

Supporting, Empowering, and Listening to Youth

REPORT OF A NATIONAL
CONVENING ON THE JUDICIAL
BYPASS

if
when
how

Lawyering for Reproductive Justice

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INTRODUCTION

This Report was authored by Rachel Rebouché, Associate Dean for Research, Professor of Law, Temple University Beasley School of Law, consulting for If/When/How: Lawyering for Reproductive Justice. A version of this report appears in the journal, 37 Law & Inequality 20 (2019). The author has tried to capture the perspectives of Convening participants, rather than express her own views.

This Report would not be possible without the invaluable assistance of Caroline Reilly, who worked with Professor Rebouché to review Convening materials and draft the Report. We extend additional thanks to the If/When/How student chapter at the University of Texas at Austin School of Law for their indispensable assistance in securing space to host the National Judicial Bypass Convening.

This Report summarizes themes from the National Judicial Bypass Convening (the Convening) held in April 2018 and organized by the national non-profit organization, If/When/How: Lawyering for Reproductive Justice, with co-sponsors Jane’s Due Process and Advocates for Youth. The Convening brought together over 120 stakeholders — advocates, academics, law students, lawyers, clinicians, and researchers — who work on issues related to young people’s access to abortion, hailing from 37 states and Washington, D.C.

This Report captures the unique opportunity to talk to over one hundred advocates, lawyers, clinicians, and academics who are experts on the judicial bypass. The Convening engaged participants in eight sessions on topics that ranged from messaging about youth pregnancy to clinical challenges in delivering abortion care to appealing court denials of judicial bypass petitions.

The longstanding and well-documented dilemmas facing pregnant youth speak to the continuing need to question the efficacy of parental involvement laws and the fairness of the judicial bypass. This Convening Report engages in such questioning and highlights new priorities of the legal and clinical professionals working under parental involvement laws, such as partnering with young people and creating an inclusive movement for reproductive justice.

We hope that this Report provides a productive starting point for anyone working to make abortion care more accessible for young people. For more information on If/When/How and the co-sponsors of the Convening, Jane’s Due Process, and Advocates for Youth, please visit their websites at IfWhenHow.org, JanesDueProcess.org, and AdvocatesForYouth.org.



2018 JUDICIAL BYPASS CONVENING ATTENDEES

Access Reproductive Healthcare - Southeast	Gutmacher Institute Healthy and Free TN	Planned Parenthood of the Great Northwest and the Hawaiian Islands
ACLU National Reproductive Freedom Project	Kentucky Health Justice Network	Planned Parenthood of the Heartland
ACLU Nebraska	Lift Louisiana	Planned Parenthood of the Rocky Mountains, Inc.
ACLU of Illinois	Michigan Organization on Adolescent Sexual Health (MOASH)	POWER (People Organizing for Women's Empowerment & Rights) House
ACLU of Utah	Mountain State Justice	Provide, Inc.
ACLU Virginia	National Abortion Federation	Public Leadership Institute
Advancing New Standards in Reproductive Health (ANSIRH)	National Association of Social Workers TX	Red River Women's Clinic
All-Options Pregnancy Resource Center	National Center for Youth Law	Sexual Health and Reproductive Equity (SHARE) Program at the UC Berkeley School of Social Welfare
Association of Pro Bono Counsel, Reproductive Justice Working Group	National Network of Abortion Funds	Shift NC
Atlanta Volunteer Lawyers Foundation	National Partnership for Women & Families	Steadfast Strategies
California Latinas for Reproductive Justice (CLRJ)	National Women's Law Center	Summit Centers
Case Western University	New Hampshire Judicial Bypass Advocacy Project	The Center for Reproductive Health Research in the Southeast (RISE)
Catholics for Choice	Northwest Abortion Access Fund	The Lawyering Project
Center for Reproductive Rights	Oklahoma Call for Reproductive Justice	University of Colorado Boulder
Center on Adolescent Health & the Law	Physicians for Reproductive Health	University of Colorado College of Nursing
Central Florida Women's Emergency Fund	Planned Parenthood Federation of America	Whole Woman's Health
Colorado Organization for Latina Opportunity and Reproductive Rights (COLOR)	Planned Parenthood League of Massachusetts	Women's Law Project
Denton Wesley Foundation	Planned Parenthood Minnesota, North Dakota, South Dakota	WV FREE
Equality Health Center, PP	Planned Parenthood of Greater Texas	Yellowhammer Fund
Feminist Women's Health Center		Young Women United

EXECUTIVE SUMMARY OF CONVENING REPORT

The judicial bypass is a court hearing in which a judge grants or denies a young person the choice to have an abortion without parental permission or notice. In almost all of the 37 states that require parents give consent or receive notice of a young person's abortion, the judicial bypass is the avenue by which young people receive abortion care without involving a parent. As the following Report makes clear, the judicial bypass, even when working at its best, creates needless obstacles that impede pregnant youth from receiving the care they need and undercut their ability to make life-altering decisions. In explaining how the bypass operates across jurisdictions, themes emerged from the Convening's conversations. Those themes, as described by the sections of this Report, include:

