

CHOICE/LESS 402: Welcome to Abortion Court

Susan Fox Gillis: I'm Susan Fox Gillis, I'm a recently retired judge from the circuit court of Cook County. If I was handling a case, or when I did handle a case, when the young woman and her attorney came into my chambers, I would greet them, say hello, I would call her Ms. Doe. Sometimes they would start to tell me their names, and I would interrupt and say, no, I don't need to know your name. In this case you are Jane Doe.

This is how this is going to proceed. You are going to be sworn in, this lady over here is a court reporter, she's taking everything down. Your attorney is going to ask you the questions.

Lorie Chaiten: When you had sex, why you had sex, who knew you had sex, how you got pregnant, weren't you using contraception, all these really invasive details about your life.

Jenn Stanley: Lorie Chaiten is a reproductive rights attorney at the ACLU of Illinois.

Lorie Chaiten: Just imagine being 16 and knowing that this, one of the most important decisions that you ever will have made in your life, is dependent on whether that person either sitting up on the bench or sitting behind the desk and maybe wearing judicial robes, listening to the most intimate details about your life, and that it's in their hands, they get to decide. Can you make the decision for yourself to have an abortion?

Jenn Stanley: How does a teenager end up in this situation, Standing before a judge trying to prove she's mature enough to have an abortion? And what does it even mean to be mature enough to have an abortion when the alternative is childbirth and possibly parenthood?

Lorie Chaiten: Yeah. It's really problematic.

Jenn Stanley: It didn't always use to be this way, so what happened? That's what we'll be talking about on this episode. For Rewire.News, I'm Jenn Stanley and this is CHOICE/LESS. If you're just joining us, this is the second episode in the series so please go back and start from the beginning. In the last episode, we heard from Jane, who at 15 crossed state lines in order to get an abortion without telling her parents, which she would have had to do in our home state of Massachusetts.

At the time, New Hampshire had no such law. That was in 2002. Laws like these and all laws to limit abortion access have been very popular in the last 15 years or so. There are currently 38 states with parental notification or consent of abortion laws in effect. New Hampshire is now one of them, meaning today, Jane would have had to travel even farther because more and more states are saying that minors are not mature enough to make abortion decisions without parental involvement.

I sent our producer, Lauren Gutierrez, out in her neighborhood. She lives in Capitol Hill in Washington, DC. It was a beautiful sunny day last spring. The area was teeming with tourists from all over and she asked them if they thought minors should be legally required to notify a parent when seeking an abortion.

Speaker 1: Do I think they should be legally required to notify their parents? That's a tough question.

Speaker 2: I would say no, they should be able to have an abortion if they feel they need to.

Speaker 3: I don't think so, because it might [inaudible 00:03:16] to do something.

Speaker 4: Absolutely 100% because if they don't know what's going on with you, they can't tell what's going on, they just see you get depressed, they can't help you there.

Speaker 5: I don't think there's anything wrong with talking to your parents, just kind of sorting out all the options but ultimately it's your body and you can do what you want with it.

Jenn Stanley: A lot of people had no idea these laws existed and hadn't really thought about the issue until they were asked.

Speaker 6: That was a hard question. It made me think about it for a second. Yes. I don't want to say that, but yeah.

Speaker 7: Why don't you want to say it?

Speaker 8: I don't want to say it just because what if mom is like a ... a "Carrie" kind of mom?

Scene from Carrie (United Artists, 1976)

Mrs White: [inaudible 00:03:59]

Carrie: No, Mama, you're hurting me.

Mrs White: We'll pray.

Speaker 8: You know, and says, "You are a dirty whore," or whatever and you have to have the baby. Okay. There's a lot of things, there are a lot, a lot, a lot of things that could ... Incest, rape, pedophilia, anything. There's a lot of things. There's a lot of factors so it's really hard to answer that.

Jenn Stanley: And many of the people who expressed approval for these laws had negative opinions about abortion and premarital sex generally.

Speaker 9: Again, if you do not get the permission slip, that means that you can walk in there and do it on your own and I think that that can cause more unprotected

sex knowing that, "Hey, I can just go get an abortion without my parent's signature, so since I'm gonna be grown enough to go lay down in a bed without telling my parents, or sneaking out of the house or doing something that I shouldn't be doing in the first place, I need to be just as grown to tell my parents that I need to go and do something that I really should not be doing because I am ... want to be grown and be out there on my own anyway."

Jenn Stanley: Others who approved of these laws thought they just made sense. Of course minors should involve their parents in their health care decisions.

