy	68.6**	58.5	60.6	59.6	66.7
Socioeconomic hardship	67.0	53.5	58.3	58.0	66.3

TABLE 4. (cont.)

Circumstance	Direct Patient Care	
	Self-	Not Self-

	employed (n=320)	employed (n=284)
To preserve the physical health or life of the mother	89.7%	93.3%
Pregnancy as a result of rape	86.9	90.1
Pregnancy as a result of incest	86.6	89.8
Fetal abnormality	80.3	84.1
Mentally retarded or otherwise incompetent mother	72.5	78.4
To preserve the mental/psychological health of the mother	70.0**	78.8
Very young age of the mother (<15)	62.8***	74.2
Unplanned/undesired pregnancy	55.6	69.3
Socioeconomic hardship	53.4***	68.9

* Values are percentages.
** P< .05 that percentages for all groups on variable are equal.
*** P< .01 that percentages for all groups on variable are equal.

TABLE 5. Pediatricians' Opinions on Debatable Issues Surrounding Abortion: Percent Who Agree* With Each Statement by Residence, Gender, and Direct Patient Care Status

Circumstance	Residence			Gender	
	Urban (n=312)	Small Metro (n=259)	Rural (n=127)	Male (n=507)	Female (n=264)
Awareness of mandatory parental notification in the decision to have an abortion will cause some adolescents to delay seeking an abortion	86.5%	85.2%	86.6%	84.2%	87.0%
Mandatory parental notification of an adolescent's decision to have an abortion jeopardizes the patient's right to privacy and confidentiality	60.3	54.5	56.3	53.8**	62.6
There should be laws to determine the circumstances under which abortion	31.5***	36.8	50.8	39.6	32.1

could be performed (rape, incest, etc)					
There should be laws regarding physician compliance with parental consent/notification laws	34.1	34.5	40.5	40.0***	28.2
There should be laws to require parental consent for abortion for adolescents	26.0	30.7	34.6	33.3***	24.0
There should be laws to regulate abortion facilities to a greater extent than other medical facilities in which procedures of comparable risk are performed	23.5	29.2	34.1	30.0	27.1
Notification laws for abortion for pregnant adolescents should include notification of the adolescent's partner	24.5**	23.3	41.6	31.3***	20.3
There should be laws to specify when life begins	18.9	19.8	22.8	21.7	17.2
There should be laws to bar public employees or facilities from performing abortions	12.3	18.7	21.6	19.2	12.9
There should be laws to withhold public funds from private physicians who perform abortions	12.9	16.7	16.5	17.2	11.4
There should be government regulations that impose sanctions on physicians performing abortions	10.0	15.6	12.0	13.9	10.7
There should be laws to require physicians performing abortions to carry additional medical liability insurance	11.0	10.9	13.4	10.3	15.3

Table 5. (Cont.)

Circumstance	Direct Patient Care	
	Self-employed (n=320)	Not Self-employed (n=284)
Awareness of mandatory parental notification in the decision to have an abortion will cause some adolescents to delay seeking an abortion	84.0%	90.1%

Mandatory parental notification of an adolescent's decision to have an abortion jeopardizes the patient's right to privacy and confidentiality	52.5	60.4
There should be laws to determine the circumstances under which abortion could be performed (rape, incest, etc)	42.1***	33.0
There should be laws regarding physician compliance with parental consent/notification laws	41.6***	30.7
There should be laws to require parental consent for abortion for adolescents	34.1**	25.8
There should be laws to regulate abortion facilities to a greater extent than other medical facilities in which procedures of comparable risk are performed	29.2**	29.3^
Notification laws for abortion for pregnant adolescents should include notification of the adolescent's partner	32.2	25.4
There should be laws to specify when life begins	22.9	17.4
There should be laws to bar public employees or facilities from performing abortions	20.5***	12.7^
There should be laws to withhold public funds from private physicians who perform abortions	17.6***	12.6^
There should be government regulations that impose sanctions on physicians performing abortions	13.6***	11.6^
There should be laws to require physicians performing abortions to carry additional medical liability insurance	12.6	11.7

---

* Combines responses of "agree" and "strongly agree."

** P < .05 that percentages for all groups on variable are equal based on a
Chi^2 test of significance. Test is based on three value dependent variable:
agree, neutral and disagree (see Table 2).

*** P < .01 that percentages for all groups on variable are equal based on a

Chi^2 test of significance. Test is based on three-value dependent variable:
agree, neutral, and disagree (see Table 2).

^ Differences are significant largely because of larger differences in percent
w ho disagree vs those who are neutral, with percent larger for non-self-
employed groups.

E-2.015 Mandatory Parental Consent to Abortion

Physicians should ascertain the law in their state on parental involvement to ensure that their procedures are consistent with their legal obligations.

Physicians should strongly encourage minors to discuss their pregnancy with their parents. Physicians should explain how parental involvement can be helpful and that parents are generally very understanding and supportive. If a minor expresses concerns about parental involvement, the physician should ensure that the minor's reluctance is not based on any misperceptions about the likely consequences of parental involvement.

Physicians should not feel or be compelled to require minors to involve their parents before deciding whether to undergo an abortion. The patient, even an adolescent, generally must decide whether, on balance, parental involvement is advisable. Accordingly, minors should ultimately be allowed to decide whether parental involvement is appropriate. Physicians should explain under what circumstances (eg, life-threatening emergency) the minor's confidentiality will need to be abrogated.

Physicians should try to ensure that minor patients have made an informed decision after giving careful consideration to the issues involved. They should encourage their minor patients to consult alternative sources if parents are not going to be involved in the abortion decision. Minors should be urged to seek the advice and counsel of those adults in whom they have confidence, including professional counselors, relatives, friends, teachers, or the clergy. (III, IV)

Issued June 1994 based on the report "Mandatory Parental Consent to Abortion," adopted June 1992. (*JAMA*, 1993; 269: 82-86)

Planned Parenthood of Alaska

Oppose House Bill 364
Keep Teens Safe!

Teenagers are talking to their parents.
In 2004 Planned Parenthood of Alaska began providing abortion services. Between January 2005 and December 2007, of the 19 minors aged 16 and under who requested abortion services, only 2 per year have not come accompanied by a parent. In Alaska, sexually active teens who have unplanned pregnancies are talking to their parents. Only in very rare cases, usually associated with abuse, have teens not involved a parent.

Good family communication cannot be mandated by government.
The best way to protect teenagers is for parents to begin talking about responsible sexual behavior from the time they are young and foster an atmosphere of trust, respect, and compassion that assures teens they can come to them with problems or questions. The government should not be intruding into personal family situations.

Keeping teenagers safe should be the top priority.
Parents want their teenagers to be safe. Despite the intention to protect – mandatory notification and consent will result in a teen delaying speaking to anyone about a pregnancy and delay seeking medical services. Teens in troubled families are truly at risk.

Consent and notification laws have undesirable consequences.
States who have enacted parental consent laws have seen an increase in late term abortions obtained by teens. The proportion of second trimester abortions among minors in Missouri increased by 17 percent after the state passed a parental consent law. Further, when access to abortion is restricted, complicated, or intimidating women still get abortions.

Confidentiality of the teen is not explicitly protected in the judicial bypass process.

HB 364 is unconstitutional.
HB 364 is an unconstitutional bill that requires parental consent and notification. A similar law mandating parental consent was just struck down by the Alaska Supreme Court in November 2007; revisiting this issue is a waste of state time and money.

Parents, teens, and Planned Parenthood of Alaska are putting prevention to work.
Between January 2005 and December 2007 PPA's Anchorage and Fairbanks clinics provided family planning and pregnancy prevention services to 2000 teens. Sexually active teens are taking responsibility for their reproductive health care.

Planned Parenthood of Alaska respects the choice of every client, including teens.
More teens are brought in for an abortion by their parents where the teen wants to continue the pregnancy, than teens that do not tell their parents about their abortion. PPA helps these teens get the services they need and refers them for prenatal care. Since the decision is up to the teen this is an easy process and ensures they obtain early prenatal care for a healthy pregnancy and a healthy baby.

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TIME IN PARTNERSHIP WITH CNN

Monday, May. 10, 2004

What Makes Teens Tick?

By CLAUDIA WALLIS

Five young men in sneakers and jeans troop into a waiting room at the National Institutes of Health Clinical Center in Bethesda, Md., and drape themselves all over the chairs in classic collapsed-teenager mode, trailing backpacks, a CD player and a laptop loaded with computer games. It's midafternoon, and they are, of course, tired, but even so their presence adds a jangly, hormonal buzz to the bland, institutional setting. Fair-haired twin Corey and Skyler Mann, 16, and their burlier big brothers Anthony and Brandon, 18, who are also twins, plus eldest brother Christopher, 22, are here to have their heads examined. Literally. The five brothers from Orem, Utah, are the latest recruits to a giant study that's been going on in this building since 1991. Its goal: to determine how the brain develops from childhood into adolescence and on into early adulthood.

It is the project of Dr. Jay Giedd (pronounced Geed), chief of brain imaging in the child psychiatry branch at the National Institute of Mental Health. Giedd, 43, has devoted the past 13 years to peering inside the heads of 1,800 kids and teenagers using high-powered magnetic resonance imaging (MRI). For each volunteer, he creates a unique photo album, taking MRI snapshots every two years and building a record as the brain morphs and grows. Giedd started out investigating the developmental origins of attention-deficit/hyperactivity disorder (ADHD) and autism ("I was going alphabetically," he jokes) but soon discovered that so little was known about how the brain is supposed to develop that it was impossible to figure out where things might be going wrong. In a way, the vast project that has become his life's work is nothing more than an attempt to establish a gigantic control group. "It turned out that normal brains were so interesting in themselves," he marvels. "And the adolescent studies have been the most surprising of all." Before the imaging studies by Giedd and his collaborators at UCLA, Harvard, the Montreal Neurological Institute and a dozen other institutions, most scientists believed the brain was largely a finished product by the time a child reached the age of 12. Not only is it full-grown in size, Giedd explains, but "in a lot of psychological literature, traced back to [Swiss psychologist Jean] Piaget, the highest rung in the ladder of cognitive development was about age 12—formal operations." In the past, children entered initiation rites and started learning trades at about the onset of puberty. Some theorists concluded from this that the idea of adolescence was an artificial construct, a phenomenon invented in the post-Industrial Revolution years. Giedd's scanning studies proved what every parent of a teenager knows: not only is the brain of the adolescent far from mature, but both gray and white matter undergo extensive structural changes well past puberty. "When we started," says Giedd, "we thought we'd follow kids until about 18 or 20. If we had to pick a number now, we'd

probably go to age 25." Now that MRI studies have cracked open a window on the developing brain, other researchers are looking at how the newly detected physiological changes might account for the adolescent behaviors so familiar to parents: emotional outbursts, reckless risk taking and rule breaking, and the impassioned pursuit of sex, drugs and rock 'n' roll. Some experts believe the structural changes seen at adolescence may explain the timing of such major mental illnesses as schizophrenia and bipolar disorder. These diseases typically begin in adolescence and contribute to the high rate of teen suicide.

Increasingly, the wild conduct once blamed on "raging hormones" is being seen as the by-product of two factors: a surfeit of hormones, yes, but also a paucity of the cognitive controls needed for mature behavior.

In recent years, Giedd has shifted his focus to twins, which is why the Manns are such exciting recruits. Although most brain development seems to follow a set plan, with changes following cues that are preprogrammed into genes, other, subtler changes in gray matter reflect experience and environment. By following twins, who start out with identical—or, in fraternal twins, similar—programming but then diverge as life takes them on different paths, he hopes to tease apart the influences of nature and nurture. Ultimately, he hopes to find, for instance, that Anthony Mann's plan to become a pilot and Brandon's to study law will lead to brain differences that are detectable on future mris. The brain, more than any other organ, is where experience becomes flesh.

Throughout the afternoon, the Mann brothers take turns completing tests of intelligence and cognitive function. Between sessions they occasionally needle one another in the waiting room. "If the other person is in a bad mood, you've got to provoke it," Anthony asserts slyly. Their mother Nancy Mann, a sunny paragon of patience who has three daughters in addition to the five boys, smiles and rolls her eyes.

Shortly before 5 p.m., the Manns head downstairs to the imaging floor to meet the magnet. Giedd, a trim, energetic man with a reddish beard, twinkly blue eyes and an impish sense of humor, greets Anthony and tells him what to expect. He asks Anthony to remove his watch, his necklace and a high school ring, labeled keeper. Does Anthony have any metal in his body? Any piercings? Not this clean-cut, soccer-playing Mormon. Giedd tapes a vitamin E capsule onto Anthony's left cheek and one in each ear. He explains that the oil-filled capsules are opaque to the scanner and will define a plane on the images, as well as help researchers tell left from right. The scanning will take about 15 minutes, during which Anthony must lie completely still. Dressed in a red sweat shirt, jeans and white K-Swiss sneakers, he stretches out on the examining table and slides his head into the machine's giant magnetic ring.

MRI, Giedd points out, "made studying healthy kids possible" because there's no radiation involved. (Before MRI, brain development was studied mostly by using cadavers.) Each of the Mann boys will be scanned three times. The first scan is a quick survey that lasts one minute. The second lasts two minutes and looks for any damage or abnormality. The third is 10 minutes long and taken at maximum resolution. It's the money shot. Giedd watches as Anthony's brain appears in cross section on a computer screen. The machine scans 124 slices, each as thin as a dime. It will take 20 hours of computer time to process the images, but the analysis is done by humans, says

Giedd. "The human brain is still the best at pattern recognition," he marvels.

Some people get nervous as the MRI machine clangs noisily.

Claustrophobes panic. Anthony, lying still in the soul of the machine, simply falls asleep.

CONSTRUCTION AHEAD

one reason scientists have been surprised by the ferment in the teenage brain is that the brain grows very little over the course of childhood. By the time a child is 6, it is 90% to 95% of its adult size. As a matter of fact, we are born equipped with most of the neurons our brain will ever have—and that's fewer than we have in utero. Humans achieve their maximum brain-cell density between the third and sixth month of gestation—the culmination of an explosive period of prenatal neural growth. During the final months before birth, our brains undergo a dramatic pruning in which unnecessary brain cells are eliminated. Many neuroscientists now believe that autism is the result of insufficient or abnormal prenatal pruning.

What Giedd's long-term studies have documented is that there is a second wave of proliferation and pruning that occurs later in childhood and that the final, critical part of this second wave, affecting some of our highest mental functions, occurs in the late teens. Unlike the prenatal changes, this neural waxing and waning alters not the number of nerve cells but the number of connections, or synapses, between them. When a child is between the ages of 6 and 12, the neurons grow bushier, each making dozens of connections to other neurons and creating new pathways for nerve signals. The thickening of all this gray matter—the neurons and their branchlike dendrites—peaks when girls are about 11 and boys 121/2, at which point a serious round of pruning is under way. Gray matter is thinned out at a rate of about 0.7% a year, tapering off in the early 20s. At the same time, the brain's white matter thickens. The white matter is composed of fatty myelin sheaths that encase axons and, like insulation on a wire, make nerve-signal transmissions faster and more efficient. With each passing year (maybe even up to age 40) myelin sheaths thicken, much like tree rings. During adolescence, says Giedd, summing up the process, "you get fewer but faster connections in the brain." The brain becomes a more efficient machine, but there is a trade-off: it is probably losing some of its raw potential for learning and its ability to recover from trauma.

Most scientists believe that the pruning is guided both by genetics and by a use-it-or-lose-it principle. Nobel prizewinning neuroscientist Gerald Edelman has described that process as "neural Darwinism"—survival of the fittest (or most used) synapses. How you spend your time may be critical. Research shows, for instance, that practicing piano quickly thickens neurons in the brain regions that control the fingers. Studies of London cab drivers, who must memorize all the city's streets, show that they have an unusually large hippocampus, a structure involved in memory. Giedd's research suggests that the cerebellum, an area that coordinates both physical and mental activities, is particularly responsive to experience, but he warns that it's too soon to know just what drives the buildup and pruning phases. He's hoping his studies of twins will help answer such questions: "We're looking at what they eat, how they spend their time—is it video games or sports? Now the fun begins," he says.

No matter how a particular brain turns out, its development proceeds in stages, generally from back to front

Some of the brain regions that reach maturity earliest—through proliferation and pruning—are those in the back of the brain that mediate direct contact with the environment by controlling such sensory functions as vision, hearing, touch and spatial processing. Next are areas that coordinate those functions: the part of the brain that helps you know where the light switch is in your bathroom even if you can't see it in the middle of the night. The very last part of the brain to be pruned and shaped to its adult dimensions is the prefrontal cortex, home of the so-called executive functions—planning, setting priorities, organizing thoughts, suppressing impulses, weighing the consequences of one's actions. In other words, the final part of the brain to grow up is the part capable of deciding, I'll finish my homework and take out the [illegible]age, and then I'll IM my friends about seeing a movie.

"Scientists and the general public had attributed the bad decisions teens make to hormonal changes," says Elizabeth Sowell, a UCLA neuroscientist who has done seminal MRI work on the developing brain.

"But once we started mapping where and when the brain changes were happening, we could say, Aha, the part of the brain that makes teenagers more responsible is not finished maturing yet."

RAGING HORMONES

Hormones, however, remain an important part of the teen-brain story.

Right about the time the brain switches from proliferating to pruning, the body comes under the hormonal assault of puberty.

(Research suggests that the two events are not closely linked because brain development proceeds on schedule even when a child experiences early or late puberty.) For years, psychologists attributed the intense, combustible emotions and unpredictable behavior of teens to this biochemical onslaught. And new research adds fresh support. At puberty, the ovaries and testes begin to pour estrogen and testosterone into the bloodstream, spurring the development of the reproductive system, causing hair to sprout in the armpits and groin, wreaking havoc with the skin, and shaping the body to its adult contours. At the same time, testosterone-like hormones released by the adrenal glands, located near the kidneys, begin to circulate.

Recent discoveries show that these adrenal sex hormones are extremely active in the brain, attaching to receptors everywhere and exerting a direct influence on serotonin and other neurochemicals that regulate mood and excitability.

The sex hormones are especially active in the brain's emotional center—the limbic system. This creates a "tinderbox of emotions," says Dr. Ronald Dahl, a psychiatrist at the University of Pittsburgh.

Not only do feelings reach a flash point more easily, but adolescents tend to seek out situations where they can allow their emotions and passions to run wild. "Adolescents are actively looking for experiences to create intense feelings," says Dahl. "It's a very important hint that there is some particular hormone-brain relationship

contributing to the appetite for thrills, strong sensations and excitement." This thrill seeking may have evolved to promote exploration, an eagerness to leave the nest and seek one's own path and partner. But in a world where fast cars, illicit drugs, gangs and dangerous liaisons beckon, it also puts the teenager at risk.

That is especially so because the brain regions that put the brakes on risky, impulsive behavior are still under construction. "The parts of the brain responsible for things like sensation seeking are getting turned on in big ways around the time of puberty," says Temple University psychologist Laurence Steinberg. "But the parts for exercising judgment are still maturing throughout the course of adolescence. So you've got this time gap between when things impel kids toward taking risks early in adolescence, and when things that allow people to think before they act come online. It's like turning on the engine of a car without a skilled driver at the wheel."

DUMB DECISIONS

Increasingly, psychologists like steinberg are trying to connect the familiar patterns of adolescents' wacky behavior to the new findings about their evolving brain structure. It's not always easy to do. "In all likelihood, the behavior is changing because the brain is changing," he says. "But that is still a bit of a leap." A critical tool in making that leap is functional magnetic resonance imaging (FMRI). While ordinary MRI reveals brain structure, FMRI actually shows brain activity while subjects are doing assigned tasks.

At McLean Hospital in Belmont, Mass., Harvard neuropsychologist Deborah Yurgelun-Todd did an elegant series of FMRI experiments in which both kids and adults were asked to identity the emotions displayed in photographs of faces. "In doing these tasks," she says, "kids and young adolescents rely heavily on the amygdala, a structure in the temporal lobes associated with emotional and gut reactions.

Adults rely less on the amygdala and more on the frontal lobe, a region associated with planning and judgment." While adults make few errors in assessing the photos, kids under 14 tend to make mistakes.

In particular, they identify fearful expressions as angry, confused or sad. By following the same kids year after year, Yurgelun-Todd has been able to watch their brain-activity pattern—and their judgment—mature. Fledgling physiology, she believes, may explain why adolescents so frequently misread emotional signals, seeing anger and hostility where none exists. Teenage ranting ("That teacher hates me!") can be better understood in this light.

At Temple University, Steinberg has been studying another kind of judgment: risk assessment. In an experiment using a driving-simulation game, he studies teens and adults as they decide whether to run a yellow light. Both sets of subjects, he found, make safe choices when playing alone. But in group play, teenagers start to take more risks in the presence of their friends, while those over age 20 don't show much change in their behavior. "With this manipulation," says Steinberg, "we've shown that age differences in decision making and judgment may appear under conditions that are emotionally arousing or have high social impact." Most teen crimes, he says, are committed by kids in packs.