- *Empowering and Listening to Youth:* Among the participants at the Convening were youth advocates and people who had sought bypass petitions. Their voices are indispensable to any discussion of parental involvement laws. Pregnant young people best understand their reproductive health needs and should be front and center in any strategy for changing the law or shaping public attitudes on youth abortion. This means active participation in political organizing, on organizations' boards, and in peer education — suggestions for resisting superficial engagement and committing to a substantive dialogue about youth sexuality.
- *The Complications of Parental Involvement:* Our legal system protects parents' rights based on the idea that parents typically want the best for their children. Parental involvement laws operate from that assumption; a well-documented problem, however, is that consent and notice laws disadvantage the very youth who cannot rely on their parents, perhaps because of absence, abuse, or any number of reasons. The task then is to talk honestly and openly with parents, even those holding deep religious convictions, about how the bypass actually works in pursuit of a common ground.
- *Cost, Travel, Time, and Lack of Information:* Youth who seek a bypass must overcome a number of obstacles to abortion services. In a process that is intended to be confidential, young people must arrange transportation to and from a court and a clinic; gather the money for the abortion procedure as well as for travel; miss work, school, and other activities for appointments; and navigate often confusing court and clinical procedures. These challenges make various forms of assistance — financial, logistical, and informational — crucial for youth.
- *Place-Based Networks:* Committed networks of advocates, many represented at the Convening, work together to blunt the harshest aspects of the bypass. Often their work revolves around an abortion provider, which

is typically the first point of contact for youth seeking abortion. Networks depend on relationships among clinics, courts, and advocacy organizations, and rely on tools that can connect young people to the resources they need — such as hotlines, websites, and social media sites, for example. These outreach measures can provide tailored information about how to manage the bypass process.

- *Stigma and the Bypass Hearing*: Too often, shame and stigma characterize the hearing at which a judge assesses a young person’s maturity or best interests in bypassing parental involvement. Some judges’ questions can humiliate or demean the young people in appearing before them. In addition, anti-abortion bias can make it difficult for judges in various places to hear petitions without facing political repercussions. Advocates and clinicians can work together to help make young people feel at ease and to make an often stigmatizing process less so.
- *Data Collection and Research*: There is not enough information about how the judicial bypass operates from state to state, and there are significant obstacles to gathering that information. More investment in developing qualitative and quantitative studies of the number and outcomes of bypass petitions across the country can fill the research gap. As recent litigation on abortion restrictions has shown, rigorous data can be useful for making a case for legal reform.
- *Building an Inclusive Movement*: Finally, strategies to improve abortion access for young people need to reflect their lived realities — taking account of the needs of young parents; moving youth sexuality from the margins to the mainstream in advocacy conversations; and assessing how law and policy impacts communities across race, income, and ethnicity, and immigration status.

With these themes in mind, this Report concludes, as the Convening did, with reflections on the recent case, *Garza v. Hargan*, in which a federal court held that immigrant youth housed at federal shelters may leave custody to obtain abortion care. The *Garza* case highlights the themes of this Report, but for a population of youth that have even tougher challenges — state restrictions exacerbated by the obstruction of federal officials; the inability to contact parents who may reside outside of the United States; and intersecting forms of marginalization, such as immigration status and speaking another language. The *Garza* litigation shows that change is possible, and it serves as a reminder of how much more remains to be done on behalf of the rights of pregnant youth. To that end, the Report includes a reading list for those interested in knowing more about the judicial bypass and parental involvement laws.

communities of faith, plenary panels on youth advocacy, and networking sessions organized by region. The closing session, discussed below, focused on the abortion rights of undocumented immigrant youth in federally-funded shelters.

WHAT STAKEHOLDERS NEED TO KNOW

Participants of the Convening spoke confidentially, and, indeed, some of what was said during the two-day meeting was discussed on the condition that it would not be shared. At the same time, participants recognized the vital need to convey information across locations and with each other. With that aim in mind, this Report brings together the ideas that underpinned the various conversations at the Convening. It does not identify speakers or their organizations and it does not refer to specific laws or policies that could identify a participant or their comments. Instead, it gathers the strategies and insights of stakeholders attempting to make the judicial bypass a more just process for young people. The themes described in this Report include:

- the importance of listening to and empowering young people;
- the nuanced nature of parental involvement in abortion decisions;
- the logistical barriers, such as cost, that deter young people from gaining access to abortion services;
- the importance of forming and sustaining networks among stakeholders;
- the dearth of data on how the judicial bypass operates from state to state; and
- the need for better outreach to young people across diverse communities.

This Report is by no means an exhaustive account of the judicial bypass or of the obstacles that stand in the way of pregnant young people seeking abortions. It is an attempt to capture the conversations of experts about the networks that bring together clinicians, lawyers, and advocates across jurisdictions. The sections that follow detail the themes that surfaced in the Convening's sessions.