Speaker 14: Okay, I think that aspect of the notify parents part, yes. Because the idea of a parent is someone who takes care of you, still claims you on their taxes, you're still a child and their decisions technically ... your decisions still technically fall upon them when it comes to hospital bills.

Jenn Stanley: But do minors always need their parents' consent for health care? This is where things get a little tricky. I brought in Rewire.News's legal team and host of our "Boom! Lawyered" podcast, Imani Gandy and Jessica Mason Pieklo, to find out what rights minors do and don't have. Here's Imani.

Imani Gandy: The law looks at them as under the age of legal competence, meaning they can't enter into contracts by themselves, there are certain rights that they don't have that adults have. Jessica, can you ... ?

Jessica: Yeah, and the idea of competence is really, from the law's perspective, what this hinges on and it's the idea of mental and emotional maturity to be held responsible for your actions or to receive the benefits of certain rights. It really gets down to the sort of nugget is does the law think that you're responsible enough to both have the benefits of what it would say as full citizenship and also the responsibilities like Imani said, can you enter into a contract, for example when you're 15 and be held responsible for it?

Imani Gandy: As a kid, as a teenager, you are allowed to consent to medical treatment. Let's say you're a pregnant teenager. You're allowed to consent to medical treatment for pregnancy. If you are sexually active, you are allowed to obtain treatment for STDs, you are allowed to, if you're pregnant, stay pregnant, you're allowed to give birth to a child, you're allowed to put that child up for adoption, but when it comes to making a decision as to whether or not to terminate that pregnancy, that's when the state requires parents to get involved. I don't think that's because abortion is separate than any of these other medical issues, I think it's because abortion is seen as inherently political. Abortion is abortion. It's this sacred political inherently traumatic thing that teenagers are just too immature to make a decision about, which makes no sense.

Jenn Stanley: The American Academy of Pediatrics doesn't support these laws. Their research shows that while it's good for young people to involve a loved one in their abortion decision, that conversation shouldn't be forced. If experts in child health aren't drafting and supporting these laws, then who is?

Paul Linton is an attorney affiliated with the religious conservative law firm, the Thomas More Society. He helps draft this type of legislation.

Paul Linton:

I've been involved in the pro-life movement for over 30 years. I worked at Americans United for Life for about eight years, and I left to go into my own practice about 20 years ago and most of that has focused on pro-life issues and also I got involved in the defense of traditional marriage. My work consists primarily of writing friend of the court briefs, which are called amicus curiae briefs, in support of traditional marriage and also the pro-life cause as well as consulting and drafting legislation and also scholarly publications.

I think with respect to virtually any type of regulation of abortion, the persons on the other side of this issue, the pro-choice folks, they do not want to compromise, they do not want to see virtually any regulation of abortion and that goes to ... that could be something as reasonable and as common as parental notice or consent with the judicial bypass. It could be informed consent, it could be a short waiting period. It could be post-viability prohibition.

Jenn Stanley:

Lorie Chaiten from the ACLU disagrees saying these laws are not about better health care or better communication.

Lorie Chaiten:

The truth is that the anti-choice movement works to pass these laws so that they will stop people from having abortions. This is not about actually better family communication. We know from the social science from all the research that's been done that most minors actually do tell their parents, but for those who don't they don't for good reasons and we know that the anti-choice movement is not passing the laws to help them. They are passing these laws to block them from getting care.

Jenn Stanley:

Lorie and her colleagues knew that if the law went into effect in Illinois, it would have an even greater impact than it had in states like Massachusetts. Back when Jane had her abortion, she had the option of several surrounding states without strict abortion laws. Even today, though New Hampshire isn't an option, Maine and Connecticut are. But the Guttmacher Institute classifies the Midwest as extremely hostile to abortion rights.

Lorie Chaiten:

So the metaphor the hole in the donut isn't exactly mine, it was something that somebody else came up with, but it really ... it's a good metaphor. It is the ... the state of Illinois is the place in the middle of the country where we have access to reproductive health care in a way that we don't in any of the surrounding states and more and more we're seeing new laws pass that make it harder to get access to abortion care, to contraception that just make it hard to be a woman or somebody who actually reproduces with female organs in any of the surrounding states. So one of the jobs that we have here at the ACLU is to make sure that in Illinois we expand rights and we preserve rights and we make it a place where people in Illinois can get the health care they need but also people from all over the Midwest can come to get the kind of care that doesn't exist in their home states.