Other researchers are exploring how the adolescent propensity for uninhibited risk taking propels teens to experiment with drugs and alcohol. Traditionally, psychologists have attributed this experimentation to peer pressure, teenagers' attraction to novelty and their roaring interest in loosening sexual inhibitions. But researchers have raised the possibility that rapid changes in dopamine-rich areas of the brain may be an additional factor in making teens vulnerable to the stimulating and addictive effects of drugs and alcohol. Dopamine, the brain chemical involved in motivation and in reinforcing behavior, is particularly abundant and active in the teen years.

Why is it so hard to get a teenager off the couch and working on that all important college essay? You might blame it on their immature nucleus accumbens, a region in the frontal cortex that directs motivation to seek rewards. James Bjork at the National Institute on Alcohol Abuse and Alcoholism has been using FMRI to study motivation in a challenging gambling game. He found that teenagers have less activity in this region than adults do. "If adolescents have a motivational deficit, it may mean that they are prone to engaging in behaviors that have either a really high excitement factor or a really low effort factor, or a combination of both." Sound familiar?

Bjork believes his work may hold valuable lessons for parents and society. "When presenting suggestions, anything parents can do to emphasize more immediate payoffs will be more effective," he says. To persuade a teen to quit drinking, for example, he suggests stressing something immediate and tangible—the danger of getting kicked off the football team, say—rather than a future on skid row.

Persuading a teenager to go to bed and get up on a reasonable schedule is another matter entirely. This kind of decision making has less to do with the frontal lobe than with the pineal gland at the base of the brain. As nighttime approaches and daylight recedes, the pineal gland produces melatonin, a chemical that signals the body to begin shutting down for sleep. Studies by Mary Carskadon at Brown University have shown that it takes longer for melatonin levels to rise in teenagers than in younger kids or in adults, regardless of exposure to light or stimulating activities. "The brain's program for starting nighttime is later," she explains.

PRUNING PROBLEMS

The new discoveries about teenage brain development have prompted all sorts of questions and theories about the timing of childhood mental illness and cognitive disorders. Some scientists now believe that ADHD and Tourette's syndrome, which typically appear by the time a child reaches age 7, may be related to the brain proliferation period. Though both disorders have genetic roots, the rapid growth of brain tissue in early childhood, especially in regions rich in dopamine, "may set the stage for the increase in motor activities and tics," says Dr. Martin Teicher, director of developmental biopsychiatry research at McLean Hospital. "When it starts to prune in adolescence, you often see symptoms recede." Schizophrenia, on the other hand, makes its appearance at about the time the prefrontal cortex is getting pruned. "Many people have speculated that schizophrenia may be due to an abnormality in the pruning process," says Teicher. "Another hypothesis is that schizophrenia has a much earlier, prenatal origin, but as the brain prunes, it gets unmasked." MRI studies have shown that while the average teenager loses about 15% of his cortical gray matter, those who develop schizophrenia lose as much as 25%.

WHAT'S A PARENT TO DO?

Brain scientists tend to be reluctant to make the leap from the laboratory to real-life, hard-core teenagers. Some feel a little burned by the way earlier neurological discoveries resulted in Baby Einstein tapes and other marketing schemes that misapplied their science. It is clear, however, that there are implications in the new research for parents, educators and lawmakers.

In light of what has been learned, it seems almost arbitrary that our society has decided that a young American is ready to drive a car at 16, to vote and serve in the Army at 18 and to drink alcohol at 21.

Giedd says the best estimate for when the brain is truly mature is 25, the age at which you can rent a car. "Avis must have some pretty sophisticated neuroscientists," he jokes. Now that we have scientific evidence that the adolescent brain is not quite up to scratch, some legal scholars and child advocates argue that minors should never be tried as adults and should be spared the death penalty. Last year, in an official statement that summarized current research on the adolescent brain, the American Bar Association urged all state legislatures to ban the death penalty for juveniles. "For social and biological reasons," it read, "teens have increased difficulty making mature decisions and understanding the consequences of their actions."

Most parents, of course, know this instinctively. Still, it's useful to learn that teenage behavior is not just a matter of willful pigheadedness or determination to drive you crazy—though these, too, can be factors. "There's a debate over how much conscious control kids have," says Giedd, who has four "teenagers in training" of his own. "You can tell them to shape up or ship out, but making mistakes is part of how the brain optimally grows." It might be more useful to help them make up for what their brain still lacks by providing structure, organizing their time, guiding them through tough decisions (even when they resist) and applying those time-tested parental virtues: patience and love.

With reporting by With Reporting by Alice Park/New York

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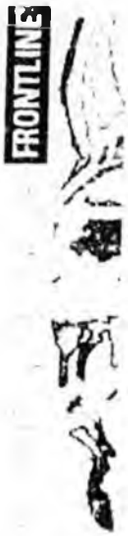


FRONTLINE

Adolescent Brains are Works in Progress

Here's Why

by FRONTLINE producer Sarah Spinks

Over the past 25 years, neuroscientists have discovered a great deal about the architecture and function of the brain. Their discoveries have led to huge strides in medicine, from pinpointing the timing at which children should be operated on for vision problems to shedding light on the mechanisms that cause such diseases as schizophrenia. Much of the early focus of the research was on the early years of development or on diseased brains. Now, with the advent of new imaging techniques, researchers are able to examine normal brains and brains of people throughout their lives.

More Information

See more about MRI's and fMRI's from PBS's "Secret Life of the Brain" web site.

Before the advent of magnetic resonance imaging (MRI), scientists already knew a lot about how the brain functioned. When people suffered brain damage or injury to particular parts of the brain, scientists could see what functions were impaired, and infer that the injured areas governed those functions. For example, people who had strokes in the area of the brain affecting speech lost the ability to speak. Autopsies showed when particular parts of the brain matured, the connections were wrapped in white matter, or myelin.

With functional MRIs, researchers can see how the brain actually functions -- what parts of the brain use energy when performing certain tasks. They know, for instance, the particular part of the brain that "lights up" when performing a visual task. Those images in which brain activity is measured are called "functional" because they measure how the brain performs tasks rather than simply mapping out the structure of the brain.

FRONTLINE's "Inside the Teenage Brain" focuses on work done by Dr. Jay Giedd at the National Institute of Mental Health in Bethesda, Md., together with colleagues at McGill University in Montreal. In a particularly interesting study, Dr. Giedd looked at the brains of 145 normal children by

Sarah Spinks is an independent director and producer. She was with the Canadian Broadcasting Corporation for 17 years, where her documentaries won many awards. Spinks' last FRONTLINE documentary, "Making Babies," reported on state-of-the-art infertility treatments.

scanning them at two-year intervals. This was work Giedd was only able to do with magnetic resonance imaging, because it requires neither harmful dyes nor radiation, making the study of normal children, as opposed to sick ones, ethically tenable.

"If a teen is doing music, sports or academics, those are the connections that will be hard wired. If they're lying on the couch or playing video games or MTV, those are the cells and connections that are going to survive."

What the researchers have found has shed light on how the brain grows and when it grows. It was thought at one time that the foundation of the brain's architecture was laid down by the time a child is five or six. Indeed, 95 percent of the structure of the brain has been formed by then. But these researchers have discovered changes in the structure of the brain that appear relatively late in child development.

Changes in the Prefrontal Cortex

Giedd and his colleagues found that in an area of the brain called the prefrontal cortex, the brain appeared to be growing again just before puberty. The prefrontal cortex sits just behind the forehead. It is particularly interesting to scientists because it acts as the CEO of the brain, controlling planning, working memory, organization, and modulating mood. As the prefrontal cortex matures, teenagers can reason better, develop more control over impulses and make judgments better. In fact, this part of the brain has been dubbed "the area of sober second thought."

The fact that this area was still growing surprised the scientists. Although they knew that the brain of a baby grew by over-producing synapses, or connections, they had not known that there was a second period of over-production. In a baby, the brain over-produces brain cells (neurons) and connections between brain cells (synapses) and then starts pruning them back around the age of three. The process is much like the pruning of a tree. By cutting back weak branches, others flourish. The second wave of synapse formation described by Giedd showed a spurt of growth in the frontal cortex just before puberty (age 11 in girls, 12 in boys) and then a pruning back in adolescence.

Even though it may seem that having a lot of synapses is a particularly good thing, the brain actually consolidates learning by pruning away synapses and wrapping white matter (myelin) around other connections to stabilize and strengthen them. The period of pruning, in which the brain actually loses gray matter, is as important for brain development as is the period of growth. For instance, even though the brain of a teenager between 13 and 18 is maturing, they are losing 1 percent of their gray matter every year.

Giedd hypothesizes that the growth in gray matter followed by the pruning of connections is a particularly important stage of brain development in which what teens do or do not do can affect them for the rest of their lives.

He calls this the "use it or lose it principle," and tells FRONTLINE, "If a teen is doing music or sports or academics, those are the cells and connections that will be hardwired. If they're lying on the couch or playing video games or MTV, those are the cells and connections that are going to survive."

Corpus Callosum and Cerebellum

In another study of growth patterns of the developing brain, Paul Thompson of the University of California at Los Angeles, along with Jay Giedd and colleagues from McGill University, found waves of growth in the corpus callosum, a fiber system that relays information between the hemispheres of the brain. Of particular interest to educators and parents is their finding that the fiber systems influencing language learning and associative thinking grew more rapidly than surrounding regions before and during puberty (a similar period to the growth of the frontal cortex), but fell off shortly after. These findings reinforce studies on language acquisition that show that the ability to learn new languages declines after the age of 12. [1]

These studies of the corpus callosum are part of a large multi-centered research study on twins. Researchers are hopeful that twin studies will also shed light on the age-old question of nature or nurture -- which traits and characteristics are due to genetics and which can be affected by the environment. For instance, the studies have shown that the corpus callosi of twins are so similar that one can put 10 twin brain MRIs on view and even a novice can spot the pairs. The researchers therefore hypothesize that this part of the brain is largely controlled by genes. However, another piece of neuroanatomy, the cerebellum, at the back of the head just above the neck, is not very similar in twins, leading Giedd to hypothesize that the cerebellum is not genetically controlled and is thus susceptible to the environment.

Interestingly, the cerebellum is a part of the brain that changes well into adolescence. Scientists think the cerebellum helps in physical coordination. But looking at functional imaging studies of the brain, researchers also see activity in the cerebellum when the brain is processing mental tasks. Giedd thinks it works like this. "It's like a math co-processor. It's not essential for any activity ... but it makes any activity better. Anything we can think of as higher thought, mathematics, music, philosophy, decision-making, social skill, draws upon the cerebellum. ... To navigate the complicated social life of the teen and to get through these things instead of lurching from ... to be a function of the cerebellum."

Cautionary Words

Jay Giedd and his colleagues have given us a new window into understanding how the pre-adolescent brain develops. It confirms what other neuroscientists have outlined over the past 25 years -- that different parts of the brain mature at different times. In particular, it corroborates the work of neuroscientists like Peter Huttenlocher who have shown that the frontal cortex of human beings matures relatively late in a child's life.

However, knowing more about the *structure* of the brain does not necessarily tell us more about the *function* of the brain. It is a good hypothesis that if a particular structure is still immature, the functions it governs will show immaturity. Thus, there is fairly widespread agreement that adolescents take more risks at least partly because they have an immature frontal cortex, because this is the area of the brain that takes a second look at something and reasons about a particular behavior. However, moving from structure to function, deciding what *behavior* is caused by what part of the brain, is much more complicated.

Jack Shonkoff, professor of child development at Brandeis University and author of *From Neurons to Neighborhoods*, warns policymakers to be careful about interpreting the findings of neuroscientists too simplistically. In his interview with FRONTLINE, Shonkoff says, "The caution is really to be careful about what's not quite ready for prime time yet in terms of application."

John Bruer, the author of *The Myth of the First Three Years* and the president of the James S. McDonnell Foundation, is more blunt. Says Bruer: "This simple, popular, newsweekly-magazine idea that adolescents are difficult because their frontal lobes aren't mature is one we should be very cautious of. Yes, there are adolescents that are hard to get along with. There are adults that are hard to get along with for the same reason. Presumably, the adults have mature frontal areas. There are very young children who seem to have no problem with this. Very immature brain structure, yet results in very sophisticated behavior. So this notion there's going to be some easy connection between counting synapses or measuring white matter and the kinds of behaviors people display or we want them to display is one we're going to have to do a lot more work on before it's science."

Despite the caveats about how much we can know about brain function and how readily any of this work can be translated into policy, it is clear from the research that the brain is a good deal more plastic or changeable than we once thought. Important structural changes are taking place well into adolescence and beyond. Except for a few well-defined sensitive periods for certain types of vision, hearing, and first-language learning, the brain is capable of growth well beyond the first few years of life. An important part of the growth is happening just before puberty and well into adolescence. The brain research adds new dimensions to our understanding of adolescence -- a time of both heightened opportunity and risk.

INTERVIEW

Deborah Yurgelun-Todd

In a recent study mapping differences between the brains of adults and teens, Todd put teenage and adult volunteers through a MRI and monitored how their brains responded to a series of pictures. The volunteers were asked to discern the emotion a series of faces like this one. The results were surprising. All the adults identified the emotion as fear, but many of the teenagers saw something different, such as shock or anger. When she examined their brain scans, Todd found that the teenagers were using a different part of their brain when reading the images.

Yurgelun-Todd is the director of neuropsychology and cognitive neuroimaging at McLean Hospital in Belmont, Mass. Her recent work suggests that teens' brains actually work differently than adults' when processing emotional information from external stimuli.

Do you notice a big difference between young teenagers and older teenagers, for instance, or adults?

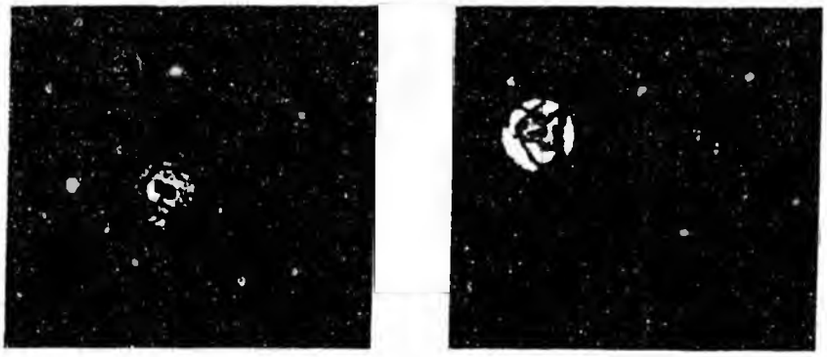
Yes. Our data suggested that the younger teenagers were significantly different in how they responded compared to adults. And we did see an age-dependent or age-related change between the ages of 11 and 17, with the most dramatic difference being in the earlier teen years.

One aspect of our work has been to look at the frontal part of the brain, which has been known to underlie thought and anticipation and planning and goal-directed behavior, and try to understand the relationship of this part of the brain to the more inferior or lower part of the brain which has been associated with emotion and gut responses. It's quite well known that, in adults, there's a relationship between these two parts of the brain, and we wanted to understand what that relationship would be in adolescent subjects.

In adults, how are those two parts of the brain related?

What do we see there?

In an adult, this anterior or prefrontal part of the brain carries out a lot of executive functions, or what we call more thinking functions: planning, goal-directed behavior, judgment, insight. And we think that that particular part of the brain influences this more emotional or gut part of the brain. Therefore this relationship is key to understanding behavior.



Teens **(left)** used less of the prefrontal (upper) region than adults **(right)** when reading emotion.

This is a really nice picture highlighting the fact that in an adolescent brain or a younger brain, the relative activation of the prefrontal region or this anterior front part of the brain is less it is in the adults. But in contrast to that, the more emotional region or that gut response region has more activation compared to the adult. So the relationship between these two regions is very different. And we think that that's been a very important finding in terms of understanding adolescent behavior.

So, confronted with a feeling, say, somebody looks at them with an expression of fear, how will the adolescent read it in relation to the adult?

... The adolescent will have a more of an emotional response. The part of the brain that has more of that gut reaction will respond to a greater extent than the adult brain will. And we think that that is due to the fact that this frontal region is not interacting with the emotional region in the same way.

How about this issue of misjudgment -- making mistakes about what they read on a person's face?

One of the things that we noticed in doing this experiment was, not only did the adolescents show this emotional response or this increased response, but they did this at the same time that they did not correctly identify the emotion. And that was very interesting to us, because it's clear that the brain was responding, but the way it was responding didn't have to do with the accuracy of the affect or the emotional expression. The adolescents typically said that they saw shock or confusion or sadness. But

they did not correctly identify fear 100 percent of the time. This is in contrast to the adults, who did find that

So 100 percent of the adults correctly identified the emotion of fear?

Right. In this pilot study, 100 percent of the adults did actually identify the emotion as fear.

And the teenagers?

Only about half.

What did they say instead?

They felt that the expression was sadness, confusion. Some said they didn't know; some said shock. But it was surprising to us that most fairly sophisticated adolescents did not correctly identify fear. ...

Is it possible that if you had interviewed ten more adults and ten more teens, the results would have changed?

This is a small pilot study, so clearly if we added a considerably larger sample, we may have very different results. So I want to be cautious and not over-interpret these findings.

"The frontal lobe, that part of the executive region that we studied, is not always functioning fully in teenagers. ... That would suggest that therefore teenagers aren't thinking through the consequences of their behaviors."

What does your work tell you about young teenagers?

One of the implications of this work is that the brain is responding differently to the outside world in teenagers compared to adults. And in particular, with emotional information, the teenager's brain may be responding with more of a gut reaction than an executive or more thinking kind of response. And if that's the case, then one of the things that you expect is that you'll have more of an impulsive behavioral response, instead of a necessarily thoughtful or measured kind of response

Does this research go part of the way to explaining the miscues between adult and teenagers?

Yes, I do think this research goes to helping understand differences between adults and teenagers in terms of communications. And I think that it does for two reasons. One, we saw that adults can actually look at fearful faces and perceive them as fearful faces, and they label them as such, whereas teenagers ... don't label them the same way. So it means that they're reading external visual cues [differently], or they're looking at affect differently.

The second aspect of the findings are that the frontal region, or this executive region, is activating differentially in the teenagers compared to adults. And I think that has important implications in terms of modulating their own responses, or trying to inhibit their own gut responses.

Talk more about that in terms of the kind of risks that teenagers take. When they exhibit risky behavior, what is actually happening?

One thing that happens in the brain when we're going to get involved in any activity or initiate any activity is, we either have to decide what the consequences of that behavior are, or we're just going to behave impulsively. And to appreciate what the consequences of a behavior are, you have to really think through what the potential outcomes of a behavior are. I think the frontal lobe, that part of the executive region that we studied, is not always functioning fully in teen agers; or least our data suggests that perhaps it's not.

That would suggest that therefore teenagers aren't thinking through what the consequences of their behaviors are, which would lead us to believe that they'd be more impulsive, because they're not going to be so worried about whether or not what they're doing has a negative consequence ...

Our findings suggest that what is coming into the brain, how it's being organized, and then ultimately the response -- all three of those may be different in our adolescents. So that attitude may be part of that, or may be related to that. But it's not simply a matter of teenagers feeling like they don't want to do something, or that they're just going to give you a hard time ...

What does this mean for teens' relationship with their parents and teachers?

One of the interesting things about the findings are that they suggest that the teenagers are not able to correctly read all the feelings in the adult face. So that would suggest to us that when they're relating to their parents or to their friends' parents or to their teachers, they may be misperceiving or misunderstanding some of the feelings that we have as adults, that is, they see anger when there isn't anger, or sadness when there isn't sadness. And if that's the case, then clearly their own behavior is not going to match that of the adult. So you'll see miscommunication, both in terms of what they think

the adult is feeling, but also what the response should then be to that.

Is there a difference between boys and girls?

Yes. Actually it's very interesting that in our study we found quite a bit of difference between males and females. And this really didn't surprise us. We found that females were somewhat more accurate than males, and also a little bit more subdued, relative to males. ... In general, the males in our studies showed more reaction from that gut region of the brain, and less frontal or executive reaction. The relationship between the gut response and that executive region was very striking for the males, and somewhat striking for the females. But was not as extreme for the teenage females compared to the teenage males. ....

So what does this mean about the kind of decisions that a teenager makes?

One of the interesting outcomes of this study suggests that perhaps decision-making in teenagers is not what we thought. That is, they may not be as mature as we had originally thought. Just because they're physically mature, they may not appreciate the consequences or weigh information the same way as adults do. So we may be mistaken if we think that [although] somebody looks physically mature, their brain may in fact not be mature, and not weigh in the same way. ...

Certainly the data from this study would suggest that one of the things that teenagers seem to do is to respond more strongly with gut response than they do with evaluating the consequences of what they're doing. This would result in a more impulsive, more gut-oriented response in terms of behavior, so that they would be different than adults. They would be more spontaneous, and less inhibited. ...

Do you think there should be things done for teenagers that are not done right now?

That's a really interesting point, because enrichment or special kinds of education during this period of time are very valuable; the brain is ready and responsive in a way that it's not later in life. And one of the questions is whether or not we can teach teenagers or adolescents to be more discriminating in interpersonal communication.