EMPOWERING AND LISTENING TO YOUTH

A central theme of several sessions was the need to involve young people in political organizing and to respect their capabilities throughout the judicial bypass process. Participants expressed concern that the negative aspects of the bypass can lead to stereotyping young people as victims. Several participants working with youth, or who were

themselves youth advocates, described how powerful their message became when reframed to one focused on rights to bodily autonomy rather than focused on victimization.

Stakeholders need to recognize that young people are in the best position to assess and communicate their needs. When young people talk about their experiences, they shed light on competing priorities, mixed messages, and doubts about having a child or an abortion. One participant who was granted a bypass reported that the greatest source of pressure was from her friends, some of whom were raising their own children.

Speakers explored how young people can take charge of the messaging around their abortion experiences. Some of the most effective strategies described young people in leadership roles in legislative or advocacy efforts and young people reaching out to their peers. As one participant put it, “Minors should not be just clients; they should be potential advocates.” One organization has a peer education network in which young people lead discussions about sex education. In addition to peer education, involving youth in advocacy projects can take a number of forms. Some participating organizations collect stories from young people, include youth on their organizations’ boards and in developing communication strategies, or create an institutional presence through youth councils. Social work skills can aid in communicating with young people in ways that are empowering. A participant emphasized a “strengths-based approach,” in which one assumes positive intention, resilience, and experience of those they seek to serve.

Outreach measures directed at young people in reproductive justice campaigns were also a rich subject of discussion. A number of participants commented on the importance of social media in building connections to youth and in communities. Many organizations work on multi-year advocacy plans and it can be difficult to keep people engaged; social media is one means to respond to change and to connect supporters to a cause.

Participants offered a word of caution, however. Some strategies to involve youth can treat young people as tokens in advocates’ missions and strategies — adding youth to boards or including them in meetings, but not incorporating their ideas or providing them with opportunities for advancement. Young peoples’ ideas need to be reflected in the core of advocates’ missions and strategies. In this vein, speakers encouraged stakeholders to provide youth with meaningful mentorship opportunities. Young people often juggle school, work, and family responsibilities, and stakeholders should offer the support and resources needed to succeed, such as career advice and leadership skills. As one youth participant stated, “Find someone to mentor you and then be someone who mentors.”

THE COMPLICATED NATURE OF PARENTAL INVOLVEMENT

Several sessions reflected on the complexities of working under parental involvement laws. Consent and notice statutes are popular because they tap into understandable

concerns about protecting young people. Indeed, many young people seek out and obtain parental notice or consent for abortion.^v

Parental involvement laws begin from the uncontroversial premise that parents want the best for their children, and based on that premise, the legal system protects parental rights.^{vi} As one speaker stated, opponents to the judicial bypass will note that young people need permission to go on field trips or to take aspirin at school, but they can circumvent parental permission for abortion. Constitutional and statutory protections for the decisions parents make for their children provide justifications for parental involvement laws.

Participants emphasized the need for critical thinking about parental involvement. Those working with the judicial bypass can acknowledge that most parents are invested in their children's well-being and, at the same time, can promote the rights of young people to make their own reproductive decisions.

A problem with the rationale for parental involvement, recognized by participants and in writings about parental involvement statutes, is that notice and consent laws may not actually protect young people.^{vii} The reasons for this are manifold and surfaced repeatedly at the Convening. First, some organizations and legislators who express the strongest support for consent/notice laws care primarily about undermining abortion rights rather than encouraging policies that strengthen child-parent relationships in all families. A speaker lamented that when Focus on the Family writes in favor of parental autonomy, such as in their Parents' Bill of Rights, they are not writing with the rights of LGBTQ parents (or youth) in mind.^{viii}

Second, parental involvement laws can fail young people who are not in contact with their parents. Some young people reside with adults that do not have legal custody of them, and some young people are not in contact with their parents for any number of reasons. Even if there are supportive adults in a young person's life, those adults may not be legally capable of authorizing an abortion under state law.^{ix}

Third, neglect or abuse upends the expectation that parents act in their children's best interests. Although there is a danger of overgeneralization, participants in various sessions recounted the violence or rejection their clients and patients had experienced at the hands of parents. One participant asked the audience to consider what their reaction should be when a parent's discovery of a pregnancy puts a young person at risk. Clinic-based counselors spoke of developing safety plans for young people in the already-onerous bypass process detailed below.

In several sessions, lawyers and clinicians noted that protecting a client's confidentiality while reporting child abuse under state laws presents tough questions. According to several speakers, there is persistent confusion about what mandatory reporting laws require. What constitutes reportable abuse by law varies, and people working with youth need to be able to understand and to explain their responsibilities as mandatory reporters. For example, a participant who staffs a bypass hotline informs callers of what information she cannot keep confidential. Speakers reminded audiences that

professionals at every access point of the process need to know the ethics and the rules that govern mandatory reporters.