Jenn Stanley: Illinois's history with these laws began in 1977. That year, the Illinois General Assembly passed a parental notification act but a judge ruled it unconstitutional. Same thing happened in 1983, but in 1995 a law passed. Then the ACLU obtained an injunction in federal court because there wasn't a clear procedure in place for minors who needed the parental notification requirement waived, which would require judicial bypass, meaning that the minor would go before a judge and argue that she's either mature enough to get an abortion without notifying a parent, or that it was in her best interest not to tell her parents.

For years, Paul Linton and the Thomas More Society fought hard in favor of the law while Lorie and her colleagues fought hard to stop it. The ACLU of Illinois collected stories from states with parental involvement laws already in effect in hopes of demonstrating potential downsides of the law.

Lorie Chaiten: So some of these young women shared their experiences and their real fear of being kicked out of their homes, or being beaten by their parents, being sent back to live with their grandparents in India so that they wouldn't have the abortion that they were seeking, although access to abortion is pretty prevalent in India, but nevertheless that was one of the stories.

These stories came from the testimony of counselors at abortion clinics and health care providers who had interacted with minors who were seeking abortion care and didn't feel safe or just didn't believe it was in their best interest to involve a parent or another adult family member in their decision.

We knew that that was a really harmful statute, that that kind of a law puts young women at risk, and it delays their health care which puts them at medical risk, which makes the care more expensive, which sometimes means they never actually get the abortion that they seek and there's no real justification for it. There's just no medical or psychological justification for it. So we filed a lawsuit under ... a series of lawsuits that kept that law from going into effect for about 40 years, but unfortunately in 2013 we lost.

In 2013, a law called the Illinois Parental Notice of Abortion Act went into effect and what that means is that if a minor in Illinois, somebody under 18, is pregnant and wants to terminate their pregnancy, wants to exercise their constitutional right to end that pregnancy, the state of Illinois says they have to tell their parents and there's some exceptions, there's some ways that they don't have to. So for example, they can go to court and they can tell a judge about themselves and demonstrate that they're mature and well informed and that therefore they can make their own decision or that it's not in their best interest to tell their parents and if they prove that to a judge then they can get what's called a judicial waiver, but of course that's a really hard thing for somebody who is in junior high or high school to do.

Jenn Stanley: So this is how you end up a teenager in court defending your maturity and right to get an abortion. After they lost the case, and the law went into effect, the ACLU of Illinois created the Judicial Bypass Coordination Project.

Lorie Chaiten:

We knew, we had represented the young women of the state of Illinois for decades and protected them against the harms of this law and we were not going to abandon them at this point and so we devoted every resource we possibly could at the ACLU of Illinois, and frankly, from our national office as well and we trained lawyers who could help us to represent minors in these court proceedings. We set up a 24-hour a day, 7-day a week hotline, we trained volunteers who could be the staff for that hotline who would answer the phone and be the first line of screening. We trained lawyers throughout our office to be the second round of a more in-depth screening.

We set up a database and all of the technological things we needed in order to run this hotline and we immediately also started to talk to the judges and the courts all around the state, because we knew from our own experience that they were not ready for this law to go into effect and we knew that they needed to be ready in order to protect the confidentiality of the young people who were going to be going through these court proceedings and to make sure that they happened quickly and that minors could get in and out of court quickly and get back to the health care providers who were going to give them the care that they need.

So we devoted all of the resources that we had to set this project up and to try to run it as smoothly and as expeditiously as we could.

Jenn Stanley:

Emily Werth is also a staff attorney at the ACLU of Illinois where she manages the Judicial Bypass Coordination Project.

Emily Werth:

We want to help the minor understand just what the experience of going to court and having to sit in front of the judge and tell your story involves. We explain to them the rights that they have and the protections that are in place for them in terms of protecting their confidentiality and making sure that this is gonna be a relatively fast process if things go as they are supposed to, which doesn't always happen, but that's how it's supposed to be. Then we'll also explore with them facts about their life and their circumstances and help them figure out what they need to tell the judge to show the judge that they are mature, that they have taken responsibility for various things in their lives and are prepared to take responsibility for this decision as well, that they've thought through all of their options, that they understand the procedure that they'd like to have from a medical perspective, and to explain their family circumstances so the judge understands why they've chosen to pursue a judicial bypass rather than notify a parent.

Jenn Stanley:

But what about teens who are homeless, who've already escaped unsafe homes or who are afraid that they'll become homeless if they tell their parents about an unplanned pregnancy? The Chicago Coalition for the Homeless found that in 2016 there were more than 11,000 unaccompanied homeless youth in Chicago alone.