For example, many adults say that one of the things that they felt most limited by is the ability to have a really good relationship, a really intimate relationship with another person. And the basis of that really comes out of being able to read cues and being able to relate to others. So I think that the teenage years are important years for learning these skills. We assume that teenagers are getting these skills at home, or we think that they're getting them in groups that they participate in, such as Boy Scouts, Girl Scouts, clubs that they belong to. But for perhaps many of our teens, they're not

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The Teen Brain: Under Construction

Information from Industry

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Many nurses are under the impression that the brain is largely developed during the school age years, simply maturing during the adolescent years. Resources profess that the most rapid proliferation of brain cells is in utero and that the structure of the human brain is laid down by age 3, with maturation attained between 10 and 12 years old. It is also espoused that the stress and storm inherent in the adolescent years is largely based on hormonal influences, leading those who work with teens to attribute the mood swings, vacillating judgments, and difficult dispositions to estrogen and testosterone. Concepts of cognitive reasoning, as laid down by Jean Piaget, propose that formal operational/abstract thinking - the highest level of reasoning - emerges between 11 and 14 years of age (Hockenberry, 2003).

Several studies have refuted these findings, indicating that the brain is actively growing throughout the teen years and is, in fact, changing until young adulthood (Spano, 2003). Several researchers contend that, based on physiological research alone, brain development extends well into the twenties, causing some to consider the adolescent period to range from 11-25 years of age (Spear, 2002). New information indicates that early adolescence is a period of significant brain growth and development characterized by three distinct processes: proliferation, pruning, and myelinization (Spano, 2003).

Prior thinking indicated that no new neurons were formed after the gestational growth spurt (Hockenberry, 2003). It was proposed that 90%-95% of the total brain cells are formed by the age of 6 (Wallis, 2004). In contrast, new research purports that many cells are formed early in adolescence in response to genetic, hormonal, and environmental cues. There is a significant increase in the amount or proliferation of brain gray matter, or unmyelinated cells, during this period (National Institute of Mental Health [NIMH], 2001). This growth, thought to peak at 11 years in girls and at 12 BD years in boys, allows nerve cells to grow and get "bushier" in response to stimuli, implying that selected stimuli may increase the number of nerve cells (Wallis, 2004, p. 59). This is not to say that humans can train their brains to grow in certain areas, but it may indicate further areas for research (Spano, 2003).

The pruning process is more complex and less familiar to nurses. The pruning process is essentially a cleaning out of nerve fibers, allowing for stronger but fewer nervous system cellular connections. Unused neurons and dendrites are eliminated to decrease the "clutter" in the brain (Spear, 2000, p. 112). The pruning process is thought to work on a "use it or lose it" basis, in which nerve cells that are not cultivated are pruned and those that are nurtured are allowed to flourish (NIMH, 2001, p. 1). This pruning results in a strengthening of connections among those neuronal pathways that are the most used and stimulated. It is here where many neuroscientists believe there may be some implications for guiding youth development and decision-making (Spano, 2003). Scientists have conjectured that teens may exercise selected brain cells and allow others to atrophy in order to influence the "hardwiring of the brain" (Spano, 2003, p. 37). This thinning out process is thought to continue well into the 20s.

The pruning process occurs primarily in the areas of the brain that govern selected functions, such as self-control, judgment, emotions, organization, multitasking, and goal-directed behaviors. The positive ramifications of the pruning process are the subject of current research. The potential for selective pruning, the impact of activities, discipline, and limits on the pruning process, the effect of genetic and hormonal influences dictating appropriate pruning, and the ability for genes, environment, and experiences to change the pruning process are all under research scrutiny (NIMH, 2001). The implications of inefficient, inappropriate, or overzealous pruning are also the topics of continued inquiry. Possible issues such as poo

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decision-making, reckless behavior, rule breaking, the tendency toward emotional outbursts, fewer organizational abilities, and lack of ability to process abstract concepts have been associated with problems in pruning (Begley, 2000).

Research conducted by Spear (2002) investigated the association between the pruning phase and the effects of alcohol. This research postulated that overuse of alcohol during

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Confessions of a Teenage Mind

Katherine Cheng

Statistics provided by the National Center for Statistics and Analysis show that though adolescents aged 15-20 year old constitute only 6.4% of 194.3 million licensed drivers in the United States, they are involved in 14% of vehicular accident-related fatalities. In 2003 alone, 7,884 adolescent drivers were involved in fatal crashes, almost half (3,657) of which were caused by the teenage drivers. With such high accident rates, car collisions constitute the number one killer of Americans aged 15-20 years. 1). Traditionally, the frequency of adolescent automobile accidents has been attributed to factors such as alcohol intoxication, drowsiness and inexperience. While such explanations remain legitimate concerns, recent scientific research suggests that a significant component of the answer may in fact lie in the very structure of the teenage brain.

Until fairly recently, researchers and medical practitioners presumed that a brain's course of development corresponded to its physical growth, so that by the time the brain grew to 95% of its adult size around age six, it would be impervious to change. Earlier studies had determined that during gestation in the womb and the first 18 months of life, a child's brain undergoes a stage referred to as "overproduction," during which the brain produces an excessive amount of cells and neural connections. Those that are not used are "pruned," or removed, a process that scientists once believed to signal the end of the brain's development. 2)A longitudinal study conducted by Dr. Judith Rapoport of the National Institute of Mental Health, however, revealed evidence to the contrary. Utilizing MRI (magnetic resonance imaging) to scan the brains of 149 children and adolescents at two year intervals, Rapoport found that brains continue to develop well into adolescence, engaging in a second stage of overproduction characterized by a thickening of the brain's grey matter, the nervous tissue responsible for information processing. 3) The frontal lobes, a division of the cerebral cortex that manages emotions, personality, impulses and reasoning, undergo particularly significant growth, but by puberty, the second stage of overproduction beings to wane. 4)
for Teenagers." From this point on, the grey matter thins as it prunes away cells and synapses that have not been used and trained in the learning of new skills, such as violin playing. 2)

Significantly, the frontal lobes, which inhibit behavior, are one of the last divisions of the brain to finish developing. Researchers now speculate that this division of the brain responsible for making "executive decisions" based on methodical rational thinking and planning continues to develop throughout a

person's early 20's. Thus, while the frontal lobes develop, other parts of the brain help process emotional information normally handled by fully-developed frontal lobes. A 1999 study conducted by Deborah Yurgelun-Todd, Director of Neuro-psychology and Cognitive Neuro-imaging at McLean Hospital in Belmont, Massachusetts, demonstrates as much. Expanding upon the research initiated by Rapoport, Yurgelun-Todd and colleagues showed adult and teenage subjects photographs of various facial expressions and asked them to articulate the illustrated emotion. While they deliberated, Yurgelun-Todd and colleagues employed MRI to scan the subjects' brains. Interestingly, they discovered that half of the teenage subjects incorrectly identified expressions of fear as sadness or shock, while every adult subject correctly identified the emotion of fear. Close inspection of the MRI revealed that the teenage and adult brains employed different parts of the brain to process the emotional information. 5) Compared to the teenagers, the adult subjects experienced heightened activity in their frontal lobes and lesser activity in the amygdale, the part of the brain involved with emotional and 'gut' responses. 4) This finding implies that teenage brains, by virtue of their immature frontal lobes, are not completely equipped to think through their behaviors and responses using the cognitive reasoning processes matured and available in normal adult brains. Until their frontal lobes have fully developed, adolescents and teenagers react to and interpret the external clues provided by the world through a lens significantly colored by emotional and "gut feeling" reactions, oftentimes relying on impulse rather than cool-headed critical analysis of a situation and potential consequences.

This insight into the developing structure of the teenage brain sheds new light on the sometimes seemingly perplexing and unnecessarily risky behavior of teenagers and adolescents, particularly when placed within the context of driving. Due to frequency of exposure and inevitability of interaction, it is reasonable to speculate that teenagers are frequently involved in car collisions because they misinterpret the behaviors of other drivers as threatening and therefore drive more aggressively, or perhaps some drive more recklessly because they do not fully think through the consequences of their decisions, particularly in high-stress driving conditions. But all of this is not to say that teenagers are incapable of processing situations and weighing the possible positive and negative outcomes of certain behaviors. Instead, it clearly makes evident that well beyond the age societal standards consider the start of adulthood, young brains interpret the world in ways markedly different from brains in which matured frontal lobes privilege rational judgment and behavior control over emotion-inspired impulsivity. This information must be taken into consideration when dealing with teenagers and adolescents in both personal and social capacities and guiding the development of their brains. During this crucial period of development, adolescents and teenagers should be encouraged to participate in the learning of various skills and activities. Never again will grey matter be more abundant, the brain more fruitful and plastic to change and development.

Moreover, these findings give rise to some interesting ethical questions. If scientific research demonstrates that in general, people do not maintain full possession of their cognitive faculties until their mid-twenties, these studies conceivably justify movements to enforce stricter guidelines on the behavior and rights of adolescents and young adults. In 1984, President Ronald Reagan signed into law the national 21 minimum drinking age legislation, since which alcohol-related car collisions and associated fatalities have decreased. 7) At the very least, these recent findings provide scientific evidence verifying the logic of this law, but for proponents of a higher drinking and/or driving age, this research stands as support for tighter regulations of teenage drivers. In the past few years, many states have already passed legislation limiting the use of cellular phones while driving and restricting the number of passengers a teenage driver may have in the car at one time.

Applying the same vein of thinking to a different context, opponents of the military draft can use this research to argue against the recruitment of individuals under the age of 25 for two reasons, the most obvious being that young men and women are simply too cognitively underdeveloped to function well in such situations in which they'd be forced to make decisions that would very literally be matters of life or

death. If injuries and fatalities caused by car collisions are already a significant concern, one can only imagine the repercussions of arming a squad of young soldiers with machine guns and the authority to shoot. Secondly, the teenage and young adult years are the most formative of a person's life. If conditioned to observe and participate regularly in the systematic violence of military life, beliefs, norms and behaviors integral to this lifestyle will indubitably become ingrained within the young men and women, possibly replicating themselves once the individual returns to civilian life. Likewise, but to a different effect, the discovery that the brain maintains a significant degree of plasticity throughout adolescence gives rise to the hope that during this crucial period, individuals experience behavioral problems can change relatively easily. Regardless, the research discussed here verified, at the very least, that we have barely grazed the surface of the amazingly complex organ that is the human brain.

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Teenage Brain: A work in progress

New imaging studies are revealing—for the first time—patterns of brain development that extend into the teenage years. Although scientists don't know yet what accounts for the observed changes, they may parallel a pruning process that occurs early in life that appears to follow the principle of "use-it-or-lose-it:" neural connections, or synapses, that get exercised are retained, while those that don't are lost. At least, this is what studies of animals' developing visual systems suggest. While it's known that both genes and environment play major roles in shaping early brain development, science still has much to learn about the relative influence of experience versus genes on the later maturation of the brain. Animal studies support a role for experience in late development, but no animal species undergoes anything comparable to humans' protracted childhood and adolescence. Nor is it yet clear whether experience actually creates new neurons and synapses, or merely establishes transitory functional changes. Nonetheless, it's tempting to interpret the new findings as empowering teens to protect and nurture their brain as a work in progress.

The newfound appreciation of the dynamic nature of the teen brain is emerging from MRI (magnetic resonance imaging) studies that scan a child's brain every two years, as he or she grows up. Individual brains differ enough that only broad generalizations can be made from comparisons of different individuals at different ages. But following the same brains as they mature allows scientists a much finer-grained view into developmental changes. In the first such longitudinal study of 145 children and adolescents, reported in 1999, NIMH's Dr Judith Rapoport and colleagues were surprised to discover a second wave of overproduction of gray matter, the thinking part of the brain—neurons and their branch-like extensions—just prior to puberty.[1] Possibly related to the influence of surging sex hormones, this thickening peaks at around age 11 in girls, 12 in boys, after which the gray matter actually thins some.

Prior to this study, research had shown that the brain overproduced gray matter for a brief period in early development—in the womb and for about the first 18 months of life—and then underwent just one bout of pruning. Researchers are now confronted with structural changes that occur much later in adolescence. The teen's gray matter waxes and wanes in different functional brain areas at different times in development. For example, the gray matter growth spurt just prior to puberty predominates in the frontal lobe, the seat of "executive functions"—planning, impulse control and reasoning. In teens affected by a rare, childhood onset form of schizophrenia that impairs these functions, the MRI scans revealed four times as much gray matter loss in the frontal lobe as

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normally occurs.[3] Unlike gray matter, the brain's white matter—wire-like fibers that establish neurons' long-distance connections between brain regions—thickens progressively from birth in humans. A layer of insulation called myelin progressively envelops these nerve fibers, making them more efficient, just like insulation on electric wires improves their conductivity.

Advancements in MRI image analysis are providing new insights into how the brain develops. UCLA's Dr. Arthur Toga and colleagues turned the NIMH team's MRI scan data into 4-D time-lapse animations of children's brains morphing as they grow up—the 4th dimension being rate-of-change.[3] Researchers report a wave of white matter growth that begins at the front of the brain in early childhood, moves rearward, and then subsides after puberty. Striking growth spurts can be seen from ages 6 to 13 in areas connecting brain regions specialized for language and understanding spatial relations, the temporal and parietal lobes. This growth drops off sharply after age 12, coinciding with the end of a critical period for learning languages.

While this work suggests a wave of brain white matter development that flows from front to back, animal, functional brain imaging and postmortem studies have suggested that gray matter maturation flows in the opposite direction, with the frontal lobes not fully maturing until young adulthood. To confirm this in living humans, the UCLA researchers compared MRI scans of young adults, 23-30, with those of teens, 12-16.[4] They looked for signs of myelin, which would imply more mature, efficient connections, within gray matter. As expected, areas of the frontal lobe showed the largest differences between young adults and teens. This increased myelination in the adult frontal cortex likely relates to the maturation of cognitive processing and other "executive" functions. Parietal and temporal areas mediating spatial, sensory, auditory and language functions appeared largely mature in the teen brain. The observed late maturation of the frontal lobe conspicuously coincides with the typical age-of-onset of schizophrenia—late teens, early twenties—which, as noted earlier, is characterized by impaired "executive" functioning.

Another series of MRI studies is shedding light on how teens may process emotions differently than adults. Using functional MRI (fMRI), a team led by Dr. Deborah Yurgelun-Todd at Harvard's McLean Hospital scanned subjects' brain activity while they identified emotions on pictures of faces displayed on a computer screen.[5] Young teens, who characteristically perform poorly on the task, activated the amygdala, a brain center that mediates fear and other "gut" reactions, more than the frontal lobe. As teens grow older, their brain activity during this task tends to shift to the frontal lobe, leading to more reasoned perceptions and improved performance. Similarly, the researchers saw a shift in activation from the temporal lobe to the frontal lobe during a language skills task, as teens got older. These functional changes paralleled structural changes in temporal lobe white matter.

While these studies have shown remarkable changes that occur in the brain during the teen years, they also demonstrate what every parent can confirm: the teenage brain is a very complicated and dynamic arena, one that is not easily understood.

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COGNITIVE AND MORAL DEVELOPMENT, BRAIN DEVELOPMENT, AND MENTAL ILLNESS: IMPORTANT CONSIDERATIONS FOR THE JUVENILE JUSTICE SYSTEM

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I. INTRODUCTION

Since Illinois created the nation's first juvenile court in 1899,[1] the legal system has recognized that juveniles are different than adults in many ways and, consequently, should be treated differently by the courts. Children and adolescents are, by definition, a "work in progress" and early intervention can help reshape detrimental cognition and behavior. It is with this focus that juvenile courts emphasize *rehabilitation* rather than *punishment*. Different theories have been put forth to explain the thought

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1 PRINCIPLES AND PRACTICE OF CHILD AND ADOLESCENT FORENSIC PSYCHIATRY 259 (Diane H. Schetky & Elissa P. Benedek eds., 2002).

processes and behaviors youth exhibit during the first two decades of their lives. Recent research into the development of the human brain has supported these theories and has allowed for an expanded understanding of cognitive and behavioral maturation during childhood.

The purpose of this Article is fourfold: (1) to outline two psychological theories concerning cognitive and moral development in children;[2] (2) to summarize recent research on juvenile brain development and related implications for understanding juveniles' behaviors;[3] (3) to explain how mental illness may impact brain development (and thereby influence cognition and behavior);[4] and (4) to discuss the integration of psychological theory, brain development, and mental illness with the juvenile justice system.[5]

II. PIAGET AND KOHLBERG: TWO INFLUENTIAL THEORIES OF CHILD DEVELOPMENT

Numerous efforts have been made to describe the maturation processes children undergo. Theories regarding emotional, social, behavioral, moral, and cognitive development have been proposed. One influential model of cognitive development was articulated by Jean Piaget, who theorized that children move sequentially through four stages of cognitive development.[6] First, in the *sensorimotor stage* (birth to about eighteen to twenty-four months), children receive environmental stimuli and react in stereotyped manners.[7] Later, in the *pre-operational stage* (age two years to about age five to seven years), children exhibit egocentric thinking (everything is about the child) and magical thinking (reality and fantasy are interwoven). Children in these ages demonstrate early stages of moral thinking, in which things are thought of as either "good" or "bad."[8] Third, children aged six to eleven years begin to show signs of *concrete operations*, in which they exhibit rational and logical

2. *See infra* Part II.
3. *See infra* Part III.
4. *See infra* Part IV.
5. *See infra* Part V.
6. *See* MASS. GEN. HOSP., MASSACHUSETTS GENERAL HOSPITAL PSYCHIATRY UPDATE AND BOARD PREPARATION 29-30 (Theodore A. Stern & John B. Herman eds., 2d ed. 2000); *see also* CHILD AND ADOLESCENT PSYCHIATRY: A COMPREHENSIVE TEXTBOOK 135-38 (Melvin Lewis ed., 2d ed. 1996).
7. CHILD AND ADOLESCENT PSYCHIATRY, *supra* note 6, at 136.
8. *Id.*

thought.[9] A more conceptual framework for understanding the world develops, and children are able to understand another individual's point of view.[10] Lastly, after age eleven years, children develop the capacity fo. *formal operations.*[11] This stage is marked by enhanced abilities for abstract thinking and deductive reasoning.[12]

Lawrence Kohlberg, a well-known University of Chicago and Harvard University professor and Piaget follower, postulated a system of moral reasoning[13] based on Piaget's model of cognitive development.[14] Kohlberg was intrigued by responses to moral dilemmas and the reasoning used to rationalize behavior.[15] He proposed that behaviors could be ascribed to each of six stages of moral development.[16] In Kohlberg's model, individuals move linearly through stages, though not all people achieve the highest stage of moral reasoning.[17] *Pre-conventional (pre-moral) reasoning* (stages one and two) is often observed in children up to nine years of age.[18] Individuals in stage one demonstrate deference to authority.[19] Avoidance of punishment helps the child develop beliefs about what is "right" and "wrong."[20] In stage two, individuals begin to exhibit behaviors reflecting values of "exchange and reciprocity."[21] One's own needs and the needs of others are met using a "You scratch my back, and I'll scratch yours" approach.[22]

Stages three and four (*conventional reasoning/ morality*) are more commonly found in adolescents and adults.[23] They reflect a basic focus on social norms and expectations. Stage three is marked by conformity to rules; approval or disapproval from others

9. *Id.* at 137.
10. *Id.*
11. *Id.*
12. *Id.*; *see also* MASS. GEN. HOSP., *supra* note 6, at 27.
13. CHILD AND ADOLESCENT PSYCHIATRY, *supra* note 6, at 215; *see also* PSYCHOLOGY FOR PSYCHIATRISTS 93-95 (Deepa S. Gupta & Rajinder M. Gupta eds., 2000); *Kohlberg's Stages of Moral Development*, WIKIPEDIA, THE FREE ENCYCLOPEDIA, http://en.wikipedia.org/w/index.php?title=Kohlberg's_stages_of_moral_development&oldid=36957739 (last visited Feb. 3, 2006) [hereinafter *Kohlberg's Stages of Moral Development*].
14. ROBERT A. BARON, ESSENTIALS OF PSYCHOLOGY 307 (2d ed. 1999).
15. CHILD AND ADOLESCENT PSYCHIATRY, *supra* note 6, at 215.
16. *Id.*
17. *Id.*
18. *Kohlberg's Stages of Moral Development*, *supra* note 13.
19. CHILD AND ADOLESCENT PSYCHIATRY, *supra* note 6, at 215.
20. PSYCHOLOGY FOR PSYCHIATRISTS, *supra* note 13, at 93.
21. CHILD AND ADOLESCENT PSYCHIATRY, *supra* note 6, at 215.
22. *Kohlberg's Stages of Moral Development*, *supra* note 13.
23. *Id.*

influences the individual's perception of "right" and "wrong."[24] In stage four, individuals focus less on approval or disapproval, instead reasoning that a system of rules is essential to ensuring order in society. Behavior that upholds the social order is seen as being "right."[25] *Post-conventional reasoning* (stages five and six) is typically found only in adults and reflects attainment of self-accepted moral principles and a struggle to go beyond simple "law and order."[26] Stage five reasoning includes behaviors that are adherent to laws to the extent that such laws serve a social purpose. Laws are seen less as an "end" but rather as a "means" to achieving a higher purpose (e.g., social justice or human rights).[27] Laws are not absolute and are thus viewed as subject to change. In stage six, individuals exhibit abstract thinking and reasoning with a goal of adhering to ethical principles through which "justice" can be achieved.[28]

These developmental theories of Piaget and Kohlberg provide a framework for understanding how juveniles think and how they interact with the world around them. By extension, such theories can be useful to a juvenile justice system seeking to intervene when a child exhibits behavior inconsistent with societal expectations. In keeping with these and other psychological constructs, a legal theory informally known as the "rule of sevens" proposes degrees of culpability, or criminal responsibility, based on age.[29] Specifically, there is a presumption of "no culpability" up to age seven years, a "rebuttable presumption of no culpability" from ages seven to fourteen years, and a presumption of "culpability" for those children older than fourteen years.[30] This "rule of sevens" demonstrates the legal system's recognition of the role cognitive and moral development play in understanding juveniles' behavior.