Stakeholders emphasized, however, the difference between protecting young persons who are experiencing abuse and casting all bypass petitioners as victims. Generally, participants felt that arguments against parental involvement overemphasize vulnerability: labeling all young people as potentially abused ignores the reality of their lives and undermines their agency. Most, though not all, young people that petition a court for a judicial bypass are older —sixteen or seventeen — and have made a host of important decisions on their own. A number of speakers commented on how often messaging around parental involvement ignores the significant number of young people seeking judicial bypasses who are already parents. One participant, for instance, estimated that 25 percent of petitioners already have children. Moreover, participants lamented that they seldom hear positive messages about young parents. Participants called on advocates to advance young people’s rights to abortion as well as their rights as parents. Policies that can support young parents included parental and sick leave for school-age parents, lactation accommodation rooms in high schools, and enforcement of Title IX’s non-discrimination provisions.

More than once, participants identified a root problem as a deep discomfort with youth pregnancy and sexuality. Stakeholders commented that encouraging acceptance of young people’s sexual expression, as well as their right to abortion, can be difficult given opposition, in some quarters, to reproductive health services for adolescents. A stakeholder reminded listeners of the dangers of paternalism — thinking of all fifteen-year-olds as “your” fifteen-year-old. Another speaker warned that asserting young people’s rights to sexual expression can put one’s organization at odds with otherwise like-minded groups.

For those receptive to nuanced messages about parental involvement, one panel’s conversation revolved around ways to support parents but also empower youth. Communication needs to reflect multiple and cross-cutting identities, such as LGBTQ youth and youth of color. Participants offered examples of tools for talking to parents: reaching out to parents with listening tips or to facilitate conversations about pregnancy with a counselor from a clinic, having social or community events where parental involvement is discussed, and encouraging advocates to talk to parents *as* parents.

Finally, participants in another session focused on the role and importance of religion in conversations about parental involvement. Speakers from communities of faith brainstormed how to address complicated conversations about religion. These participants included people from Muslim, Jewish, Catholic, and evangelical Christian backgrounds. Their message was that people can hold religious beliefs and still see problems with parental involvement laws. For one, panelists noted that abortion is not counter to the religious doctrines in Judaic or Islamic teachings. They commented, too, that anti-abortion beliefs are seldom accompanied with measures to address child poverty. Others mentioned that when religious leaders speak, they do not necessarily speak for millions of adherents to that religion. Speakers conveyed a message of optimism: they believed communication

across faiths was possible through “radical empathy” — what one speaker defined as a person of faith’s commitment to changing the world through empathy.

THE IMPEDIMENTS OF COST, TRAVEL, TIME, AND LACK OF INFORMATION

The cost and time of seeking an abortion and petitioning for a bypass affect every young person in the process. A lack of financial independence makes raising the money needed for an abortion incredibly daunting. Without the financial help of parents, most young people will have limited access to the money that abortions can cost, sometimes as high as \$950.^x The time that it takes to secure funding can delay the abortion procedure by weeks, in turn increasing the cost. One youth advocate, speaking on a panel, noted that her abortion was delayed by six weeks because she could not work enough hours or borrow enough money to cover the costs of the procedure; in fact, the delay meant that she could not obtain a medical abortion. Because cost is a hurdle for so many women across ages and locations, financial support for abortion and other services is vital.

Related to cost, both the judicial bypass process and the abortion procedure require mobility and flexibility that many young people do not have. Stakeholders reminded audiences of the restrictions on young people’s movement and how challenging maintaining confidentiality can be as one navigates school, work, childcare, and home demands. When still enrolled in school, youth may miss class for clinic and court appointments or may have to drop out of extracurricular activities. Speakers identified instances in which school personnel notified parents of absences, despite those absences being excused. They also described memorandums developed for school officials on the bypass. As offered in one anecdote, a judge issued a memorandum that advised school officials on confidentiality. However, fear of liability or anti-abortion animus often can mean that no one follows such advice.

Another significant problem is the ability to gain access to transportation. Young people may not have vehicles, be too young to drive, or have little money for other forms of transportation. Consistently, clinic staff and advocates described the ways in which they facilitate young people getting to courts and clinics — helping with payment for a taxi or Lyft, for example. One participant noted that many young people’s transportation needs are met by volunteers. The best volunteers, according to the speaker, are college students who can pick up patients at various times and in different parts of the state.

Some young people cannot stay in their hometowns or in their states to attend hearings or to have procedures. In the northeast part of the country, for instance, where there is a higher concentration of states without parental involvement laws, young people will travel to avoid notice or consent statutes. That travel can be difficult and expensive.

Participants also recounted travel to neighboring counties within a state because the closest court will not hear petitions or has proven hostile to petitioners.

When clinics close, or a state passes abortion restrictions, it slows down the process of seeking services and makes problems of cost and transportation that much more difficult to solve. Consider a regulation that requires the same doctor who performs an ultrasound during a patient's first office visit (before a mandatory waiting period starts) to perform the abortion. A participant noted that such a law means that the patient must plan two trips around the physician's schedule; yet physicians in this example only worked two days a week. Compounding logistical problems is a nationwide shortage of abortion providers, and an acute scarcity in many rural areas.^{xi}

Participants noted the numerous other logistical issues that pregnant youth face. If traveling out of state or county, is there overnight lodging available? How will they explain their absences to their parents? If the young person is a parent, who will take over childcare during clinic and court appointments? If the young person is working, can they take time off work? In many states, and particularly those with sizable immigrant populations, there are substantial language barriers. One clinic staff member noted that thirty to forty dialects are spoken in just her region. Advocates translate some of their informational materials, but not all of them.