A 2005 study by the same organization found that of the 25,000 homeless youth living in Illinois, one third blamed family conflict. Others said they were physically or sexually abused by a parent or adult family member and three out of five said they had been victims of violence within the year prior. Parental notification is specific for abortion, not other pregnancy outcomes. Why is that? Former Cook County judge, Susan Fox Gillis has heard many judicial bypass cases since the Illinois law went into effect in 2013.

Susan: I served there for 18 years in the county division. In that division, we heard elections, adoptions, mental health commitment hearings, mental health medication hearings, abortion bypass cases, name changes, and a variety of other miscellaneous things.

People always said that adoptions are the happiest place in the court system. They are the happiest place if there's no contest, but a contested adoption I would contend is one of the worst things you have to handle.

Jenn Stanley: But as somebody that's heard both cases, do you think that the decision to have an abortion is more weighty or deserves more maturity, needs more maturity, than the decision to place a child for adoption?

Susan: No, I don't. I think that if you're mature enough to make the decision to give up a child and you've carried them to term, then certainly that is a bigger decision, a bigger emotional decision, has many more ramifications for the girl I think, than proceeding with an abortion.

Jenn Stanley: So what's the purpose of these laws? Is it to foster good communication?

Tiffany Pryor: The research does tell us that youth who feel comfortable will have the conversation and so we just go back and say, "And what about the youth who don't?"

Jenn Stanley: Tiffany Pryor is the executive director for the Illinois Caucus for Adolescent Health. They were founded 40 years ago, originally to serve pregnant and parenting teens in Illinois, and they've expanded their mission to provide resources and education for all youth to learn and take control of their bodies and sexuality.

Tiffany Pryor: If you're not having that conversation about identities or sexuality or sexual behavior from the start, why are you gonna have a conversation around abortion access? We're jumping here, which is why we all ... before we can get to the abortion conversation, we have to start with what does conversation actually look like between these two folks or these however many folks, how are we starting that, before we can say, "Oh, let's talk about abortion now," because we know abortion is polarizing for people. You can't just jump straight to it.

Jenn Stanley: Everyone I spoke to who has advocated against these laws or been affected by them has said the same thing, a state mandated abortion conversation isn't a

healthy one. So what about the people in favor? Is good communication really what they're after or is it about limiting abortion access?

Paul Linton:

I'm glad you asked that question. In the last full year, when it was not in effect for any part of the year, if you compare the numbers of abortions on minors in Illinois, I should say on Illinois residents in Illinois and compare it to what it was for 2016, which is the last year for which we have data from the Department of Health, so we're talking about it's a four-year period. The numbers of abortions on minors dropped by more than 50 percent in four years.

Jenn Stanley:

Supporters of the law believe that it has sent a message that abortion is wrong and that's helped lower the abortion rate. It's true, the abortion rate in Illinois has been on a steady decline, but so has the teen pregnancy rate and the birth rate. While the decline in abortion rate has continued through 2013, it started going down long before that. Still, stigma can keep people from accessing abortion or it can make a person delay seeking care. Kush Thompson is a 23-year-old activist and poet from Chicago. At 15, she was pregnant and decided she wanted to get an abortion.

Men make laws restricting women's rights all the time and some of these laws hit young people even harder. They're too young to vote, but they are organizing and in Illinois, ICAH is helping them. Each year, a pro-choice advocacy organization, the 1 in 3 Campaign, hosts a livestream speak out where people from around the country tell their abortion stories. ICAH's Tiffany Pryor brought Kush and other activists to D.C. for the 2018 event and Kush shared her story.

Kush Thompson:

You know, long story short, the thing happened and I ignored my body changing for about four months. That was already I guess what sets me further apart from most of the stories that I hear is that I actually was showing and I actually had a body in me and not just like a blip of something. Yeah, when I finally decided to acknowledge that my body was changing and that my period wasn't missing for some abstract reason, I just tried to steer away from parental guidance at all.

I confided in my older sister and she took me to Planned Parenthood downtown Chicago and we had the test and I got the confirmation and I was devastated. Just the moment that the word pregnant hit my ear, I broke down. I knew it this whole time, but the stigma that we're talking about was something that kept me from acknowledging it. Like, "No, it has to be all these other reasons. It's not pregnancy because I only had sex with this person one time and how could that be a thing?" So yeah, broke down. Just started thinking about all the girls that I went to school with who decided to have their babies and who went to school and had their bellies under their school uniforms and I was just like, ... "I'm a Black girl in the West side of Chicago and this is what everyone expects from me and maybe I expected it from me, and I'm just disappointed, I'm just sad about myself right now."