III. UNDERSTANDING NORMAL BRAIN DEVELOPMENT

Until only recently, attempts at comprehensively integrating theories of cognition and behavior with a detailed understanding of brain development have been difficult. Such efforts have relied

24. *Id.*
25. CHILD AND ADOLESCENT PSYCHIATRY, *supra* note 6, at 215.
26. PSYCHOLOGY FOR PSYCHIATRISTS, *supra* note 13, at 95.
27. *Kohlberg's Stages of Moral Development*, *supra* note 13.
28. PSYCHOLOGY FOR PSYCHIATRISTS, *supra* note 13, at 95.
29. *In re* Devon T., 584 A.2d 1287, 1290 (Md. Ct. Spec. App. 1991) (citing WAYNE R. LAFAVE & AUSTIN W. SCOTT, JR., CRIMINAL LAW 398 (2d ed. 1986)).
30. *Id.*

on studying patients who have sustained injuries resulting in brain damage as well as utilizing post-mortem (autopsy) analyses. These methods allowed researchers and clinicians to correlate behavioral observations with observable anatomical pathology.

The case of Phineas Gage provided early information about the role of the frontal lobes of the brain.[31] While working in railroad construction in 1848, an accidental explosion caused a forty-three inch iron bar, one and one quarter inches in diameter at one end and one quarter inch in diameter at the other, to be propelled through Gage's head.[32] Amazingly, the injury did not kill the twenty-five-year-old.[33] It did, however, result in significant damage to the left front part of his brain.[34] Though he recovered physically from his injury, Gage reportedly exhibited a substantial change in his behavior following the accident:

> [B]ecause his personality had changed so much, the contractors who had employed him would not give him his place again. Before the accident he had been their most capable and efficient foreman, one with a well-balanced mind, and who was looked on as a shrewd smart business man. He was now fitful, irreverent, and grossly profane, showing little deference for his fellows. He was also impatient and obstinate, yet capricious and vacillating, unable to settle on any of the plans he devised for future action.[35]

This account highlights the now well-understood fact that different regions of the brain control different aspects of human behavior. Particularly relevant to the issue of juvenile justice, the right and left frontal lobes (located just behind the forehead), are thought to play a role in "executive functions" such as planning, impulse control, and reasoning.[36] Other brain regions, including the cerebellum (located in the back of the head), may assist in these functions as well. Some of Gage's personality changes were likely related to damage to frontal-lobe circuits. By extension, children may exhibit poor impulse control and deficits in planning

31 Malcolm Macmillan, *Phineas Gage's Story*, http://www.deakin.edu.au/hbs/GAGEPAGE/Pgstory.htm (last visited Feb. 3, 2006).

32 *Id.*

33 *Id.*

34 *Id.*

35 *Id.*

36 NAT'L INSTITS. OF HEALTH, PUB. NO. 01-4929, TEENAGE BRAIN: A WORK IN PROGRESS (2001), *available at* http://www.nimh.nih.gov/publicat/teenbrain.cfm

because of their incompletely developed frontal lobes.

Recent research has helped elucidate the timeline of normal brain development.[37] It is now postulated that the human brain develops in a nonlinear fashion, with different regions of the brain developing at different times and at different rates. The human brain contains both gray matter and white matter. Gray matter includes nerve cells (and other structures), whereas white matter describes the portion of the nerve that is covered by myelin. Myelin is a substance that "insulates" the message-conducting part of the neuron, allowing signals to travel more quickly and efficiently.

Though total brain size does not change substantially after age five years,[38] it does undergo dramatic changes over the lifetime. Significant changes occur both before and after birth.[39] Gray matter develops in a non-linear manner until puberty, at which time the brain undergoes a wave of gray matter loss (termed "pruning"). This loss is essentially a "use it or lose it" phenomenon that allows the brain to trim unused connections in an effort to enhance the function of the remaining nerves. White matter—the myelin sheathing around nerves that allows for enhanced communications between the cells—increases throughout life. In a study by Jay Giedd and colleagues, frontal lobe gray matter increased over childhood, reaching a maximum size at 12.1 years for males and 11.0 years for females.[40] Temporal lobe gray matter did not reach its maximum until 16.5 years for males and 16.7 years for females.[41] Occipital lobe gray matter increased throughout the age range studied (four to twenty-two years) without evidence of decrease.[42]

The implications of this research are dramatic when considered in the context of the functional maturation process. As Nitin Gogtay and colleagues explain in describing the results of their study:

37. Nitin Gogtay et al., *Dynamic Mapping of Human Cortical Development During Childhood Through Early Adulthood*, 101 PROCEEDINGS NAT'L ACADS. SCI. 8174, 8174-79 (2004).

38. Sarah Durston et al., *Anatomical MRI of the Developing Human Brain: What Have We Learned?*, 40 J. AM. ACAD. CHILD & ADOLESCENT PSYCHIATRY 1012, 1014 (2001).

39. In utero (pre-birth) brain changes are beyond the scope of this article.

40. Jay N. Giedd et al., *Brain Development During Childhood and Adolescence: A Longitudinal MRI Study*, 2 NATURE NEUROSCIENCE 861, 861-63 (1999).

41. *Id.* at 862.

42. *Id.*

> [P]arts of the brain associated with more basic functions matured early: motor and sensory brain areas matured first, followed by areas involved in spatial orientation, speech and language development, and attention (upper and lower parietal lobes). Later to mature were areas involved in executive function, attention, and motor coordination (frontal lobes).[43]

Recognition that the process of human brain development is ongoing throughout childhood and adolescence provides anatomical evidence to support the psychological theories put forth by Piaget, Kohlberg, and others.

IV. BRAIN DEVELOPMENT AND MENTAL ILLNESS

As the case of Phineas Gage and similar cases involving other patients demonstrate, damage to a specific brain region can have dramatic implications for alterations in cognition and behavior. As the medical and scientific communities are gaining a deeper understanding of the process of normal brain development, other researchers have sought to determine if abnormalities in the development or function of specific brain regions can be linked to or implicated in certain mental illnesses. A 1996 study by F. Xavier Castellanos and colleagues demonstrated that males aged five to eighteen years suffering from attention-deficit hyperactivity disorder (ADHD) exhibited a 4.7% smaller total cerebral volume than matched healthy controls (comparison subjects).[44] Additionally, the same research showed that boys with ADHD typically had a smaller right caudate nucleus,[45] a smaller right globus pallidus, a smaller right anterior frontal region, and a smaller cerebellum.[46] A similar study demonstrated that girls with ADHD had a smaller total brain volume, as well as a smaller posterior-inferior cerebellar vermis (a part of the cerebellum) than matched healthy controls.[47]

Imaging studies have revealed anatomical differences in

43. *See* Giedd et al., *supra* note 37 and accompanying text.

44. F. Xavier Castellanos et al., *Quantitative Brain Magnetic Resonance Imaging in Attention-Deficit Hyperactivity Disorder*, 53 ARCHIVES GEN. PSYCHIATRY 607, 607 (1996).

45. *Id.* at 611.

46. *Id.* at 607.

47. F. Xavier Castellanos et al., *Quantitative Brain Magnetic Resonance Imaging in Girls with Attention-Deficit/Hyperactivity Disorder*, 58 ARCHIVES GEN. PSYCHIATRY 289, 289 (2001).

patients suffering from depression, as well. Isabelle Rosso and colleagues recently found that a group of children with depression had significant reductions in amygdala volumes compared to healthy controls.[48] A study by Ronald Steingard and colleagues found that children with depression had smaller whole brain volumes, as well as smaller frontal white matter volumes and larger frontal gray matter volumes.[49] An earlier study revealed that children and adolescents with depression had larger ventricles (the space in which cerebrospinal fluid flows).[50] Additionally, a study of adolescents thirteen to eighteen years of age revealed smaller left hippocampus volumes (by seventeen percent) in those suffering from a major depressive disorder as compared to healthy controls.[51]

Other studies have demonstrated significant differences in children and adolescents suffering from psychotic disorders.[52] Judith Rapoport and colleagues showed that children suffering from schizophrenia had a fourfold greater decrease in gray matter volume during adolescence,[53] while Leslie Jacobsen and colleagues found that children with schizophrenia had a smaller cerebellar vermis than healthy controls.[54] This and other research supports the notion that psychiatric illness is often marked by specific, measurable abnormalities in brain development.

48. Isabelle M. Rosso et al., *Amygdala and Hippocampus Volumes in Pediatric Major Depression*, 57 BIOLOGICAL PSYCHIATRY 21, 21 (2005).

49. Ronald J. Steingard et al., *Smaller Frontal Lobe White Matter Volumes in Depressed Adolescents*, 52 BIOLOGICAL PSYCHIATRY 413, 413 (2002).

50. Ronald J. Steingard et al., *Structural Abnormalities in Brain Magnetic Resonance Images of Depressed Children*, 35 J. AM. ACAD. CHILD & ADOLESCENT PSYCHIATRY 307, 310 (1996).

51. Frank P. MacMaster & Vivek Kusumakar, *Hippocampal Volume in Early Onset Depression*, BMC MEDICINE (2004), http://www.biomedcentral.com/1741-7015/2/2.

52. Briefly, psychotic disorders are those in which the patient experiences a loss of reality testing. Psychosis is often marked by experiencing auditory hallucinations, delusional thinking, and other impairing symptoms.

53. Judith L. Rapoport et al., *Progressive Cortical Change During Adolescence in Childhood-Onset Schizophrenia*, 56 ARCHIVES GEN. PSYCHIATRY 649, 649 (1999).

54. Leslie K. Jacobsen et al., *Quantitative Morphology of the Cerebellum and Fourth Ventricle in Childhood-Onset Schizophrenia*, 154 AM. J. PSYCHIATRY 1663, 1663 (1997).

V. FORENSIC IMPLICATIONS OF THE PROCESS OF BRAIN DEVELOPMENT AND MENTAL ILLNESS

The current state of scientific knowledge about the process of normal brain development suggests that full cognitive maturity may not occur until late in adolescence or perhaps not even until the early twenties. Recognition of this fact is critical when considering that juveniles may not possess many of the cognitive abilities assumed present in adults entering the criminal justice system. For example, the Minnesota criminal justice system currently holds that the level of competence necessary to permit a child's participation in juvenile proceedings is the same as the competence level necessary for an adult to stand trial in an adult proceeding.[55] This competence level may be lacking in juveniles, however, as was demonstrated by Thomas Grisso and colleagues in their assessment of adjudicative competence in a group of 927 adolescents (ages eleven to seventeen years) in juvenile detention and community settings.[56] They compared these youth to 466 young adults (ages eighteen to twenty-four years) in jails and in the community.[57] Their assessment included the MacArthur Competence Assessment Tool-Criminal Adjudication (MacCAT-CA) as well as the MacArthur Judgment Evaluation (MacJEN).[58] The MacCAT-CA is "a 22-item structured interview for the pretrial assessment of adjudicative competence. This instrument uses a vignette format and objectively scored questions to standardize the measurement of three competence-related abilities."[59] The MacJEN was designed specifically for the study as a research tool to examine immaturity of judgment.[60]

Grisso and colleagues showed that "youths aged fifteen and younger performed more poorly than young adults, with a greater proportion manifesting a level of impairment consistent with that

55. *In re* Welfare of D.D.N., 582 N.W.2d 278, 282 (Minn. Ct. App. 1998) (citing MINN. R. JUV. DEL. PROC. 20.01, subd. 1(B)).

56. Thomas Grisso et al., *Juveniles' Competence to Stand Trial: A Comparison of Adolescents' and Adults' Capacities as Trial Defendants*, 27 LAW & HUM. BEHAVIOR 333, 333-63 (2003).

57. *Id.*

58. *Id.*

59. *See generally* STEVEN K. HOGE ET AL., MACARTHUR COMPETENCE ASSESSMENT TOOL-CRIMINAL ADJUDICATION (MACCAT-CA™). For a description of the MacCAT-CA, see http://www3.parinc.com/products/product.aspx?Productid=MACCAT-CA.

60. Grisso et al., *supra* note 56, at 333-63.

of persons found incompetent to stand trial."[61] The study further suggested that "adolescents also tended more often than young adults to make choices (e.g., about plea agreements) that reflected compliance with authority, as well as influences of psychosocial immaturity."[62] These results make sense when viewed in the context of theories put forth by Piaget and Kohlberg[63] and when considered with the recognition that fifteen-year-olds are still undergoing the complex process of brain development.

While the process of normal brain development itself puts juveniles at risk for behaviors that may be at odds with societal expectations, juveniles with mental illness may be at added risk of running afoul of the legal system. Indeed, a study of 1829 children (1179 boys and 650 girls) in a Chicago detention center demonstrated that nearly 75% of the girls and more than 66% of the boys had one or more psychiatric disorders.[64] The Colorado Supreme Court recognized as early as 1975 that mental illness can play an important role in the juvenile justice system.[65] The court found that when a juvenile is mentally ill and not competent to proceed in trial, the juvenile is protected under Colorado law from having to answer to the charges against him or her.[66] In making this finding, the court concluded that the child need only meet the lesser burden of proof for mental illness rather than the stricter burden required for an insanity defense.[67]

Many jurisdictions have recognized the complexities inherent in working with juveniles suffering from mental illnesses. Wraparound programs in Wisconsin

> provide treatment and service coordination for delinquent and nondelinquent youth with mental health disorders, with the goal of keeping youth in the community and with their families when possible. Using blended funding from the juvenile justice and child welfare systems, Wraparound Milwaukee allows families to select from among an array of services and providers, and

61. *Id.*
62. *Id.*
63. *See supra* Part II.
64. DEP'T OF HEALTH & HUM. SERVS., REPORT OF THE SURGEON GENERAL'S CONFERENCE ON CHILDREN'S MENTAL HEALTH: A NATIONAL ACTION AGENDA (2000), *available at* http://www.surgeongeneral.gov/topics/cmh/childreport.htm.
65. *See generally* Briones v. Juvenile Court for Denver, 534 P.2d 624 (Colo. 1975).
66. *Id.* at 625.
67. *Id.* at 626.

provides "case coordination" to ensure the best use of resources.[68]

Additionally, the creation and use of juvenile mental health courts, such as those in California and Ohio,[69] is a cost-effective means of reestablishing the rehabilitative mandate of a juvenile justice system established over 100 years ago that strove to treat, not punish, youth offenders in our society.[70]

VI. CONCLUSION

The psychological theories put forth by Piaget and Kohlberg, along with an ever-expanding understanding of normal brain maturation and brain development in the context of mental illness, provide a solid foundation for concluding that children and adolescents really are different than adults. Children truly are "works in progress" in terms of their cognitive capacity and moral reasoning. Behaviors resulting in the juvenile coming into contact with the legal system, as well as the juvenile's capacity to function within that system, must be weighed in that context.

68. STEPHEN SMALL ET AL., WHAT WORKS, WISCONSIN: WHAT SCIENCE TELLS US ABOUT COST-EFFECTIVE PROGRAMS FOR JUVENILE DELINQUENCY PREVENTION (2005), *available at* http://www.uwex.edu/ces/flp/families/whatworkswisconsin.pdf (citing Bruce Kamradt, *Wraparound Milwaukee: Aiding Youth with Mental Health Needs*, 7 JUV. JUST. J. 14, 32 (2000)).

69. ELLEN HARRIS & TAMMY SELTZER, JUDGE DAVID L. BAZELON CTR. FOR MENTAL HEALTH LAW, THE ROLE OF SPECIALTY MENTAL HEALTH COURTS IN MEETING THE NEEDS OF JUVENILE OFFENDERS (2004), *available at* http://www.bazelon.org/issues/criminalization/publications/mentalhealthcourt/juvenilemhcourts.htm.

70. *See generally* Patrick Geary, *Juvenile Mental Health Courts and Therapeutic Jurisprudence: Facing the Challenges Posed by Youth with Mental Disabilities in the Juvenile Justice System*, 5 YALE J. HEALTH POL'Y L. & ETHICS 671, 671-72 (2005).

Dynamic Cycles of Cognitive and Brain Development:

Measuring Growth in Mind, Brain, and Education

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Dynamic Cycles of Cognitive and Brain Development: Measuring Growth in Mind, Brain, and Education

Kurt W. Fischer

Most scientists and teachers find it obvious that cognitive development and brain development go together, and the enterprise of connecting mind, brain, and education starts with that assumption, as evident in most chapters of this book. Knowledge of brain development is growing at a phenomenal rate (Coch, Fischer, & Dawson, in press; Dawson & Fischer, 1994), and knowledge of cognitive development and learning is extensive, deep, and still building (e.g., Case, 1998; Fischer & Bidell, 1998; Fischer & Bidell, 2006, in press; Piaget, 1983; Siegler, 1997). Yet understanding of how cognitive and brain development relate has been minimal. Many brain characteristics – number of neurons and synapses, brain mass, myelination, brain activity, and so forth -- change systematically as children grow up. Simultaneously children's actions, speech, concepts, problem solving, social skills, motivation, and emotion develop. All these various changes are globally correlated, but the correlations are not very informative because everything is changing in parallel. Scientists who seek to understand brain-behavior relations and educators who want to use cognitive neuroscience to improve education need ways of finding and analyzing meaningful connections between changes in brain and behavior, moving beyond the finding that characteristics go generally up (some go generally down) with age. Despite these limitations of scientific knowledge, public expectations about relating brain science to educational practice are running far ahead of the realities of scientific knowledge (chapter by Bruer; Fischer, Immordino-Yang, & Waber, 2006).

Meaningful approaches to relating brain and cognitive development are beginning to emerge, however. In one promising arena, the new tools of dynamic systems analysis have combined with the discovery of growth cycles in cognitive and brain development to provide a foundation for moving beyond the difficulties of analyzing brain-behavior relations. Dynamic

systems theory provides tools for analyzing complex patterns of change in individual people, in contrast to traditional tools that focus on analyzing average patterns of change for groups, which smooth out the interesting complexities of individual change (chapter by van Geert & Steenbeck). Research shows that individuals grow in complex patterns, showing not linear change but cycles of jumps and drops (Dawson-Tunik, Commons, Wilson, & Fischer, 2005; Fischer & Bidell, 2006, in press; Molenaar, 2004). These discontinuities and complex patterns provide valuable tools for analyzing development of brain and behavior because scientists can examine relations between the patterns. Evidence is accumulating for cycles of brain growth, cycles of cognitive development, and cycles in learning. All three cycles seem to involve a common process of growth, and one outcome of the research on these growth patterns is the discovery of a general ruler for development and learning that has many uses in educational assessement and practice.

Growth Cycles and Rulers for Brain and Behavior

In living organisms, growth generally occurs through cycles. A prime example is the growth of the cortex, which grows six layers in a cyclical process of neuron generation and migration, as described by Rakic (1971; 1988). A single growth process thus produces six distinct layers in which cells for different layers end up with vastly different functions, even though they are all created by the same process. The process begins as the germinal layer in the embryo's ventricular zone grows new cells in large numbers, and each cell migrates along a ladder created by a glial cell to its destination. The first cells to migrate stop at the first layer of the cortex (dubbed layer six because it is the sixth layer from the top of the cortex, although it is the first one in development of the embryo). After that layer fills up, the cells continue to a higher point to become the second layer, which in turns becomes filled. The next cells then stop at what becomes the third layer, which again becomes filled. This process continues until

the six layers of the cortex are all laid down. In this way one growth process creates cortical layers that end up with very different properties and functions. Within a cortical column, the six layers relate to each other hierarchically, with the lower layers (5 and 6 by conventional numbering) performing more basic functions, such as dealing with basic sensory and motor inputs and outputs, and the higher layers (1 and 2) performing functions that combine, integrate, or differentiate the signals from the lower ones.

Analogous growth cycles seem to occur in brain and cognitive development over time, based on the still young research on growth patterns of brain activity and the more mature evidence on cognitive performance. One of the simplest indexes of the cyclical pattern is that growth occurs with a series of discontinuities – spurts or drops in the simplest case, such as the widely documented spurts in language in the second year (Reznick & Goldfield, 1992). In a study of spontaneous language production in Dutch children Ruhland and van Geert (1998) found that most children showed rapid jumps in performance for specific word categories in the vicinity of 24 months of age, such as the spurt produced by Tomas for use of personal pronouns, shown in Figure 1.

Insert Figure 1 about here.

This spurt at around 24 months comprises one pass through the *growth cycle for cognitive development*, which moves through a series of spurts in performance starting in early infancy and continuing into the 20s (Fischer & Bidell, 2006, in press), as shown for the upper line in Figure 2. Infants, children, adolescents, and young adults all move through periods when their skills are leaping forward at a fast pace, especially under conditions that support optimal performance (upper line). In more ordinary performance, where they are not pushing the limits of their capacity, they commonly show either linear growth or unsystematic change (lower line). The graph presents a summary portrait of the growth patterns for the advanced

abstract skills that develop during adolescence and early adulthood (Fischer, Yan, & Stewart, 2003).