Stakeholders gave advice to professionals who assist young people in overcoming the barriers to a judicial bypass that this section describes. First, panelists with degrees in social work reminded listeners to have empathy for young people who show up late or are frustrated by the process, particularly for young people managing multiple responsibilities. They cautioned lawyers and clinical staff to have patience when young people are difficult to work with (or give wrong information) and asked the audience to consider how various behaviors might be coping strategies for past trauma, the result of previous punishment for telling the truth, or a lack of positive role models. As this section makes clear, young people face many obstacles in navigating parental involvement laws, and the system is not designed to help them.

Second, there are a number of interventions that can ease the burden of the judicial bypass process, some of which are described in more detail below. Participants emphasized how crucial it is for a young person to have a consistently available point of contact who is knowledgeable about the bypass and can coordinate assistance with child care, transportation, and funding. Case managers or hotline staff can help explain the process, secure practical resources (like transportation), and put young people in touch with clinics, lawyers, and other advocates. Volunteers — law students, for example — can walk young people through the judicial bypass process and help them fill out court and clinic forms. Managing information and resources for young people is fundamentally important: without information coordination, pregnant youth can wait too long to obtain a legal abortion in their state or can give up out of frustration.

THE WORK OF PLACE-BASED NETWORKS

Stakeholders recounted their dependence on each other to understand how the judicial bypass works and to help young people. Indeed, in many places, relationships developed among stakeholders and with schools, public health departments, youth centers, and advocacy groups make petitioning for a bypass less burdensome.

Often at the core of a network is a clinic, and the strong message from several speakers was to build relationships with abortion providers and clinical staff. Almost all referrals to attorneys and advocates come from clinic staff, who are the first points of contact. This underscores the need for clinic staff members to know what resources are available to young people seeking a bypass. Moreover, many clinics can ease the burdens described in the previous section: they can help facilitate transportation, schedule appointments at flexible hours, provide easy-to-comprehend information about the bypass, and connect patients to lawyers.

Outside of clinics, stakeholders have developed materials on best practices for school social workers or nurses and state agencies that work with pregnant young people. However, participants report that, in some states, school or health officials are resistant to helping pregnant youth. Advocates recounted being excluded from conferences for school nurses and counselors or being rebuffed by state officials who manage foster care programs. Resistance to assisting young people with bypass petitions sometimes reflects opposition to abortion, but it also can be the product of office policy or culture. School and state personnel may fear losing their jobs or violating their institution's or profession's code of ethics.

Coordination among different stakeholders is important and it takes time to “work a network,” as one speaker put it. To establish and maintain networks, participants suggested that advocates operate a hotline or host an informational website; pool funding to assist with costs; ease the logistical burdens of transportation; and establish relationships with courts, clinics, and advocates. In several places, the system depends on just one or two stakeholders who work with clinical and legal professionals, provide trainings, invest time to create user-friendly forms for court, or develop case management systems. Many bypass processes are heavily dependent on volunteers, who run hotlines and help young people.

Continuity is a challenge when resources and outreach is managed by interns and volunteers who transition out of their positions. When coordinators move or are no longer available, the network can fall apart. Thus, capacity building was cited as a consistent need. A promising direction is a directory being developed by If/When/How, which could serve as a clearinghouse for information about the judicial bypass and connect stakeholders across states.

How do pregnant persons tap into the resources of a network? According to participants, most youth find information about the judicial bypass through Google, which is what leads many to call a clinic and learn of parental involvement requirements. Stakeholders described outreach measures using call-in numbers, websites, texting, and social media. There appeared to be consensus on the importance of a hotline that can field calls at various times. Additionally, advocates have created websites that allow young people to download the information they need. Participants also suggested creating online intake forms and using inexpensive databases that can track and sort information securely. In addition to hotlines and websites, speakers noted that texting is often the best way to contact young people; lawyers specifically commented on the frequency with which they text their clients. Social media sites are increasingly important outreach measures, and stakeholders have made use of applications such as Instagram, Slack, Twitter, and Snapchat (or blogs with relevant content like *Bedsider* — a website with information about contraceptives for youth).

Despite efforts to connect youth to established networks, information about the judicial bypass often is passed by word of mouth. In short, the judicial bypass process, in many places, depends entirely on relationships. As noted by one speaker, there is a constant need to collect information on who is willing to help young people and what their knowledge base is. In building key relationships, participants emphasized getting to know the lawyers, judges, and clerks in one's jurisdiction, in addition to clinical staff members and abortion providers. Take the appeals process in many states, for instance. Success at the appellate level can depend on the relationship between the bench and the bar. An attorney reported that losing an appeal often has more to do with the reputation of the attorney as well as the composition of the court than the facts of the case.