- Jenn Stanley: Kush wasn't legally required to involve a parent because her abortion was in 2011, two years before the Illinois law went into effect. She says the stigma delayed her care and that made it more expensive and invasive than it would have been if she made an appointment sooner in the pregnancy. She ended up having to involve one of her parents to help her pay for it.
- Kush Thompson: My sister, we were from a low-income family and didn't have the funds, so we called my dad I think a few days before and he was just ... it was everything that I expected from my mom times ten. He really was pushing me to not do it and he was like, "Oh, I'm so disappointed in you." Kept saying my name over and over again. Like, "How did you let this happen?" I was like, I'm on the other end like, "I can't do this. I can't. I'm 16, I can't." I'm not even sure if I said any other words besides that, but, "I cannot do this, I'm 16, I cannot do this."
- Jenn Stanley: Kush was determined to have the abortion. She made her choice and she was going to do it regardless of the stigma, but for young people who think that telling their parents will either mean that their parents will prevent them from having the abortion or that telling them could put them in danger, it's up to a judge to decide. Emily Werth, from the ACLU of Illinois's Judicial Bypass Coordination Project says it's unclear how a judge decides whether or not someone is mature enough to have an abortion.
- Emily Werth: There isn't a consistent reason and that's because a lot of judges are basically looking for pretexts. They don't want to be in the position of giving someone permission to have an abortion for personal moral reasons or for professional reasons and so a lot of times the reasons that they give are pretty obviously pretextual like the minor ... the teenager speaks like a teenager and doesn't present as a 35-year-old and therefore doesn't meet the standard or the fact that the teenager does not want to involve their parents is a sign somehow that they are not mature enough to be making this decision.

So the reasons can often vary, and it would appear to me that one of the reasons that there isn't necessarily a consistent sort of theme in those denials is because judges will seize on what they can if they are so inclined to deny the petition.
- Jenn Stanley: Paul Linton thinks there should be a higher standard of proof in these cases because the fetus has no one to defend it.
- Paul Linton: Because this is an ex parte, that is a one-sided proceeding, there is nobody on the other side, nobody is contesting what she is seeking. There's no party on the other side, no defendant if you will. Because of that, it's reasonable to impose a higher standard of proof, because the only person in court who's presenting any evidence is her.
- Jenn Stanley: Whittling away at the judicial bypass option could create an effective ban on abortion for many young people. These laws are common. There are only 12 states that don't have laws like this on the books. Again, Judge Susan Fox Gillis.

Susan: I think the laws are common because we have a very paternalistic society and because people have very, very different and very strong beliefs on the issue of abortion. This in many people's minds provides some oversight that people, some people, think is necessary, others don't agree with that, but I think that's why the laws are so common.

I mentioned before that people came from out of state where ... from states where teenagers couldn't get abortions so I always found that interesting and very sad that they had to travel from one state to another.

Jenn Stanley: Paul Linton mentioned that the abortion rate among teens has halved since the law went into effect in 2013, but what he didn't mention is that the number of people who come into Illinois for an abortion from out of state has increased by 53% since 2014. Even with the parental notification law in effect, for many Midwesterners, it's easier to travel hundreds of miles to Illinois to have an abortion than it is to get one in their home states. In the possible event that Roe v Wade is overturned in the next few years, that number will likely rise as Illinois recently passed a law to keep abortion legal even if something happens to Roe.

Even now, many Americans can't access abortion care because of their zip codes. In the last episode, Jane talked about how as a freshman in high school she traveled out of state for an abortion to avoid having to tell her parents about it. She was only 15 and she was afraid.

Did you tell your parents?

Jane: Not until way later in life.

Jenn Stanley: Check out the next episode of Choice/Less to hear what it's like telling parents the hard stuff.

Niky Washington: I was like, I said, I said, "Huh."

Jenn Stanley: Choice/Less is a production of Rewire.News. We're the leading nonprofit journalism outlet devoted to reporting on reproductive and sexual health rights and justice. To stay up to date with our award winning journalism, find us on Facebook, Twitter, and Instagram. Choice/Less is created and produced by me, Jenn Stanley. Music, sound design, and mixing are by Douglas Helsel. Marc Faletti is our executive producer. Jodi Jacobson is our editor-in-chief. Additional production help on this season by Lauren Gutierrez and Saskia Henneke. If you like this series, please rate and review us on iTunes. It helps more people find CHOICE/LESS. Thanks for listening.