Insert Figure 2 about here.

These complex growth patterns combined with methods from dynamic systems theory provide powerful tools for use in research on brain development and education, because they follow a common scale across domains. Skills in different domains demonstrate discontinuities along the same scale (Dawson-Tunik et al., 2005; Fischer & Bidell, 2006, in press). The results are especially strong and clear for cognitive development and learning, where research has clearly demonstrated a single common scale for skill complexity across diverse contents and with different methods for assessing patterns of change. Cognitive development moves along this scale whatever the domain, just as temperature follows one scale whether the object measured is a sick child, a glacier, a boiling pot of water, a volcano, or the surface of the sun. The complexity scale provides a useful ruler for educational assessments, applying for different domains, for learners and teachers, for tests and curricula (Bidell & Fischer, 1992; Dawson-Tunik & Stein, in press). It has proved useful even for tracking the ups and downs of learning a specific task, which is commonly called microdevelopment (Granott, Fischer, & Parziale, 2002).

Understanding the growth patterns behind the scale requires first addressing a common misconception about development. Most people assume unconsciously that development involves progression along a ladder from one stage to the next. However, children and likewise adults develop not along a ladder but along a web of many strands. The common complexity scale across domains does not mean that development occurs in ladder-like stages. Figure 3 illustrates the web for three domains of development in adolescents and young adults – mathematics, self-in-relationships, and reflective judgment (Fischer et al.,

2003). An individual constructs separate skills for each domain, including several different strands within each. All strands move along the same complexity scale, but the skills in one strand are independent of those in another. Sometimes strands differentiate into new, separate strands, and at other times they combine to form a new integrated strand. For some purposes skills in different domains such as reflective judgment and conceptions of self can be treated as simply separate, but as development proceeds, people often combine strands from different domains, connecting for example conceptions of self as a student with conceptions about how they know that something is true (the bases of knowledge – reflective judgment). In either case, the same complexity scale characterizes development along each strand, even though the strands involve separate skills. The same ruler measures the complexity, but this common ruler does not imply that all the skills are the same, any more than a common temperature reading means that a person with a given temperature contains the same heat energy as a summer day with that temperature.

Insert Figure 3 about here.

The growth cycle of skill construction appears in the web as *clusters of discontinuities* – angles, joinings, and separations of lines within the boxes marking the zones in which three new optimal levels emerge. These clusters capture changes for optimal performance, while ordinary, non-optimal performance takes place at lower points along the strands. That is, the same person in the same domain or strand shows a different developmental level depending on whether he or she is performing at optimal or functional level (as shown in Figure 2). People do not act consistently at one level, even for a familiar domain such as conceptions of self Their skills vary in complexity from minute to minute depending on contextual support, motivation, fatigue, and other factors.

Cycles of Cognitive Development

Cognitive development moves through ten levels between 4 months of age and early adulthood. The levels from childhood to adulthood, which are most relevant for education, are summarized in Table 1. Among the simplest, most compelling evidence for the levels is the spurts and drops in performance that occur for optimal performance at specific ages. Research on arithmetic, self concepts, reflective judgment, moral reasoning, classification, conservation, and many other tasks shows these spurts and drops marking the onset of capacities to build skills at each of the levels.

Insert Table 1 about here.

In a study of concepts for arithmetic operations, adolescents demonstrated spurts under optimal conditions for three levels – single abstractions, abstract mappings, and abstract systems (Fischer, Kenny, & Pipp, 1990). Students between 9 and 20 years of age from diverse schools as well as a university in a mid-Western American city performed a set of arithmetic problems, such as 7 + 7 + 7 = 21, 3 x 7 = 21, 5 + 9 = 14, and 14 - 9 = 5. They then answered questions that required them to explain the operations of addition, subtraction, multiplication, and division, and then the relations between the pairs of operations, such as addition and multiplication, or addition and subtraction. What is multiplication, and how do the problems that were calculated fit the definition of multiplication? How does multiplication relate to addition, and how do the problems involve that relation? Students first did the calculations and offered the explanations under low-support conditions, simply answering the questions on their own. Then they were provided with good, prototypic answers to the questions about the operations (high support), which they were asked to explain in their own terms. At the end of the session they were told that they would return in two weeks to do the problems again, and they should

think about the questions. When they returned, they again did the problems and answered the questions first with low support and then with high support.

Students showed dramatic jumps in performance under optimal conditions at specific ages, as shown in Figure 4 for mappings relating pairs of arithmetic operations. The spurts were especially abrupt in the second session, two weeks after the first one, when students had not only high support but also days to practice and think about the questions. Students were asked to explain the relations between addition and subtraction, addition and multiplication, multiplication and division, and subtraction and division (two versions of each question for a total of eight tasks). When they were simply asked, without any support or practice (Session 1 No Support), they showed very low levels of performance – near zero until age 16 and reaching only 32 percent correct at age 20. However, when they were given support (Session 1 Support), their performance jumped sharply between 15 and 17 years. The opportunity to think about the problems for two weeks led to an even more abrupt spurt, from 6 percent at age 15 to 88 percent at age 16 (Session 2 Support). This study was the first test of a spurt predicted solely from dynamic skill theory without any prior evidence, and Figure 4 shows that the finding was strong and unambiguous.

Insert Figure 4 about here.

Besides the spurt for mappings, the graph also shows another developmental phenomenon with strong educational relevance – *later-level consolidation*: A new kind of skill, such as relations of arithmetic operations or concepts for determining truth, emerges at one level; but it is only consolidated to produce consistent performance at a later level several years later, when the various components can be coordinated and interconnected. In the arithmetic study, the two curves showing spurts both leveled out for a few years after 16 and then spurted again to even better performance at about age 20. Such a second spurt occurs

commonly in cognitive development, reflecting the emergence of the next level, which in this case is abstract systems (Ab3). When a new level emerges, performance jumps above zero, but it typically jumps to much less than perfect performance. For example, with reflective judgment (explaining the bases of knowledge in complex dilemmas), students' performance jumped to only about 50 percent correct with the first emergence of a level (Kitchener, Lynch, Fischer, & Wood, 1993). Only five years later, with emergence of the next level, did performance approach 100 percent.

The series of discontinuities in cognitive growth define a 10-level *developmental scale* – three levels of sensorimotor actions plus the seven levels in Table 1. In addition, a different set of methods have produced independent evidence of the same scale of seven levels in Table 1. Theo Dawson (Dawson & Wilson, 2004; Dawson-Tunik et al., 2005) pioneered this research using Rasch analysis to scale item difficulty in extensive data sets based on interviews, standardized tests, essays, and other written materials. Rasch scaling detected exactly the same seven-level scale in these data sets, demonstrating clustering of items by complexity level and gaps along the complexity scale between the clusters. The clustering holds even for adults, where age is not a factor in the ordering of items.

The successive levels that develop as shown in Table 1 indicate one kind of growth cycle, a recurring cluster of spurts in performance with emergence of each new cognitive level. Analogous to the growth cycle that produces successive layers of cortex through the common process of neuron generation and migration, the cognitive levels build over time based on a common growth process, producing a qualitatively new skill structure at each level.

Within these levels a second kind of growth cycle appears as well – a repetitive pattern of types of coordination of components that groups the levels into what are called *tiers*. This cycle first became evident in research when coders made common errors that mixed up, for

example, a 5-year-old's simple relations of concrete roles with the more abstract relations of a 15-year-old (Fischer & Elmendorf, 1986). Five-year-olds relate roles of mother with child or of doctor with patient, as when they tell stories with standard specific interactions between mother and child. Fifteen-year-olds relate instead broad, abstract roles of mother with child or doctor with patient. They describe the mother and child roles in society, for example, instead of limiting themselves to a specific, prototypical mother-child interaction. This combination of similarity and difference reflects a repetitive cycle of skill levels, a tier.

In general, development moves through at least three repetitive cycles from early infancy to adulthood. In each cycle or tier, a child or adult first controls a single unit of behavior – a single action, representation, or abstraction for the sensorimotor, representational, and abstract tiers, respectively (Fischer, 1980; Fischer & Bidell, 2006, in press). Then the person relates at least two such units to form a mapping of actions, representations, or abstractions. Next the person coordinates at least two mappings to form a system. Finally with the fourth level in a tier, the person integrates at least two systems to form a system of systems, which generates a new kind of unit: Action systems generate single representations. Representational systems generate single abstractions. Abstract systems generate single principles. (There is no evidence to date of emergence of new levels beyond single principles.) Figure 5 illustrates this cycle for the representational and abstract tiers with the metaphor of building blocks, in which the simple blocks for representations eventually create a new kind of more complex building block to begin the capacity to think abstractly. I suspect that growth cycles of this kind are pervasive in cognitive and brain development, and I will propose several cycles for brain development that by hypothesis are related to these cycles of cognitive development.

Insert Figure 5 about here.

Cycles of Cortical Development

Most research on the structure and development of the brain has focused on local, microscopic anatomy and physiology, such as how single neurons and synapses function. For connecting to education, the big picture of how the brain functions and changes with development is more obviously relevant. Although research on the brain system has been relatively sparse, it is growing rapidly, and there are sufficient findings to establish some key facts about brain development and to build initial models of cycles of brain growth (Fischer & Rose, 1994).

The first established fact about brain development – of which many scientists and educators remain unaware – is that the brain and its parts generally grow in spurts, as do other body systems (Blinkov & Glezer, 1968; Fischer & Rose, 1994; Lampl, Veldhuis, & Johnson, 1992; Noonan, Farnum, Leiferman, Lampl, Markel, & Wilsman, 2004; Thatcher, 1994). The smooth growth curves shown on pediatric charts work only for averages of many children. Individual children grow in fits and starts.

These discontinuities are evident in many different measures of brain anatomy and activity, including cortical thickness, synaptic density, cortical electrical activity, and cortical connectivity. One of the simplest characteristics that shows this pattern of spurts and drops is the energy in the electroencephalogram (EEG), which is measured by calculating the area under the curves generated by electrical activity. In a classic study Matousek and Petersén (1973) measured EEG for people between 1 and 21 years of age in Sweden. The relative energy (energy in one frequency band for a cortical region divided by energy in all bands for that region) showed highly systematic growth curves, as shown in Figure 6 for the alpha band measured in the occipital-parietal region. Growth proceeds consistently upward, but there are recurring spurts (marked by the black dots in Figure 6), plateaus, and slight drops, reminiscent

of the growth curves for development of arithmetic, reflective judgment, and other cognitive skills (Figures 1, 2, and 4). (Note that for some frequency bands (notably theta and delta) the growth curves go consistently downward, moving in similar fits and starts. Also, the form of the growth curves varies depending on the cortical region; for example, spurts during adolescence are much stronger in the prefrontal region than in the occipital region, Hudspeth & Pribram, 1992.)

Insert Figure 6 about here.

Remarkably the ages of the spurts for EEG energy correspond closely with the ages for cognitive spurts, as evident in comparisons of Figure 6 and Table 1. The correspondence is so close that it suggests a linkage between the two dynamic growth processes. This finding first inspired the simple form of the *brain growth hypothesis*: that cortical growth spurts reflect the emergence of new skill levels. However, most studies that show these spurts in brain or cognitive development measure only one – brain or cognition – not both, which means that few data exist to test whether the two in fact relate in developing individuals. Fortunately a small number of studies do measure both brain and cognitive development, and they support the brain growth hypothesis (Bell & Fox, 1994; Bell & Fox, 1996; Stauder, 1999; van der Molen & Molenaar, 1994), but clearly more research is required to test the correspondence fully.

These phenomena suggest a simple growth model of correlated successive spurts in cortical activity and cognitive capacity, but they raise questions about the nature of the brain reorganizations with each spurt as well as the relation to the cognitive reorganizations in the growth cycles shown in Figure 5. My colleagues and I have created a model of growth of cortical networks – the network-growth hypothesis – based on existing research, especially the findings of Thatcher (Hanlon, Thatcher, & Cline, 1999; 1992; 1994), Matousek and Petersén (1973), Hudspeth and Pribram (1990, 1992), and Somsen (Somsen, van 't Klooster, van der

Molen, van Leeuwen, & Licht, 1997). Besides EEG energy, the other most important measures from these findings involve EEG coherence, the correlation between electrical wave patterns in two regions. Correlated wave patterns indicate an active connection between two regions. Uncorrelated wave patterns indicate no active connection.

Explanation of the neural-network model requires describing the general layout of cortical areas assessed by EEG and other brain imaging techniques. Figure 7 diagrams the brain viewed from the top, with the nose marking the front of the head and the gray area indicating the prefontal cortex, which plays an especially important role in cortical networks. The regions of the cortex are given standard names listed in the diagram: left and right hemispheres, and within each hemisphere areas called prefrontal (F), central (C), temporal (T), parietal (P), and occipital (O). Neural fibers (axons) connect parts of the cortex even across long distances, such as the frontal-parietal connections marked by the long arrows. Shorter connections are also important in neural networks, such as the prefrontal-temporal connections marked by the shorter arrows as well as connections within a cortical region, such as prefrontal-prefrontal connections (not shown). Evidence indicates that the large majority of active network connections occur within a hemisphere, as indicated by the arrows.

According to the *network-growth hypothesis*, the changes in energy shown in Figure 6 arise from developmental changes in neural networks in the brain, developments that come about through a cyclical process of rewiring and retuning networks. This growth process moves around the cortex systematically in a manner similar to that suggested by Thatcher (Hanlon et al., 1999; 1994) and illustrated in Figure 8 for the cognitive levels Rp3 and Ab1 that emerge at about 6 and 10 years. The prefrontal cortex leads the way, since empirical evidence indicates that the large majority of systematic changes with age in networks involve connections between the prefrontal cortex and other regions. Thatcher's data suggest that growth

dominates in one part of the cortex at a given time, but it undoubtedly occurs less saliently in other places as well. Also, the diagram represents the hypothesized normative pattern, but different people are likely to show different patterns in the growth cycle. Research clearly shows, for instance, differences between males and females (Hanlon et al., 1999).

Insert Figures 7 and 8 about here.

At the top of the diagram, front-back (prefrontal-occipital) connections grow more strongly than other connections as the level of representational systems Rp3 begins to develop. Gradually over several years the leading edge of growth of connections moves around the cortex, starting with the right hemisphere, where it becomes more local over time, tuning shorter connections. Halfway through the cycle, at the bottom of the diagram, the leading edge moves to the prefrontal cortex, as growth of local connections there predominate. Next it moves into the right hemisphere, starting more local and gradually moving toward longer connections until it returns to the longest, frontal-occipital connections. Here it begins the process over again, as the level of single abstractions Ab1 starts to develop. Eventually the cycle repeats, restructuring the network for the capacity of single abstractions, until eventually it completes, and the next level begins, abstract mappings Ab2.

According to the hypothesis, the network cycle corresponds to periods when particular types of learning and developmental changes occur, such as spurts in a major skill. In two studies, Martha Ann Bell has shown exactly such a relation – spurts and drops in coherence for specific cortical regions related to growth of major skills in infancy (Bell, 1998; Bell & Fox, 1996). In her ambitious study of the onset of crawling, infants who were beginning to crawl displayed high coherence connecting frontal, occipital, and parietal regions, especially in the right hemisphere. As the infants became skilled crawlers, coherence dropped. Similarly, in a case study an infant showed high frontal-temporal coherence, especially in the left

hemisphere, as she focused on babbling to produce many syllable-like sounds. The left temporal region plays an important role in language in most older children and adults.

For the minority of people who use the right hemisphere more prominently for language, the growth pattern for coherence should be different, of course. Likewise in general, individual differences in abilities and patterns of learning with age should correspond to cycle differences, based on the network-growth hypothesis. Just as infants who crawl late show a later spurt in frontal-occipital and frontal-parietal coherence, children who develop abstract thinking (Ab1 and beyond) late or learn to read late or suddenly begin to work hard at learning a sport should show parallel changes in growth of coherence in particular regions.

For cognitive development, the cycle that produces cognitive levels is nested within the wider cycle for tiers (Figure 5). Likewise, by hypothesis, the cycle for growth of networks shown in Figure 8 is nested within a larger cycle of growth of energy, coherence, and other brain characteristics that relate to tiers – the *nested network hypothesis*. For example, prefrontal energy seems to surge when a new tier emerges according to the analyses of EEG energy by Hudspeth and Pribram (1990; 1992). Also, the highest spurts in energy move around the cortex systematically, according to the evidence to date. In addition, the oscillation patterns of coherence for specific cortical connections shift in correspondence with the movement into a new cortical-network cycle (Thatcher, 1994). Presumably, as yet unspecified shifts in network connections and other brain properties co-occur with the peak shifts.

According to the nested network hypothesis, the peak energy in specific cortical regions shifts systematically as cortical network cycles change through a tier of levels, as shown in Figure 9. Note that the cortical network cycle is nested inside the peak-energy cycle in the diagram. The peak energy begins in the prefrontal cortex and then gradually moves around the cortex over long age periods as children grow new levels. The model in Figure 9 fits

reasonably with the few data that are available: Growth of peak energy moves gradually from prefrontal to occipital, parietal, central, temporal, and then back to central, parietal, occipital, and prefrontal. A reasonable hypothesis is that the first peaks (right side of the diagram) are concentrated in the right hemisphere, and the later ones in the left hemisphere; but most of the published data do not contain the information for testing this specification. This nested cycle, like the network-growth cycle in Figure 8, presumably also corresponds to particular behavioral patterns, such as focusing on some skill domain or social-emotional issue.

Insert Figure 9 about here

Cycles of Learning: Backwards Growth and Microdevelopment

The skill scale and the dynamic growth patterns that accompany it create several avenues for research on mind, brain, and education. Not only do they make possible research relating cognitive change with brain development, but they also provide a scale for measuring learning, teaching, curriculum, and other cognitive performances and products – a scale that has wide-ranging uses in educational assessment, evaluation, and practice (Dawson-Tunik & Stein, in press; Schwartz & Fischer, 2005). To illustrate this range of uses, I will focus on analysis of classroom learning as microdevelopment – growth of skill in school-related time periods, such as minutes, hours, days, and weeks during which students are supposed to learn.

When analyzed in terms of levels of constructed skill, students' performances show dynamic changes, with lots of increases and drops. These patterns of change reflect a cyclical process of skill construction, in which task characteristics interact with the student's level of expertise in the domain, among other things. The patterns also demonstrate that building of general knowledge (as opposed to learning specific "facts") is slow and hard. Much research shows that the kinds of knowledge taught in many high school and college courses – causes

of the Civil War, the concept of energy in physics, analyzing evidence for evolution, writing a convincing essay – take much longer than a semester or a year to master (Fischer et al., 2003; Salomon & Perkins, 1989).

The skill scale provides a method for measuring performance and learning across all these tasks and in any other domain and thus makes possible the assessment of any performance on a single metric as well as the comparison of performances across domains and tasks on that metric. In research on students learning over several months (middle school science students learning about magnetism, graduate students learning how to use a computer for statistical analysis, etc.) we found that learning occurs in recurring waves or scallops (Granott, 2002; Schwartz & Fischer, 2005; Yan & Fischer, 2002): A student starts with a low level of understanding a task or performance, such as using the computer to do a statistical analysis, and gradually builds up the skill in one situation, moving from actions to representations or from representations to abstractions, as shown in Figure 10. But the understanding collapses because of a change in the situation or for any of a hundred reasons. The student then builds up the understanding again and sustains it briefly, but once more it collapses. This process repeats itself many times as the student learns a new skill or understanding, producing what is called a scalloping pattern in learning.

Insert Figure 10 about here.

The collapses do not indicate difficulties. Instead they are normal and required, reflecting the need to build and rebuild a skill with variations so that the person can eventually sustain it in the face of changes in context and state. Commonly, mastering a task requires moving down to primitive levels of representations of even actions (similar to those of infants) as shown in Figure 10, so that the person can figure out the action characteristics of the task or situation. The human capacity to move down to such elementary levels provides enormous

flexibility for intelligent adaptation, because people can learn new patterns of sensorimotor action required for success in a different kind of task. Moving to a low cognitive level for a new task comprises an essential part of intelligence.

The scalloping pattern only occurs some of the time in learning situations, however. It reflects the midpoint in the learning process, as shown in Figure 11. When students are novices – not familiar or comfortable with tasks that they need to do – their performance is even more variable than that in Figure 10 (Yan & Fischer, 2002). Instead of building to a higher level skill over several activities, any relatively complex skill that they build quickly falls apart. Their performance vacillates up and down chaotically, as in the upper growth curve in Figure 11. As they acquire some knowledge of the task, they move from this chaotic pattern to the intermediate pattern of scalloping (the middle curve in Figure 11 and the curve in Figure 10), where they can sustain a higher level skill for a longer time but are still subject to abrupt, periodic collapse. After working at the task for some time (typically months or even years), they become experts who can sustain a stable, high level performance, as shown in the lower curve in Figure 11. Experts often require an initial period of exploring the task to understand its properties ("figure it out") before reaching a stable level, which leads to a gradual rise in level, as shown in the curve. Also, they occasionally encounter some event that leads to a drop in complexity level, which is typically shortlived.