Relatedly, stakeholders underscored the importance of training sessions and materials on the judicial bypass. Jane's Due Process — a nonprofit legal organization representing pregnant youth — provides training that many organizations have used as a model. Some stakeholders spoke of success in hosting trainings for a court; often judges can open the door to conversations and trainings with other judges. One participant suggested circulating bench memorandums detailing procedural rules, what the law requires, the process for recusal, and examples of evidence to demonstrate maturity or best interests. Another speaker drafted forms for court use and wrote rules for hearings and appeals. Some participants viewed their role as helping educate legal professionals about current case law, relevant social science, and the realities of abortion care. And there are sources of assistance that stakeholders do not always consider, such as staff at Title X clinics, youth centers, and public health departments.

There was concern among speakers, however, that the more visible networks are the more anti-abortion attention they receive. A participant noted that anti-abortion advocates already infiltrate hotlines, protest tabling at community events, and engage in other disruptive tactics. Networks that directly help young people may have to “work under the

radar,” while other organizations can be out in front of the movement. One speaker remarked, “Find your allies that can step into a public space.”

STIGMA AND THE BYPASS HEARING

Participants commonly observed a lack of empathy for petitioners at varying points of the bypass process, particularly at the hands of some judges. Although judges can be sympathetic or make young people feel at ease, many young people have had horrible experiences in front of courts. Stakeholders recounted hearings at which young people felt ashamed, that they had made a mistake, or were accused of lying. One lawyer witnessed a judge accuse a petitioner of fabricating sexual assault.

In other examples, judges expressed hostility in the questions they asked to establish the young person’s maturity or best interests — the grounds for granting a petition under state statutes. Some questions pried into the young person’s personal life. A speaker recounted one judge who questioned a petitioner about what types of contraceptives she had used and if she was “dating around.” Other judges required the recital of anti-abortion tropes (such as contested risks associated with abortion) or expected expressions of regret. A participant noted that a judge in her jurisdiction did not believe any young person was well informed unless they repeated to the court that abortion “kills the unborn child inside of her.” Another participant remembered a client who had several hallmarks of maturity — she was seventeen, employed, and had good grades — but her petition was denied because of her accent and because she could not list numerous risks of abortion in detail.

When judges ask questions about the risks of abortion, speakers believe they are expressing skepticism of clinics’ options counseling and a general fear that young people have been coerced. Participants explained why such fears are misguided. Clinic staff follow guides and handbooks on counseling options that explain avenues other than abortion. As noted above, a number of participants described working with young people at an early stage in the process to understand why they did not want to involve their parents and to offer assistance in facilitating communication with a parent. Despite these well documented efforts to give young people the information they need to make informed decisions, suspicion frequently characterizes judicial bypass hearings.

Moreover, other factors beyond judicial attitudes on abortion affect bypass hearings. Attorneys commented, in the context of taking appeals, that they assume no one in the process has any idea how the bypass works. Staff turnover often changes friendly counties to not-as-welcoming places. And the politics of the state can make participating in hearings fraught with risk for legal actors. Judges who grant petitions in elected states can face backlash from voters and can be targets of opposition campaigns by anti-abortion organizations. In some jurisdictions, and to avoid political controversy, participants noted that some judges do not rule on petitions because petitions are deemed granted after so

many days. According to a panelist, judges endeavor “to dodge the issue as far as they can.”

Other times there are scheduling difficulties: in many places, only one or two judges will hear bypass cases. Venue provisions then become very important. Speakers recounted that some young people need to seek bypasses in counties in which they do not reside if their state law permits them to do so.

In addition to the treatment by judges, clinicians and attorneys can sometimes exacerbate the difficulties of the process because of how their policies operate or how they approach their patients/clients. For the former, office rules applied by a clinic but not prescribed by law can present obstacles for a young person, such as requiring proof of parentage (a birth certificate) or that consent be notarized.

Participants urged those working with pregnant youth to stay attuned to their demeanor and to consistently treat young people with respect. Although some organizations offer continuing assistance for young people (attorneys that file emancipation or protective orders, for example), most stakeholders are in young people’s lives for only a brief time. Professionals have to establish boundaries based on their limited time with the young person and the limits of their own professional skills. Yet, stakeholders powerfully shape a young person’s experience by how they treat their clients/patients. One participant urged that all attorneys should view judicial bypass petitioners as they would any other client. They should share information with petitioners and explain the process as it unfolds, informing their clients of the challenges ahead. Speakers noted that attorneys should work strategically with clients, thinking through the timing of a hearing, or a possible appeal, based on the stage of pregnancy and the availability of abortion services.

In sum, networks of stakeholders can help make an unwieldy and potentially demeaning process more humane.