Insert Figure 11 about here.

In this way, learning involves not monotonic growth to higher levels of understanding but an extended cyclical process, in which a student repeatedly builds and rebuilds a performance. He or she moves from chaotic variation in skill level to repeated, gradual rebuilding of a skill (scalloping) and eventually to a relatively stable level of expertise. This analysis provides one example of how the skill complexity scale can illuminate learning and

other educational activities. Perhaps it will also become possible to analyze brain activity as learning progresses, to ask how changes in brain activity relate to degree of skill and expertise. It is possible that some of the brain growth cycles described earlier will be evident as learning progresses in microdevelopment.

Moving from Growth Cycles to Educational Implications

The research relating cognitive developmental cycles and scaling to educational assessment is but one of many instances in which cognitive science findings contribute straightforwardly to educational research and practice. Connections between the cycles of brain development and education, however, are farther from fruition. Eventually research directly connecting brain growth cycles with patterns of learning will illuminate the processes of learning, especially differences across individuals and contexts. For example, by hypothesis, differences in cortical network cycles relate to differences between children in both motivation to learn and effectiveness of learning in specific domains, such as spatial reasoning, mathematics, and literacy.

At present, however, efforts to link brain development research to education raise serious concerns because of carelessness and excess in "application" (chapter by Bruer, Fischer et al., 2006). Journalists, educators, and even brain scientists too readily leap from a brain research finding to an "implication" for education – which is typically nothing more than seat-of-the-pants speculation. An important case of this kind of excess and its dangers took place in the 1970s and 1980s, when a few scientists uncovered the first evidence of head growth spurts (Epstein, 1974) and then brain activity growth spurts (Fischer & Rose, 1994; John, 1977). Within a few years some scientists and educators were leaping to conclusions wholly unwarranted by the data, such as that students could not learn anything new during plateau periods between brain growth spurts. They recommended to a number of school

districts that curricula be changed to introduce no new concepts during the normative age periods of brain growth plateaus, because no new learning would occur then, they asserted (Epstein, 1978; Fischer & Lazerson, 1984). The cognitive evidence, including data on school performance and learning, never supported this speculation, but a number of school systems in North America took the recommendations seriously because the proponents claimed that they came from brain science. Several of us fought against these specious claims for several years until finally the troublesome efforts faded away.

Another common error has been to leap from evidence of critical periods in brain development – a limited window of time during which a specific experience shapes brain function – to implications about when people can and cannot learn to speak, read, do arithmetic, etc. (Bailey, Bruer, Symons, & Lichtman, 2001; Snow & Hoefnagel-Hohle). These claims too represent illegitimate conclusions that are not supported by careful research evidence.

Researchers and educators in mind, brain, and education need to use normal scientific caution in drawing conclusions for educational practice. That includes refraining from leaps to educational implications from brain research until there is direct evidence assessing learning and performance – evidence that links brain to behavior and behavior in turn to practice. For example, there is great promise that cycles of brain and cognitive growth will illuminate learning and educational practice, providing powerful new tools for analyzing students' learning patterns and differences and optimizing educational interventions. Already the research on cognitive growth cycles is bearing fruit in assessing and comparing learning patterns across domains and individuals as well as relating them to teaching and curriculum. However, the current state of knowledge does not allow direct extrapolation from brain growth cycles to educational practice. Building links among mind, brain, and education requires building

Children's Health Encyclopedia

Cognitive Development

Definition

Cognitive development is the construction of thought processes, including remembering, problem solving, and decision-making, from childhood through adolescence to adulthood.

Asthma
How to prevent and treat an asthma attack

Description

It was once believed that infants lacked the ability to think or form complex ideas and remained without cognition until they learned language. It is now known that babies are aware of their surroundings and interested in exploration from the time they are born. From birth, babies begin to actively learn. They gather, sort, and process information from around them, using the data to develop perception and thinking skills.

Cognitive development refers to how a person perceives, thinks, and gains understanding of his or her world through the interaction of genetic and learned factors. Among the areas of cognitive development are information processing, intelligence, reasoning, language development, and memory.

Historically, the cognitive development of children has been studied in a variety of ways. The oldest is through intelligence tests, such as the widely used Stanford Binet Intelligence Quotient (IQ) test first adopted for use in the United States by psychologist Lewis Terman (1877-1956) in 1916 from a French model pioneered in 1905. IQ scoring is based on the concept of "mental age," according to which the scores of a child of average intelligence match his or her age, while a gifted child's performance is comparable to that of an older child, and a slow learner's scores are similar to those of a younger child. IQ tests are widely used in the United States, but they have come under increasing criticism for defining intelligence too narrowly and for being biased with regard to race and gender.

In contrast to the emphasis placed on a child's native abilities by intelligence testing, learning theory grew out of work by behaviorist researchers such as John Watson (1878-1958) and B. F. Skinner (1904-1990), who argued that children are completely malleable. Learning theory focuses on the role of environmental factors in shaping the intelligence of children, especially on a child's ability to learn by having certain behaviors rewarded and others discouraged.

Piaget's Theory of Cognitive Development

The most well-known and influential theory of cognitive development is that of French psychologist Jean Piaget (1896-1980). Piaget's theory, first published in 1952, grew out of decades of extensive observation of children, including his own, in their natural environments as opposed to the laboratory experiments of the behaviorists. Although Piaget was interested in how children reacted to their environment, he proposed a more active role for them than that suggested by learning theory. He envisioned a child's knowledge as composed of schemas, basic units of knowledge used to organize past experiences and serve as a basis for understanding new ones.

Schemas are continually being modified by two complementary processes that Piaget termed assimilation and accommodation. Assimilation refers to the process of taking in new information by incorporating it into an existing schema. In other words, people assimilate new experiences by relating them to things they already know. On the other hand, accommodation is what happens when the schema itself changes to accommodate new knowledge. According to Piaget, cognitive development involves an ongoing attempt to achieve a balance between assimilation and accommodation that he termed equilibration.

At the center of Piaget's theory is the principle that cognitive development occurs in a series of four distinct, universal stages, each characterized by increasingly sophisticated and abstract levels of thought. These stages always occur in the same order, and each builds on what was learned in the previous stage. They are as follows:

- Sensorimotor stage (infancy): In this period, which has six sub stages, intelligence is demonstrated through motor activity without the use of symbols. Knowledge of the world is limited, but developing, because it is based on physical interactions and experiences. Children acquire object permanence at about seven months of age (memory). Physical development (mobility) allows the child to begin developing new intellectual abilities. Some "symbolic (language) abilities are developed at the end of this stage.
- Pre-operational stage (toddlerhood and early childhood): In this period, which has two sub stages, intelligence is demonstrated through the use of symbols, language use matures, and memory and imagination are developed, but thinking is done in a non-logical, non-reversible manner. Egocentric thinking predominates.
- Concrete operational stage (elementary and early adolescence): In this stage, characterized by seven types of conservation (number, length, liquid, mass, weight, area, and volume), intelligence is demonstrated through logical and systematic manipulation of symbols related to concrete objects. Operational thinking develops (mental actions that are reversible). Egocentric thought diminishes.
- Formal operational stage (adolescence and adulthood): In this stage, intelligence is demonstrated through the logical use of

symbols related to abstract concepts. Early in the period there is a return to egocentric thought. Only 35 percent of high school graduates in industrialized countries obtain formal operations; many people do not think formally during adulthood.

The most significant alternative to the work of Piaget has been the information-processing approach, which uses the computer as a model to provide new insight into how the human mind receives, stores, retrieves, and uses information. Researchers using information-processing theory to study cognitive development in children have focused on areas such as the gradual improvements in children's ability to take in information and focus selectively on certain parts of it and their increasing attention spans and capacity for memory storage. For example, researchers have found that the superior memory skills of older children are due in part to memorization strategies, such as repeating items in order to memorize them or dividing them into categories.

Infancy

As soon as they are born, infants begin learning to use their senses to explore the world around them. Most newborns can focus on and follow moving objects, distinguish the pitch and volume of sound, see all colors and distinguish their hue and brightness, and start anticipating events, such as sucking at the sight of a nipple. By three months old, infants can recognize faces; imitate the facial expressions of others, such as smiling and frowning; and respond to familiar sounds.

At six months of age, babies are just beginning to understand how the world around them works. They imitate sounds, enjoy hearing their own voice, recognize parents, fear strangers, distinguish between animate and inanimate objects, and base distance on the size of an object. They also realize that if they drop an object, they can pick it up again. At four to seven months, babies can recognize their names.

By nine months, infants can imitate gestures and actions, experiment with the physical properties of objects, understand simple words such as "no," and understand that an object still exists even when they cannot see it. They also begin to test parental responses to their behavior, such as throwing food on the floor. They remember the reaction and test the parents again to see if they get the same reaction.

At 12 months of age, babies can follow a fast moving object; can speak two to fours words, including "mama" and "papa"; imitate animal sounds; associate names with objects; develop attachments to objects, such as a toy or blanket; and experience separation anxiety when away from their parents. By 18 months of age, babies are able to understand about 10-50 words; identify body parts; feel a sense of ownership by using the word "my" with certain people or objects; and can follow directions that involve two different tasks, such as picking up toys and putting them in a box.

Toddlerhood

Between 18 months to three years of age, toddlers have reached the "sensorimotor" stage of Piaget's theory of cognitive development that involves rudimentary thought. For instance, they understand the permanence of objects and people, visually follow the displacement of objects, and begin to use instruments and tools. Toddlers start to strive for more independence, which can present challenges to parents concerned for their safety. They also understand discipline and what behavior is appropriate and inappropriate, and they understand the concepts of words like "please" and "thank you."

Two-year-olds should be able to understand 100 to 150 words and start adding about ten new words per day. Toddlers also have a better understanding of emotions, such as love, trust, and fear. They begin to understand some of the ordinary aspects of everyday life, such as shopping for food, telling time, and being read to.

Preschool

Preschoolers, ages three to six, should be at the "preoperational" stage of Piaget's cognitive development theory, meaning they are using their imagery and memory skills. They should be conditioned to learning and memorizing, and their view of the world is normally very self-centered. Preschoolers usually have also developed their social interaction skills, such as playing and cooperating with other children their own age. It is normal for preschoolers to test the limits of their cognitive abilities, and they learn negative concepts and actions, such as talking back to adults, lying, and bullying. Other cognitive development in preschoolers are developing an increased attention span, learning to read, and developing structured routines, such as doing household chores.

School Age

Younger school-age children, six to 12 years old, should be at the "concrete operations" stage of Piaget's cognitive development theory, characterized by the ability to use logical and coherent actions in thinking and solving problems. They understand the concepts of permanence and conservation by learning that volume, weight, and numbers may remain constant despite changes in outward appearance. These children should be able to build on past experiences, using them to explain why some things happen. Their attention span should increase with age, from being able to focus on a task for about 15 minutes at age six to an hour by age nine.

Adolescents, ages 12 through 18, should be at the "formal operations" stage of Piaget's cognitive development theory. It is characterized by an increased independence for thinking through problems and situations. Adolescents should be able to understand pure abstractions, such as philosophy and higher math concepts. During this age, children should be able to learn and apply general information needed to adapt to specific situations. They should also be able to learn specific information and skills necessary for an occupation. A major component of the passage through adolescence is a cognitive transition. Compared to children, adolescents think in ways that are more advanced, more efficient, and generally more complex. This ability can be seen in five ways.

First, during adolescence individuals become better able than children to think about what is possible, instead of limiting their thought to what is real. Whereas children's thinking is oriented to the here and now—that is, to things and events that they can observe directly—adolescents are able to consider what they observe against a backdrop of what is possible; they can think hypothetically.

Second, during the passage into adolescence, individuals become better able to think about abstract ideas. For example, adolescents find it easier than children to comprehend the sorts of higher-order, abstract logic inherent in puns, proverbs, metaphors, and analogies. The adolescent's greater facility with abstract thinking also permits the application of advanced reasoning and logical processes to social and decision-making matters. This is clearly seen in the adolescent's increased facility and interest in thinking about interpersonal relationships, politics, philosophy, religion, and morality.

Third, during adolescence individuals begin thinking more often about the process of thinking itself, or metacognition. As a result, adolescents may display increased introspection and self-consciousness. Although improvements in metacognitive abilities provide

important intellectual advantages, one potentially negative byproduct of these advances is the tendency for adolescents to develop a sort of egocentrism, or intense preoccupation with the self.

A fourth change in cognition is that thinking tends to become multidimensional, rather than limited to a single issue. Whereas children tend to think about things one aspect at a time, adolescents can see things through more complicated lenses. Adolescents describe themselves and others in more differentiated and complicated terms and find it easier to look at problems from multiple perspectives. Being able to understand that people's personalities are not one-sided or that

Cognitive development	
Age	Activity
One month	Watches person when spoken to.
Two months	Smiles at familiar person talking. Begins to follow moving person with eyes.
Four months	Shows interest in bottle, breast, familiar toy, or new surroundings.
Five months	Smiles at own image in mirror. Looks for fallen objects.
Six months	May stick out tongue in imitation. Laughs at peekaboo game. Vocalizes at mirror image. May act shy around strangers.
Seven months	Responds to own name. Tries to establish contact with a person by cough or other noise.
Eight months	Reaches for toys out of reach. Responds to "no."
Nine months	Shows likes and dislikes. May try to prevent face-washing or other activity that is disliked. Shows excitement and interest in foods or toys that are well-liked.
Ten months	Starts to understand some words. Waves bye-bye. Holds out arm or leg for dressing.
Eleven months	Repeats performance that is laughed at. Likes repetitive play. Shows interest in books.
Twelve months	May understand some "where is...?" questions. May kiss on request.
Fifteen months	Asks for objects by pointing. Starting to feed self. Negativism begins.
Eighteen months	Points to familiar objects when asked "where is...?" Mimics familiar adult activities. Know some body parts. Obeys two or three simple orders.
Two years	Names a few familiar objects. Draws with crayons. Obeys found simple orders. Participates in parallel play.
Two-and-a-half years	Names several common objects. Begins to take interest in sex organs. Gives full names. Helps to put things away. Peak of negativism.
Three years	Constantly asks questions. May count to 10. Begins to draw spec objects. Dresses and undresses doll. Participates in cooperative play. Talks about things that have ha ened.
Four years	May make up silly words and stories. Beginning to draw pictures that represent familiar things. Pretends to read and write. May recognize a few common words, such as own name.
Five years	Can recognize and reproduce many shapes, letters, and numbers. Tells long stories. Begins to understand the difference between real events and make-believe ones. Asks meaning of words.
SOURCE: *Miller-Keane Encyclopedia and Dictionary of Medicine, Nursing, and Allied Health*, 5th ed. and Child Development Institute, http://www.childdevelopmentinfo.com.	

social situations can have different interpretations depending on one's point of view permits the adolescent to have far more sophisticated and complicated relationships with other people.

Finally, adolescents are more likely than children to see things as relative, rather than absolute. Children tend to see things in absolute terms—in black and white. Adolescents, in contrast, tend to see things as relative. They are more likely to question others' assertions and less likely to accept facts as absolute truths. This increase in relativism can be particularly exasperating to parents, who may feel that their adolescent children question everything just for the sake of argument. Difficulties often arise, for example, when adolescents begin seeing their parents' values as excessively relative.

Common Problems

Cognitive impairment is the general loss or lack of development of cognitive abilities, particularly autism and learning disabilities. The National Institutes of Mental Health (NIMH) describes learning disabilities as a disorder that affects people's ability to either interpret what they see and hear or to link information from different parts of the brain. These limitations can show up in many ways, such as specific difficulties with spoken and written language, coordination, self control, or attention. Such difficulties extend to schoolwork and can impede learning to read or write or to do math. A child who has a learning disability may have other conditions, such as hearing problems or serious emotional disturbance. However, learning disabilities are not caused by these conditions, nor are they caused by environmental influences such as cultural differences or inappropriate instruction.

Parental Concerns

As of 2004 it is widely accepted that a child's intellectual ability is determined by a combination of heredity and environment. Thus, although a child's genetic inheritance is unchangeable, there are definite ways that parents can enhance their child's intellectual development through environmental factors. They can provide stimulating learning materials and experiences from an early age, read to and talk with their children, and help children explore the world around them. As children mature, parents can both challenge and support the child's talents. Although a supportive environment in early childhood provides a clear advantage for children, it is possible to make up for early losses in cognitive development if a supportive environment is provided at some later period, in contrast to early disruptions in physical development, which are often irreversible.

When to Call the Doctor

If, by age three, a child has problems understanding simple directions or is perplexed when asked to do something simple, the parents or primary caregiver should consult a physician or pediatrician. The child may have a delay in cognitive development. Parents should also consult a healthcare professional if, after age three, their child's cognitive development appears to be significantly slower than their peers.

Resources

Books

Bjorklund, David F. *Children's Thinking: Cognitive Development and Individual Differences*. Stamford, CT: Wadsworth Publishing, 2004.

Pica, Rae. *Your Active Child: How to Boost Physical, Emotional, and Cognitive Development Through Age-Appropriate Activity*. New York: McGraw-Hill, 2003.

Thornton, Stephanie. *Growing Minds: An Introduction to Children's Cognitive Development*. New York: Palgrave Macmillan, 2003.

Wadsworth, Barry J. *Piaget's Theory of Cognitive and Affective Development: Foundations of Constructivism*, 5th ed. Upper Saddle River, NJ: Allyn & Bacon, 2003.

Periodicals

Blumberg, Fran C., and Lori M. Sokol. "Boys' and Girls' Use of Cognitive Strategy when Learning to Play Video Games." *The Journal of General Psychology* (April 2004): 151-58.

Dahl, Ronald. "Risk-Taking and Thrill-Seeking." *Behavioral Healthcare Tomorrow* (June 2004): SS6-SS7.

Li, Xiaoming, and Melissa S. Atkins. "Early Childhood Computer Experience and Cognitive and Motor Development." *Pediatrics* (June 2004): 1715-22.

Thurber, Christopher A. "I Am, Therefore, I Think: Explanations of Cognitive Development." *Camping Magazine* (July-August 2003): 36-41.

Wacharasin, Chintana, et al. "Factors Affecting Toddler Cognitive Development in Low-Income Families: Implications for Practitioners." *Infants & Young Children* (April-June 2003): 175-81.

Zinner, Susan. "The Role of Cognitive Development in Pediatric Medical Decision-Making." *Global Virtue Ethics Review* (January 2004): N/A.

Organizations

Cognitive Development Society. University of North Carolina, PO 3270, Chapel Hill, NC 27599. Web site: www.cogdevsoc.org.

National Academy of Child & Adolescent Psychiatry. 3615 Wisconsin Ave. NW, Washington, DC 20016. Web site: www.aacap.org.

Web Sites

Developmental Psychology: Cognitive Development, 2004. Available online at www.psy.pdx.edu/PsiCafe/Areas/Developmental/CogDev-Child/index.htm (accessed November 9, 2004).

Piaget's Theory of Cognitive Development, 2003. Available online at (accessed November 9, 2004).

[Article by: Ken R. Wells]

cognitive developmer Find

Answers.

Sports Science and Medicine: cognitive development

Development of the thought processes by which knowledge is acquired including perce[illegible] intuition, and reasoning. Compare physical development.

Science Dictionary: cognitive development
(kŏg'nĭ-tĭv)

The growth of a person's ability to learn.

Wikipedia: Theory of cognitive development

The **Theory of Cognitive Development**, one of the most historically influential theories was developed by Jean Piaget, a Swiss psychologist (1896-1980). His theory provided many central concepts in the field of developmental psychology and concerned the growth of intelligence, which for Piaget, meant the ability to more accurately represent the world and perform logical operations on representations of concepts grounded in the world. The theory concerns the emergence and acquisition of schemata - schemes of how one perceives the world - in "developmental stages", times when children are acquiring new ways of mentally representing information. The theory is considered "constructivist", meaning that, unlike nativis' theories (which describe cognitive development as the unfolding of innate knowledge and abilities) or empiricist theories (which describe cognitive development as the gradual acquisition of knowledge through experience), it asserts that we construct our cognitive abilities through self-motivated action in the world. For his development of the theory, Piaget was awarded the Erasmus Prize. Piaget divided schemes that children use to understand the world through four main periods, roughly correlated with and becoming increasingly sophisticated with age

- Sensorimotor period (years 0-2)
- Preoperational period (years 2-7)
- Concrete operational period (years 7-11)
- Formal operational period (years 11-adulthood)

Sensorimotor period

According to Piaget, this child is in the *sensorimotor period* and primarily explores the world with senses rather than through mental operations.

Infants are born with a set of congenital reflexes, according to Piaget, in addition to a drive to explore their world. Their initial schemas are formed through differentiation of the congenital reflexes

The ***sensorimotor period*** is the first of the four periods. According to Piaget, this stage marks the development of essential spatial abilities and understanding of the world in six sub-stages:

- The first sub-stage, known as *the reflex schema* stage, occurs from birth to six weeks and is associated primarily with the development of reflexes. Three primary reflexes are described by Piaget: sucking of objects in the mouth, following moving or interesting objects with the eyes, and closing of the hand when an object makes contact with the palm (palmar grasp). Over these first six weeks of life, these reflexes begin to become voluntary actions; for example, the palmar reflex becomes intentional grasping. (Gruber and Vaneche, 1977).
- The second sub-stage, *primary circular reaction phase*, occurs from six weeks to four months and is associated primarily with the development of habits. Primary circular reactions or repeating of an action involving only one's own body begin. An example of this type of reaction would involve something like an infant repeating the motion of passing their hand before their face. The schema developed during this stage inform the infant about the relationships among his body parts (e.g., in passing the hand in front of his eyes he develops a motor schema for moving his arm so that the hand becomes visible.) Also at this phase, passive reactions, [illegible]caused by classical or operant conditioning, can begin (Gruber et al., 1977).
- The third sub-stage, the *secondary circular reactions phase*, occurs from four to nine months and is associated primarily with the development of coordination between vision and prehension. Three new abilities occur at this stage: intentional grasping for a desired object, secondary circular reactions, and differentiations between ends and means. At this stage, infants will intentionally grasp the air in the direction of a desired object, often to the amusement of friends, family, younger and older siblings, grandparents, etc. Secondary circular reactions, or the repetition of an action involving an external object begin, for example, moving a switch to turn on a light repeatedly. The differentiation between means also occurs. This is perhaps one of the most important stages of a child's growth as it signifies the dawn of logic (Gruber et al., 1977). However, babies still only have a very early rudimentary grasp of this and most of their discoveries have an "accidental" quality to them in that the initial performance of what will soon become a secondary circular reaction occurs by chance; but then operant conditioning causes the initial "accidental" behavior (which was followed by an interesting pattern of stimulation) to be repeated. And the ability to repeat the act is the result of primary circular reactions established in the previous stage. For example, when the infant's hand accidentally makes contact with an object he is looking at the infant receives both visual and tactile feedback about the object; and his subsequent ability to bring his hand into contact with other objects in his field of vision is based on the primary circular reaction of bringing his hand into his field of vision. Thus the child learns (at the level of schemata) that "if he can see it then he can also touch it" and this results in a schema which is the knowledge that his external environment is populated with solid objects.
- The fourth sub-stage, called *the coordination of secondary circular reactions stage*, which occurs from nine to twelve months, is when Piaget (1954) thought that object permanence developed. In addition, the stage is called the co-ordination of secondary circular reactions stage, and is associated primarily with the development of logic and the coordination between means and ends. This is an extremely important stage of development, holding what Piaget calls the "first proper intelligence." This stage marks the beginning of goal orientation or intentionality, the deliberate planning of steps to meet an objective (Gruber et al., 1977).
- The fifth sub-stage, *the tertiary circular reactions phase*, occurs from twelve to eighteen months and is associated primarily with the discovery of new means to meet goals. Piaget describes the child at this juncture as the "young scientist," conducting pseudo-experiments to discover new methods of meeting challenges (Gruber et al., 1977).
- The sixth sub-stage, considered "beginnings of symbolic representation", is associated primarily with the beginnings of insight, or true creativity. In this stage the trial-and-error application of schemata, which was observable during the previous stage, occurs internally (at the level of schemata rather than of motor responses), resulting in the sudden appearance of new effective behaviors (without any observable trial-and-error.) This is also the time when symbols (words and images) begin to stand for other objects. This marks the passage into the preoperational stage.

The role of imitation

Piaget postulated that imitative activity is the forerunner of mental symbolism.[1] Bodily activity, imitating the action of perceived phenomena, actually builds bodily/behavioral signifiers that stand for phenomena in a comparable way to that by which mental symbols will later stand for these phenomena. Such imitative formations provide the basis upon which mental symbolic activity can later build. The symbol is, according to Piaget, an internalized imitation.

For Piaget, even perception of an object is an imitative activity, the eye tracing the shape of an object is forming a pre-symbolic concept of the object. Piaget suggests that the motions experienced here may be repeated by the child in an abbreviated fashion when recalling the object; this bodily image symbolizes the object that was perceived earlier.[2]

1. ^ Ginsburg and Opper, *Piaget's Theory of Intellectual Development*, ISBN 0-13-675140-7, p. 71

2. ^ Ibid., pp. 72-75

Preoperational stage

The Preoperational stage is the second of four stages of cognitive development. By observing sequences of play, Piaget was able to demonstrate that towards the end of the second year a qualitatively new kind of psychological functioning occurs. **(Pre)Operatory Thought** in Piagetian theory is any procedure for mentally acting on objects. The hallmark of the preoperational stage is sparse and logically inadequate mental operations.

According to Piaget, the **Pre-Operational stage** of development follows the **Sensorimotor stage** and occurs between 2-7 years of age. It includes the following processes:

Symbolic functioning—characterized by the use of mental symbols, words, or pictures, which the child uses to represent something which is not physically present.

Centration—characterized by a child focusing or attending to only one aspect of a stimulus or situation. For example, in pouring a quantity of liquid from a narrow beaker into a shallow dish, a preschool child might judge the quantity of liquid to have decreased, because it is "lower"—that is, the child attends to the height of the water, but not to the compensating increase in the diameter of the container.

Intuitive thought—occurs when the child is able to believe in something without knowing why he or she believes it.

Egocentrism—a version of centration, this denotes a tendency of a child to only think from her or his own point of view. Also, the inability of a child to take the point of view of others. Example, if a child is in trouble, he or she might cover her eyes thinking if I cannot see myself my mom cannot either.

Inability to Conserve—Through Piaget's conservation experiments (conservation of mass, volume and number) Piaget concluded that children in the preoperational stage lack perception of conservation of mass, volume, and number after the original form has changed. For example, a child in this phase will believe that a string of beads set up in a "O-O-O-O" pattern will have a larger number of beads than a string which has a "OOOO" pattern, because the latter pattern has less space in between Os, or that a tall, thin 8-ounce cup has more liquid in it than a wide, short 8-ounce cup (see also centration, above).

Animism The child believes that inanimate objects have "lifelike" qualities and are capable of action. Example: a child plays with a doll and treats it like a real person. In a way this is like using their imagination.

Concrete operational stage

The **Concrete operational stage** is the third of four stages of cognitive development in Piaget's theory. This stage, which follows the **Preoperational stage**, occurs between the ages of 7 and 11 years and is characterized by the appropriate use of logic. Important processes during this stage are:

Seriation—the ability to arrange objects in an order according to size, shape, or any other characteristic. For example, if given different-shaded objects they may make a colour gradient.

Classification—the ability to name and identify sets of objects according to appearance, size or other characteristic, including the idea that one set of objects can include another. A child is no longer subject to the illogical limitations of animism (the belief that all objects are alive and therefore have feelings).

Decentering—where the child takes into account multiple aspects of a problem to solve it. For example, the child will no longer perceive an exceptionally wide but short cup to contain less than a normally-wide, taller cup.

Reversibility—where the child understands that numbers or objects can be changed, then returned to their original state. For this reason, a child will be able to rapidly determine that if 4+4 equals 8, 8−4 will equal 4, the original quantity.

Conservation—understanding that quantity, length or number of items is unrelated to the arrangement or appearance of the object or items. For instance, when a child is presented with two equally-sized, full cups they will be able to discern that if water is transferred to a pitcher it will conserve the quantity and be equal to the other filled cup.

Elimination of Egocentrism—the ability to view things from another's perspective (even if they think incorrectly). For instance, show a child a comic in which Jane puts a doll under a box, leaves the room, and then Yoquinta moves the doll to a drawer, and Jane comes back. A child in the concrete operations stage will say that Jane will still think it's under the box even though the child knows it is in the drawer.

Formal operational stage

The formal operational period is the fourth and final of the periods of cognitive development in Piaget's theory. This stage, which follows the Concrete Operational stage, commences at around 11 years of age (puberty) and continues into adulthood. It is characterized by acquisition of the ability to think abstractly, reason logically and draw conclusions from the information available. During this stage the young adult is able to understand such things as love, "shades of gray", logical proofs, and values. Lucidly biological factors may be traced to this stage as it occurs during puberty (the time at which another period of neural pruning occurs), marking the entry to adulthood in Physiology, cognition, moral judgement (Kohlberg), Psychosexual development (Freud), and social development (Erikson). Some two thirds of people do not develop this form of reasoning fully enough that it becomes their normal mode for cognition, and so they remain, even as adults, concrete operational thinkers.[*]

General information regarding the stages

These four stages have been found to have the following characteristics:

- Although the timing may vary, the sequence of the stages does not.
- Universal (not culturally specific)
- Generalizable: the representational and logical operations available to the child should extend to all kinds of concepts and content knowledge
- Stages are logically organized wholes
- Hierarchical nature of stage sequences (each successive stage incorporates elements of previous stages, but is more differentiated and integrated)
- Stages represent qualitative differences in modes of thinking, not merely quantitative differences

Challenges to Piagetian stage theory

Piagetians accounts of development have been challenged on several grounds. First, as Piaget himself noted, development does not always progress in the smooth manner his theory seems to predict. Decalage, or unpredicted gaps in the developmental progression, suggest that the stage model is at best a useful approximation. More broadly, Piaget's theory is 'domain general', predicting that cognitive maturation occurs concurrently across different domains of knowledge (such as mathematics, logic, understanding of physics, of language, etc). However, more recent cognitive developmentalists have been much influenced by trends in cognitive science away from domain generality and towards domain specificity or modularity of mind, under which different cognitive faculties may be largely independent of one another and thus develop according to quite different time-tables. In this vein, many current cognitive developmentalists argue that rather than being domain general learners, children come equipped with domain specific theories, sometimes referred to as 'core knowledge', which allows them to break into learning within that domain. For example, even young infants appear to understand some basic principles of physics (e.g. that one object cannot pass through another) and human intentionality (e.g. that a hand repeatedly reaching for an object has that object, not just a particular path of motion, as its goal). These basic assumptions may be the building block out of which more elaborate knowledge is constructed.

Post Piagetian and Neo-Piagetian stages

There are three major changes to the number of stages and their definitions. First and foremost, the half stages are now shown to be stages. Pascual Leone discovered this. Almost all Post Piagetians accept this. Second, postformal stages have been shown to exist. Kurt Fischer suggested two, Michael Commons presents evidence for four postformal stages: the systematic, metasystematic, paradigmatic and cross paradigmatic. Fischer has considered a stage suggested by Biggs and Biggs. It is a stage before the early preoperational. Commons and Richards call this stage the sentential because organisms can sequence representations of concepts.

Piagetian and post-Piagetian stage theories/heuristics

- Michael Barnes' stages of religious and scientific thinking
- Michael Lamport Commons' Model of Hierarchical Complexity
- Kieran Egan's stages of understanding
- James W. Fowler's stages of faith development
- Suzy Gablik's stages of art history
- Christopher Hallpike's stages of moral understanding
- Lawrence Kohlberg's stages of moral development
- Don Lepan's theory of the origins of modern thought and drama
- Charles Raddings theory of the medieval intellectual development
- R.J. Robinson's stages of history and theory of the origins of intelligence

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Human development: biological - psychological

Stages Infancy • Childhood • Adolescence • Adulthood • Early adulthood • Middle adulthood • Late adulthood

Development Child development • Youth development • Ageing & Senescence

Theorists-theories John Bowlby attachment • Jean Piaget cognitive • Lawrence Kohlberg moral • Sigmund Freud psychosexual • Erik Erikson psychosocial

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Why Teens Are Such Impulsive Risk-takers

ScienceDaily (Nov. 8, 2007) — Teenagers and adults often don't see eye to eye, and new brain research is now shedding light on some of the reasons why. Although adolescence is often characterized by increased independence and a desire for knowledge and exploration, it also is a time when brain changes can result in high-risk behaviors, addiction vulnerability, and mental illness, as different parts of the brain mature at different rates.

Recent imaging studies in humans show that brain development and connectivity are not complete until the late teens or early twenties. Combining these observations with those of experimental research, it is becoming clear that the status of both inhibitory and excitatory brain chemical systems, and connectivity between brain regions, is unique in teenagers. The teenage brain is significantly different from both the young child and the fully mature adult. In other words, the teenage brain is not just an adult brain with fewer miles on it!

The teenage brain may be more responsive to environmental stimuli and, although this may facilitate learning rates, it may also make this group more susceptible to negative stimuli, such as stress and substances of abuse and addiction. The research presented here highlights some important new advances in understanding the unique status of the teen brain.

In new research, animals exposed to either restraint stress or social isolation during puberty did not grow as fast as their unstressed counterparts and gained the least weight during adolescence, suggesting that these two kinds of stressors add up to worsen the overall effects of stress, says Russell Romeo, PhD, of Rockefeller University in New York, now at Barnard College, also in New York.

Using a behavioral test that measures how long it takes animals to give up in an aversive situation, Romeo found that animals that experienced stress during adolescence struggled less and gave up faster, suggesting that they were experiencing greater depressive-like learned helplessness behavior. Similar to the growth rates, animals experiencing both stressors exhibited the greatest level of depressive-like behavior.

Finally, measurements of corticosterone, a stress hormone, in the blood showed that animals exposed to stress during puberty had higher levels in adulthood. "We believe that stress during puberty, and not just long periods of stress, is what leads to these changes in depressive behaviors and physiological measures, as animals that were exposed to the same amount of stress, but after puberty, showed none of these changes," Romeo says.

Many studies of adolescent boys and girls show that exposure to stress during puberty may contribute to an individual's vulnerability to depression. In an effort to model how adolescent stress exposure affects neurobehavioral function in animals, Romeo and his colleagues investigated whether physical or psychological stressors experienced during puberty-for example, one hour of restraint stress every other day or social isolation-influence growth, depressive-like behaviors, and levels of stress hormones in adulthood.

Humans suffering from typical depression have three main symptoms: weight loss, feelings of learned helplessness, and elevated levels of stress hormones. Romeo's studies in rats provide evidence that these symptoms of depression can be replicated in an animal model. They also provide a way to study stress-induced behavioral changes duri .g adolescence and may help in the development of treatments or interventions to either prevent or reverse these behavioral and physiological problems.

Scientists also are researching how the developing brain responds differently to drugs of abuse such as stimulants and examining the periods during which adolescents are most vulnerable to addiction. Research shows that the teenage brain may be particularly vulnerable to the negative effects of drugs, including increased susceptibility to addiction later in life and emotional and behavioral difficulties, which could persist and become a lifelong disability.

A new study reveals that, with repeated binges, the drug ecstasy's effect on social behavior grows more pronounced and lasts well beyond the active effects of the drug, says Jean Di Pirro, PhD, of Buffalo State College in New York. Moreover, repeated ecstasy binges cause long-term changes in body temperature regulation and levels of the brain chemicals serotonin and oxytocin. These results also suggest that binge use of ecstasy may not produce the increase in social behavior typically described by users. Reduced social contact and altered sensory experiences, such as reduced pain sensitivity, during adolescence may have serious implications for the development of normal adult social behavior and mental health.

"Animal models show unequivocally that ecstasy produces changes in the brain, like neurotoxicity of serotonin neurons, and behavior such as increased soc al avoidance that far outlast the immediate effects of the drug," Di Pirro says.

In other research, scientists have found that adolescents maintain drug-related associations longer than adults, leading to a greater likelihood of relapse. Once adolescent animals learn to prefer environments previously paired with cocaine, they require 75 percent more time to lose these preferences compared with adults. These data suggest that during adolescence, drug exposure will lead to addiction that will be more difficult to treat by abstinence, says Heather Brenhouse, PhD, and her colleague S. L. Anderson, PhD, of Harvard Medical School and McLean Hospital in Belmont, Mass.

Adolescents also will resume drug-seeking behavior more strongly than adults when exposed to a small reminder dose of cocaine. Based on the adolescent's greater propensity to form strong associations with rewarding stimuli, Brenhouse says, "extended treatment that involves substitution for different rewards, such as exercise or music, may be a more appropriate approach than adult-based rehabilitation of abstinence."

"To our knowledge, this information provides the first preclinical evidence that during adolescence, drug exposure produces stronger memories for drug-paired cues and contexts than in adults. Furthermore, adolescents are more susceptible to relapse after less initial drug exposure," says Brenhouse.

In the same manner that Pavlov's famous dogs salivated in response to the sound of a bell, an addict will perform drug-seeking behaviors when he or she encounters cues previously paired with drug use. Normally, the ability to associate cues in the environment with pleasurable feelings ensures the survival of an infant, through childhood and beyond. During adolescence, however, the need arises to make one's own decisions about what associations are important and worth remembering. Drugs of abuse pose an unnaturally high degree of stimulation to the reward system and may lock in a memory for its associated cues at the expense of other information.

"Adolescents therefore appear to hold stronger memories for these rewarding events, which may make extinction treatment more difficult and relapse more probable," Brenhouse says.

"By understanding these processes during adolescence, we can identify unique targets for treatment and prevention of drug abuse and addiction during this critical stage of development," says Brenhouse. "We believe that adolescents are more predisposed to process and store reward-related information differently, and therefore will require different addiction treatment strategies than adults."

In other research, a new study shows an increase in the prevalence of frequent cannabis use among youngsters accompanied by a decrease in age of first use. Use starts at a younger age and more potent forms of the drug are now available, says Gerry Jager, PhD, of the Rudolf Magnus Institute of Neuroscience at the University Medical Center Utrecht, in the Netherlands.

Jager and her colleagues studied the consequences of frequent cannabis use during adolescence for memory, learning, and brain development, using functional magnetic resonance imaging (fMRI).

Several studies indicate that the severity of cannabis use on mental health and cognition is highly dependent on the age when cannabis use begins. The reason for this could be that 1) those who begin cannabis use early in adolescence are more likely to become heavily dependent; or that 2) the brain is still maturing and is vulnerable to persistent alterations in brain function. Thus, the effects of frequent cannabis use during adolescence could be more serious than during adulthood.

In an fMRI study, Jager's lab examined 10 boys, aged 15 to 18 years, who were regular cannabis users, with use varying from once a week up to daily, for about two years. They were compared with nine non-using peers, matched for age, IQ scores, and alcohol use. All participants had to abstain from cannabis and alcohol for at least one week prior to testing to avoid any lingering effects of the drug. This was checked by testing urine samples for the presence of drug metabolites.

Subjects performed a memory task in an fMRI scanner, which showed that all subjects activated brain areas, including parts of the frontal and temporal lobes, that are well-known for their involvement in memory and in learning, says Jager.

The cannabis users activated the same brain regions as their non-using peers and performed the task equally well. However, the adolescent cannabis users displayed higher levels of activity than the controls. With task performance being normal, this could indicate that the brain has to work harder to maintain normal performance. It is unlikely that this effect is due to any lingering pharmacological effect of cannabis, as all of the adolescents were abstinent from cannabis for at least one week prior to scanning. Nevertheless, it remains to be seen whether the increased brain activity persists after more prolonged periods of abstinence.

Other research shows that the brain systems involved in reward processing are not yet fully developed in children and adolescents and that adolescents tend to behave in a more risky and impulsive manner than adults and children, says Jessica Cohen, MA, at the University of California, Los Angeles.

Moreover, adolescents tend to be more sensitive to the differences between various amounts of reward than children are, reinforcing the finding that neural areas sensitive to rewards are more fully developed in adolescents than in children. "This may help explain why adolescents tend to engage in risky activities that may result in immediate rewards more often than children," Cohen says.

The findings come from an fMRI study involving 26 participants ranging in age from 10 to 19 years old.

The group of children ranged from 10 to 12 years old, and the group of adolescents ranged from 14 to 19 years old. All participants played a computer game while pictures were taken of their brains in an fMRI machine.

All participants displayed activity in areas in the brain called the amygdala, ventral striatum, and medial prefrontal cortex on trials when they received rewards, as compared with those when they did not. Each of those areas has been associated in previous studies with increased activity when people are rewarded. Behaviorally, adolescents were more sensitive to different reward values than children were, as demonstrated by changes in the speed of responding to stimuli associated with different rewards in adolescents but not in children. Correlations with age were conducted with the neural data to determine if there were areas of the brain that portrayed the noted increased behavioral sensitivity to reward in adolescents.

An interesting relationship was observed in the striatum, an area associated with learning and receipt of reward. Some subregions within the striatum showed age-related changes in response to greater rewards and others to smaller rewards. "These results imply that the striatum may aid reward-related learning by increasing the sensitivity to both positive and negative differences in reward value, not only by increasing sensitivity to more rewarding stimuli," says Cohen.

"Armed with the knowledge that adolescents are more sensitive to reward than younger children, yet realizing, based on previous studies, that their neural regions involved in self-control are not fully developed," says Cohen, "may help clinicians understand why adolescents engage in potentially detrimental yet appealing risky behavior, such as substance abuse, and how better to teach and encourage more adaptive behavior."

In summary, research is just beginning to shed light on how previous assumptions about the teen may be incorrect. At this time, the teenage demographic is the largest worldwide, and this population has unique educational, social, and emotional needs. Consideration of the effects of substance abuse and stress needs to take into account the possible greater consequences in the teen compared to the adult.

Much research on early brain development has translated to the field of early education, and that on the aging brain is having a major impact on developing therapeutic strategies for disorders such as dementia. However, the unique features of the teenage brain are only recently being recognized and will likely have major implications for educational and medical approaches to those in this age group.

Adapted from materials provided by Society for Neuroscience.