DATA COLLECTION AND RESEARCH ON THE BYPASS

It is challenging to measure how many young people petition for a bypass and even more difficult to study who needs but does not receive a judicial bypass. Generally, the total number of young people seeking abortion — and all pregnant people seeking abortions — has decreased in recent years. Some states keep track of bypass petitions filed and what the results of those petitions are.^{xii} But speakers observed that statistics on young people accessing abortion are missing in many states, leaving gaps in knowledge or leading to studies that lack specificity or precision. Offering experiential insights, participants on one panel reported that the number of young people seeking a bypass is low; one jurisdiction had a high mark of 20 per year in the state. On the national level, studies estimate that about four percent of young people require a bypass order and over two thirds of pregnant youth involve a parent in their decision.^{xiii} Other speakers reported

higher percentages of young people seeking a bypass — 20 to 30 percent of youth terminate pregnancies without parental involvement. Regardless of the number of bypasses sought, commentators agreed that youth of color and low-income young persons are disproportionate users of the bypass.

A session at the Convening addressed why information about the bypass may be difficult to gather. One speaker reminded the audience that some questions are not answerable; it would be useful to know, but hard to measure, how many young people learn what the bypass entails and opt out before any process begins. Another speaker suggested that the confidentiality of the procedure can impede abortion research.

Participants on one panel posited that a lack of information affects the whole of the reproductive justice movement. For one, it creates a dilemma in applying for funding; organizations are donor-reliant and most donors want evidence of the organization's impact. Relatedly, research in the area may not reveal dramatic conclusions. A participant recalled finishing a study, which demonstrated that women were coping reasonably well with certain abortion restrictions, and the lawyers who read the results of the research deemed it “too boring” for advocacy.

Moreover, laws and policies do not always have the effects that one might expect, and advocacy messages and research do not always line up. Speakers highlighted that researchers are in a different position than advocates. With scientific integrity as a guidepost, researchers try to find the best data through methodologies (questionnaire standardization, for example) marked by objectivity and neutrality. As one participant noted, there is a difference between someone telling a story and a qualitative study.

At the same time, panelists noted how useful research has been for litigation strategies, particularly in the recent case *Whole Woman's Health v. Hellerstedt*.^{xiv} Amicus briefs submitted to the Supreme Court of the United States detailed how far people would have to travel if a proposed Texas law took effect; those findings were key to demonstrating that the law was an unconstitutional undue burden on the right to abortion.^{xv} Studies such as those cited in *Whole Woman's Health* captured the experiences of clinicians and patients to assess what might happen if clinics closed.^{xvi} In the same vein, the researchers present at the Convening discussed current and future qualitative studies that could fill the gaps in what is known about the judicial bypass.

CREATING AN INCLUSIVE MOVEMENT

Regardless of one's age, unintended pregnancy can present hard choices. Participants agreed that the reproductive justice movement needs better messaging around pregnant young people and youth seeking abortion without parental involvement. Specifically, movement leaders should articulate and then advance policies that respect and support pregnant young people and young parents. At times, stakeholders commented on how the

reproductive rights movement traditionally has ignored the parenthood practices of various communities, which reflect racial and ethnic identities and values.

Panelists in one session emphasized that fostering change means starting with values, rather than advocating from reactive positions or perpetuating stereotypes of asexual young people or young people always in crisis. One speaker focused on the language commonly used to describe bypass petitioners — “young people” and “youth” strips away some of the connotations that words like “teen” or “kid” or even “minor” carry with them. But in talking about youth sexuality, a speaker lamented that advocating on behalf of young people’s rights to sexual expression, as well as rights to parent or not to parent, has been a continuing source of tension between major non-profit organizations and groups representing the interests of particular communities. When language and messaging captures where young people are in their lives and affirms their agency, the gap between what communities need and what the movement asks for can shrink.

In addition, when the bypass is framed as a consequence of abuse or victimhood, messaging around young people’s reproductive rights misses the multiple reasons why people seek abortion. As the previous section described, youth involve the people they trust in their procreative decisions and they best understand their own health needs. A speaker reminded participants that “young people make important decisions about their lives every day.”

Reflecting lived realities requires placing race, location, and gender identity at the center of the conversation about parental involvement. Specifically, participants emphasized the centrality of race in assessing policies’ and laws’ impact on youth. Bills seeking to prohibit trafficking or underage marriage were examples of legislation that can perpetuate — perhaps inadvertently — discrimination based on ethnic origin. Participants discussed extensively how legal or advocacy strategies that ignore individuals and communities of color directly and indirectly entrench this country’s deep-seated racism.

Speakers stressed that the privileges that wealth, whiteness, and location confer have to be acknowledged in discussions of how legal and clinical systems serve young people. Stakeholders offered their thoughts on the strategic ways people can deploy their privilege for social justice ends. Stakeholders further argued for deeper collaborations with related social justice movements, such as immigration justice, to defeat policies that undermine young people’s agency and exacerbate their marginality.

THE GARZA CASE

Perhaps one population of young people bears special attention — those in custody of the state. In many places, youth in foster care, in the juvenile justice system, or at immigration detention centers must go through the judicial bypass process because a

parent or guardian is not available to give consent. The particular dilemmas of undocumented immigrant youth detained in federally-funded shelters received national attention in *Garza v. Hargan*, the subject of the Convening’s final plenary session.^{xvii}

The plaintiff in *Garza* faced significant hurdles to abortion care — a myriad of state restrictions layered on top of obstruction by federal officials; the inability to contact parents; and intersecting forms of marginalization, such as not speaking English. The *Garza* case also is worth highlighting because it shows that change is possible — *Garza* is a story of success. However, court victories, though important, are just one step toward realizing on-the-ground change.