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Psychologist Explains Teens' Risky Decision-making Behavior

ScienceDaily (May 31, 2007) — Meg Gerrard will be the first to admit that unraveling the adolescent mind is not an easy thing. Like most parents, she's even asked her teen daughters, "What were you thinking?" after one of them was caught in a risky behavior.

But now it's Gerrard -- an Iowa State University psychology professor -- who has tried to answer that question scientifically through analysis of research from the last 12 years on adolescent risk-taking. She was invited by the Association of Psychological Science to deliver a presentation titled "A Dual Process Approach to Adolescent Decision-Making: Applications to Cancer Risk and Prevention" at its annual convention last week in Washington, D.C.

Her analysis included research she conducted with ISU colleagues on more than 10,000 youths from across the country regarding such things as smoking, use of alcohol and/or drugs, or practicing unsafe sex. She's found that one of the biggest reasons teens are so hard to figure out is because there is an impulsive element to their behavior.

"There's actually been a series of studies we've done over the last 10 or 12 years designed specifically to ask questions about what's going through their heads, or what's not going through their heads as they're making these decisions," she said. "And what's not going through their heads is a big part of the story.

"What's novel about this research is that we've demonstrated that quite a bit of adolescent decision-making is not reasoned on -- on any level," she said. "It's not because it's motivated behavior, or they've thought about how much they want to do it. It's because they just do it."

Her presentation detailed two ways humans process information to make decisions -- a more reasoned path that leads to intention to engage in a behavior; or a more intuitive path that leads to an openness or willingness to engage in a behavior. These two modes are always active in everybody, but a situation may lead an adolescent in one direction or another. Some people are more prone to operate in a more reasoned fashion, while others are more impulsive.

According to Gerrard, prior research on adolescent risk-taking behavior has treated teens like adults and assumed that they make reasoned decisions that lead to intentions to engage in specific behaviors. But she's found that their decisions are often not planned or even premeditated. Instead, they're reactive to "risk-conducive" circumstances that usually involve friends and peers.

"Parents ask kids, 'What were you thinking?' and they say, 'I don't know.' And they really don't know what they were thinking," she said.

Gerrard said that the initial risk-taking experience will influence an adolescent's intention to repeat the behavior in the future. They do consult their conscience over risk-taking, but not always in a classic

"good vs. evil" way.

"From a kid's perspective, if you're operating in this more reasoned, thoughtful [experienced] mode -- then you have the proverbial devil and the angel over your shoulder," she said. "If you're operating in the more experiential [impulsive] mode, you don't even know the angel is there. Those things are not in your mind at all, and the devil's only saying, 'This could be interesting.'"

But the research indicates it's not just the devil that made them do it. When it comes to the impulsive mode, image is everything -- specifically distinct social images of the kind of person who engages in specific risk behaviors.

The good news, according to Gerrard, is that those images can be easily shaped so parents can steer their kids from future risky decisions.

"Kids have these images or prototypes in their heads of what kind of kid does this," she said. "There's a lot of agreement about these prototypes. They're formed very early -- we have evidence that they're formed when kids are 7 to 8 years old -- and it's not that difficult to change them. Oftentimes kids who are not willing to engage in a risk behavior are not willing because they don't have a favorable prototype [of someone engaging in that risk behavior]."

But Gerrard's study suggests that parents should really use two approaches when trying to keep kids from adopting risk behaviors.

"What I think most parents and most prevention programs try and do is get kids to think about the potential negative consequences before they engage in a behavior. That's good, but it's not enough," she said. "It needs reinforcement and you need to change how they think about people who exhibit those risky behaviors."

Gerrard hopes to change the way people think about teen risk-taking behavior through her research.

Adapted from materials provided by Iowa State University, via Newswise.

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Iowa State University (2007, May 31). Psychologist Explains Teens' Risky Decision-making Behavior. *ScienceDaily*. Retrieved February 28, 2008, from http://www.sciencedaily.com /releases/2007/05/070531093830.htm

ISSUE BRIEF 1

MACARTHUR FOUNDATION RESEARCH NETWORK ON Adolescent Development and Juvenile Justice

Adolescent Legal Competence in Court

One of the pillars of the American justice system is the assurance that those who stand accused of crimes be mentally competent to understand and participate in their trials. The conventional standard for competence has typically focused on the effects of mental illness or mental retardation on individuals' capacities to grasp the nature of their trials or their abilities to decide how to plead. Yet as the courts, both juvenile and adult, see increasingly younger defendants some argue that the law should also take into account adolescents' lesser capacities owing to emotional and psychological immaturity.

This brief details findings from the first comprehensive assessment of juvenile capacities to participate in criminal proceedings using measures of both trial-related abilities and developmental maturity. The MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice compared the responses of youth and adults in a series of hypothetical legal situations, such as plea bargains, police interrogations, and attorney-client interactions. Responses revealed the degree to which participants understood the long-term consequences of their decisions, their ability to weigh risks, and other factors related to developmental and cognitive maturity. Findings show that a significant portion of youth, especially under age 15, are likely unable to participate competently in their own trials, either in an adult or juvenile court, owing to developmental immaturity.

It is important to note that our study examined only youths' competence to stand trial, not their criminal blameworthiness (i.e., whether someone should be held fully responsible for an offense). These are two separate issues. For example, a young inexperienced driver who accidentally skidded off the road and killed another person might be competent to stand trial for the wrongful death of another, but could be judged less than fully responsible for the death because it was accidental. Whether youths of a certain age have abilities suggesting competence or incompetence to stand trial does not tell us whether youths of that age should or should not be held as responsible as adults for their offenses.

Young Adolescents More Likely to Lack Capacities for Trial

Network researchers interviewed 1,400 individuals aged 11–24 both in juvenile detention centers and in the community at large to determine whether teens differed from young adults (aged 18–24) in their abilities relevant for competence to stand trial. Youth were interviewed in Philadelphia, Los Angeles, northern Florida, and Virginia.

Using a standard assessment tool, the study first gauged the functional abilities defined in the existing legal concept of *competence to proceed*—the ability to understand the purpose and nature of the trial process; the capacity to provide relevant information to counsel and to process that information; and the ability to apply information to one's own situation in a manner that is neither distorted nor irrational.[1] This standard is regularly applied in adult courts with mentally impaired individuals.

Findings from the assessment showed that age matters. Those aged 11–13 performed significantly worse than 14–15 year olds, who performed significantly worse than 16–17 year olds and 18–24 year olds (adults).[2] Interestingly, the performance of 16–17 year olds did not differ from that of the young adults (aged 18–24) (see Figure 1).

The youngest group was nearly three times more likely than youth older than 15 to be significantly impaired in reasoning and understanding, two important components of legal competence. In other words, nearly one-third of 11–13 year olds and one-fifth of 14–15 year olds had deficits that courts might see as serious enough to question their ability to proceed in a trial. These patterns varied little by race-ethnicity, gender, socioeconomic status, or region of the country.

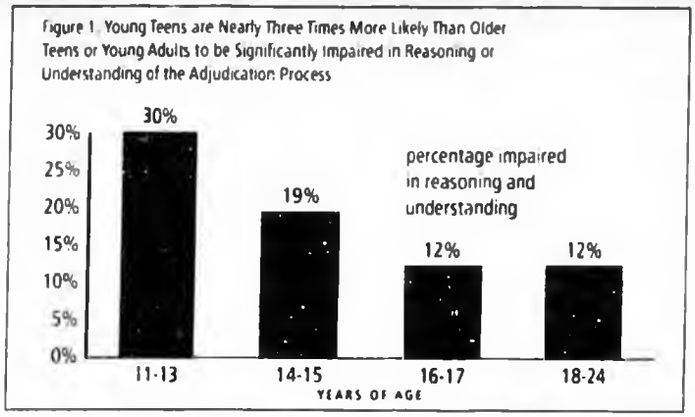

Figure 1. Young Teens are Nearly Three Times More Likely Than Older Teens or Young Adults to be Significantly Impaired in Reasoning or Understanding of the Adjudication Process

Level of Maturity Influences Important Choices

The Network next assessed youths' emotional maturity in a legal decision-making context. The most relevant aspects of maturity in this context are the ability to take into consideration long-term consequences (future orientation), perceive and comprehend risks, deflect peer influence, and weigh whether to comply with authority figures.

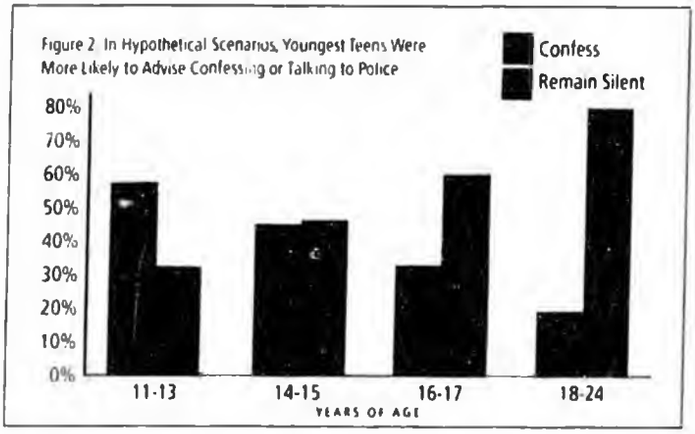

Figure 2. In Hypothetical Scenarios, Youngest Teens Were More Likely to Advise Confessing or Talking to Police

Using the *MacArthur Judgment Evaluation*, a tool designed specifically for this study, researchers asked respondents to recommend the best and worst choices in three hypothetical situations: responding to police interrogation when one is guilty of a crime; disclosing information during consultation with a defense attorney; and responding to a plea agreement in exchange for a guilty plea and testimony against other defendants. Choices for police interrogation included confessing, denying the offense, or refusing to speak. Choices for the attorney consultation included full or partial disclosure, denial, or refusing to cooperate. Plea agreement options included accepting or rejecting the offer. Researchers also asked participants to identify the positive and negative consequences (or risks) of each of their recommendations, and their responses were scored according to predetermined criteria for risk appraisal. Researchers measured youth's future orientation from these responses. Finally, to assess the influence of peer pressure, youth were told to imagine that their friends had chosen a different response and were given the option of changing their answer.

In general, the youngest teens (aged 11–13) proved less mature in their decision making than older youth. Younger individuals, for example, were more likely to endorse decisions that comply with what an authority seemed to want as measured by their willingness to confess and plea bargain (see Figures 2 and 3). The proportion of youth who recommended confession decreased with age, from about one-half of the 11–13 year olds to only one-fifth of the 18–24 year olds (see Figure 2). (Few individuals in any age group chose to actively deny the offense.) The proportion who advised accepting a plea agreement declined from nearly three-fourths of 11–13 year olds to one-half of young adults (see Figure 3). Once again, the study revealed few statistically significant differences among those older than age 15.

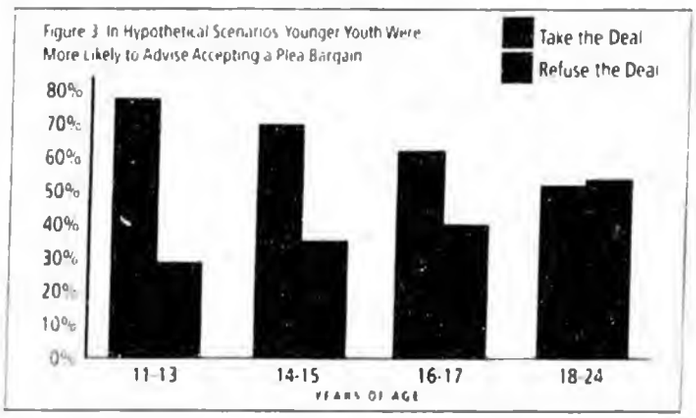

Figure 3. In Hypothetical Scenarios, Younger Youth Were More Likely to Advise Accepting a Plea Bargain

In addition, younger teens were significantly less likely to recognize the inherent risks in various decisions, and they were less likely to comprehend the long-term consequences of their decisions. The study found no differences by age in the effects of peer pressure on decision making. Those with lower IQs, however, performed more poorly on all items. Although perhaps not surprising, this finding is notable given that two-thirds of those under age 15 in juvenile detention facilities had an IQ lower than 89 compared with one-third in the community sample. Therefore, because a greater proportion of youth in the juvenile justice system are of below-average intelligence, the risk for incompetence to stand trial is even greater among adolescents who are in the juvenile justice system than it is among adolescents in the community. For example, among 11–13 year olds with very low IQ scores, more than one-half scored as poorly as adults who are typically found incompetent to stand trial. Once again, none of the findings varied by race-ethnicity, socioeconomic status, or locale.

These findings suggest that younger adolescents' developmental immaturity may affect their behavior as defendants in ways that extend beyond their competence to stand trial. Their responses indicate that they are often more willing than adults to confess to authority figures such as police, rather than remaining silent, especially if they believe it will result in an immediate reward, such as going home. For similar reasons, they may be more willing to accept a prosecutor's plea agreement.

Expanded Definition of Competence Needed

Clearly, many of the youngest adolescents are less able to understand the trial process and are less mature in their ability to take into consideration the long-term ramifications of their decisions. Yet, the relation between immaturity and competence to stand trial has not yet been defined legally. The findings reported here point to the need for a broader legal construct of competency, one that recognizes that developmental factors—namely, cognitive and psychosocial immaturity—may compromise the critical decision-making ability of many young criminal defendants in either adult or juvenile courts. The findings also suggest the need to consider various protections against trying youth who may not be competent; for example, making competency evaluations mandatory for adolescents below a certain age, and requiring competence evaluations for any youth sent to criminal court to be tried as an adult.

The findings raise a dilemma, however. If a sizable proportion of younger adolescents are unfit to stand trial owing to immaturity, how does society redress the crimes they committed? One option is to develop a dual system of competence, one for the adult courts and one for the juvenile courts, with more relaxed standards of competence in the latter. Youth deemed incompetent to stand trial in an adult court could be tried in a juvenile court under less demanding standards of competence. Of course, this lower standard of protection would also require less punitive sentencing that involves rehabilitative services for those youth. For those very few who would be deemed incompetent to stand trial in either court, dismissal of charges and adequate supervision with useful remedial services could be employed, as is already done in many states.

New Guides to Help Assess Juvenile Competence

Legal and clinical practitioners have had few, if any, resources to help them understand how immaturity manifests itself in legal contexts with juveniles. The Network therefore sought to develop a set of flexible tools and practice guides that present the issues and identify the needed information to assess youth capacity and maturity in the context of legal competence. The guides are designed to be adaptable to the many different state juvenile justice laws and to the different audiences who might use the manuals, from judges to mental health practitioners.

Evaluating Juveniles' Adjudicative Competence: A Guide for Clinical Practice, and *Clinical Evaluations for Juveniles' Competence to Stand Trial: A Guide for Legal Professionals* draw from a national survey of existing practices for competence evaluations of juveniles, a nationwide review of juvenile competency laws, and a national set of consensus panels that included judges, prosecutors, defense attorneys, and mental health clinicians. The Network has begun introducing these guides through a series of workshops with mental health and legal professionals in 87 of the 100 largest U.S. jurisdictions.[4]

The findings of this latest research affirm the developmental reality of adolescence and underscore the need to expand the notion of competence to include cognitive and psychosocial maturity. The competency standard announced by the Supreme Court in *Dusky v. United States* (1960) is a functional test, and functionally it should make no difference whether the source of the defendant's incompetence is mental illness (the current standard for adults) or immaturity.

[2] The tool is called the MacArthur Competence Assessment Tool—Criminal Adjudication (MacCAT-CA). For more information, see T. Grisso et al., "Juveniles' Competence to Stand Trial: A Comparison of Adolescents' and Adults' Capacities as Trial Defendants," Law and Human Behavior, vol. 27 (2003), pp. 333-363.

[3] These are likely conservative estimates given that those youth with more serious mental health issues were screened out of the study.

[4] The guides are available from Professional Resource Press, at www.prpress.com

For more information

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The Research Network on Adolescent Development and Juvenile Justice is an interdisciplinary, multi-institutional program focused on building a foundation of sound science and legal scholarship to support reform of the juvenile justice system. The network conducts research, disseminates the resulting knowledge to professionals and the public, and works to improve decision-making and to prepare the way for the next generation of juvenile justice reform.

[redacted]HOUSE COMMITTEE REPO[redacted]

(7)

Date Referred to Committee: February 13, 2008 **FURTHER REFERRALS: Finance**

Date of Committee Action: 2/11

The JUDICIARY Committee considered: **HB 364**

HOUSE BILL NO. 364 **NOTICE & CONSENT FOR MINOR'S ABORTION**

"An Act relating to notice and consent for a minor's abortion; relating to penalties for performing an abortion; relating to a judicial bypass procedure for an abortion; relating to coercion of a minor to have an abortion; relating to reporting of abortions performed on minors; amending Rule 24(a), Alaska Rules of Civil Procedure, amending Rule 220, Alaska Rules of Appellate Procedure, and Rule 20, Alaska Probate Rules, relating to judicial bypass for an abortion; and providing for an effective date."

Recommends it be replaced with | | HCS *or* **| ✓ | CS** *for* HB 364 ( )

For Senate Bills with new title: | | Technical Title | | New Title: HCR_____ **| | Same Title | ✓ New Title**

[ ] attach amendments
[ ] add new referral to _____Committee
[ ] Letter of Intent_____Committee

List of Abbrev for Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
HSS
LWF
LAW
LEG
MVA
DNR
DPS
REV
DOT
UA

NEW **FISCAL NOTES** *Assigned by Chief Clerk's Office				
List by Dept(s):	***FN#**	**Fiscal**	**Indet.**	**Zero**
HSS			✓	

PREVIOUS **FISCAL NOTES**				
List by Dept(s):	**FN#**	**Fiscal**	**Indet.**	**Zero**

Signing with recommendations	**Printed Last Name**	**DP**	**DNP**	**NR**	**AM**
	Gruenberg		–		
	LYNN	X			
	Coghill	–			
	Stoltze	X			
	SAMUELS				X
			X		
Chair:	R. Hawkins	X			
Chair:					

In favor of HB364
Rep. Jon Coghill
HJUD

Parental Consent

I am amazed at the Alaska Supreme Court for choosing to remove parental consent for a medical procedure for a minor. We as parents are responsible for our children's behavior, health, and financial well-being until they are adults—which I understand to be 18 years of age. At that point, they are granted full medical privacy from their parents along with full responsibility for their actions.

In regard to abortion—a medical procedure with potential physical and emotional complications—it makes no sense to afford a minor complete privacy and full authority to make such an important decision concerning their health and future well-being. They are not equipped to make that decision completely on their own. Parental guidance is needed in regard to an unplanned pregnancy of a minor. Either the girl became pregnant by her own choice to be involved sexually, or it was forced upon her.

If sex was forced upon the girl and she is seeking an abortion without her parent's knowledge, she is trying to hide the fact that a crime was committed against her. She will experience an abrupt change in her mental/emotional health, and her parents will not know why. Often when you add a secretive abortion on top of an unexposed rape you will compound the emotional struggles that the young woman will face– even to the point of suicide. You may drive the initial emotional upheaval into the ground, but within a matter of time those issues will sprout up and show themselves later on. An abortion does not erase the fact that the rape happened or that there was a pregnancy. Parents need to be given the opportunity to help their child deal with the emotional responses that they will experience in regard to the trauma they have undergone.

If the teen girl was having sex consensually then as a parent we should be aware of that. They are engaging in very risky behavior and are opening themselves up to contracting STDs and further unwanted pregnancies. This is a behavior that parents need to be aware of in order to "parent" their teen and guide them in their decision-making process.

From my understanding of the law, it is illegal to have sex until you are 16 years of age. There should be no reason whatsoever that a child under the age of 16 should be allowed to keep their sexual activity a secret from their

parents. Are we going to protect children who are caught drinking or taking drugs from telling their parents just so that they don't have any family conflict? I think the only reason a teen doesn't want to tell her parents about her sexual activity is because she doesn't want to "get in trouble" or "disappoint her parents". We should not have laws that prot[illegible] teens from getting in trouble for breaking the rules of their house. You are taking away the rights of parents to parent their teens.

Also, without parental consent an abortionist could be performing "fake" abortions on young girls—telling them they are pregnant and need an abortion, when in fact, they aren't pregnant. This is a potential scam that, if a parent were to be involved, would be less likely to happen. Adults understand more about medical terms and pregnancy—especially mothers—because they have already been through at least one pregnancy themselves.

Personally I am against abortion, but even if I was for it, I would want to know that my daughter was going in for an abortion and would want to be a part of the decision-making process and be there for the medical procedure.

Please reverse this most affronting law, and restore parental consent to the state of Alaska in regard to abortion. Not only am I asking for a reversal of the law, but I am also asking that parental consent be enforced more strongly than it was before.

I have seen the agony caused first-hand already by this fateful decision last Nove[illegible]ber. I hope to never see it again, and I hope that my own teenagers would never take advantage of this heinous law themselves. The Supreme Court has taken away a basic parental right from me that shocks me and makes me shutter to the core. Please restore our rights as parents and protect the guiding, nurturing relationship that parents must have with their teenagers to raise them the healthiest way possible.

Thanks for your time.

Kim Ford
3232 Naomi Ave.
Wasilla, AK 99654

Mr.
Dave Jones

Does it "load" to require
artists + concert?

Non-profit