The speakers described the troubling treatment of undocumented pregnant young people by shelters funded by the U.S. Office of Refugee Resettlement (ORR). For instance, the federal government funds religiously-affiliated shelters, and authorizes shelters with religious objections to abortion to remove youth seeking to terminate pregnancies from their programs.^{xviii}

Panelists believed that current ORR standards and policies have been developed with the input of anti-abortion groups. In early 2017, the ORR began interfering directly with access to abortion for pregnant young persons in federal custody. The ORR implemented a policy of attempting to influence pregnant youth to carry their pregnancies to term, and, if that failed, prohibited departure from federal custody for abortion-related appointments without the ORR Director’s approval.^{xix} This policy, as one speaker noted, contravenes the *Flores* settlement agreement, a nationwide consent decree guaranteeing young people in ORR custody the right to access emergency and routine medical treatment as well as family planning services.^{xx}

Ultimately, the ORR was held accountable. In September 2017, a detained young woman petitioned for and was granted a judicial bypass in Texas.^{xxi} However, the ORR refused to approve the young woman’s departure from the shelter’s custody.^{xxii} Following a series of decisions, the United States Court of Appeals for the District of Columbia, sitting *en banc*, required the ORR to allow the plaintiffs in *Garza* to leave shelters for their abortion-related appointments.^{xxiii}

As the speakers noted, however, practical problems of delivering the care young people need while in state facilities remain. Shelters and federal officials do not have an obligation to offer logistical or legal assistance to undocumented young people seeking abortions while in federal custody. The petitioners in *Garza* are emblematic of the many pregnant people of varying ages who do not have ready access to abortion care. One speaker concluded, “If you are outraged about Jane Doe in ORR custody, you should be outraged by all the women who cannot access abortion across the country.”

CONCLUSION

Although confronting the challenges parental involvement laws pose is daunting, a number of participants described reasons for optimism — for example, the introduction of legislation that protects young people’s reproductive health and ensures access to mental health services, sex education, and contraceptives. To that end, participants concluded the Convening by reflecting on what next steps they might take. Common responses included meeting with stakeholders in their regions and potentially holding a local convening; setting up a judicial bypass project in their state; reaching out to people of faith or talking about the bypass as a person of faith; researching state laws and how those laws are implemented; understanding how the judicial bypass actually operates and its impact across communities; and investing in policy advocacy to repeal or revise parental involvement laws. Though it is clear that the fight for a better bypass process is far from over, the Convening was a productive starting point and provided the attendees with a new sense of empathy and context. Young people have voices that deserve to be heard. Convening participants asked each other, and a broader audience, to keep listening.

SELECTION OF RECOMMENDED READINGS

LAW REVIEW ARTICLES AND HEALTH STUDIES

Virginia G. Cartoof & Lorraine V. Klerman, *Parental Consent for Abortion: Impact of the Massachusetts Law*, 76 AM. J. PUB. HEALTH 397 (1986)

Taylor I. Dudley, *Bearing Injustice: Foster Care, Pregnancy Prevention, and the Law*, 28 BERKELEY J. GENDER L. & JUST. 77 (2013)

J. Shoshanna Ehrlich, *Grounded in the Reality of Their Lives: Listening to Teens Who Make the Abortion Decision Without Involving Their Parents*, 18 BERKELEY WOMEN'S L.J. 61 (2003)

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Martin Guggenheim, *Minor Rights: The Adolescent Abortion Cases*, 30 HOFSTRA L. REV. 589 (2002)

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Wendy-Adele Humphry, *Two-Stepping Around a Minor's Constitutional Right to Abortion*, 38 CARDOZO L. REV. 38, 1769 (2017)

Elizabeth Janiak et al., *Massachusetts' Parental Consent Law and Procedural Timing Among Adolescents Undergoing Abortion*, 133 OBSTETRICS & GYNECOLOGY ___ (2019)

Ted Joyce, *Parental Consent for Abortion and the Judicial Bypass Option in Arkansas: Effects and Correlates*, 42 PERSP. SEXUAL REPROD. HEALTH 168 (2010)

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Jamin B. Raskin, *The Paradox of Judicial Bypass Proceedings*, 10 AM. U. J. GENDER SOC. POL'Y & L. 281 (2002)

Rachel Rebouché, *Parental Involvement Laws and New Governance*, 34 HARV. J.L. & GENDER 175 (2011)

Carol Sanger, *Regulating Teenage Abortion in the United States: Politics and Policy*, 18 INT'L J.L. POL'Y & FAM. 305 (2004)

Carol Sanger, *Decisional Dignity: Teenage Abortion, Bypass Hearings, and the Misuse of Law*, 18 COLUM. J. GENDER & L. 409 (2009)

Helena Silverstein & Leanne Speitel, *"Honey, I Have No Idea": Court Readiness to Handle Petitions to Waive Parental Consent for Abortion*, 88 IOWA L. REV. 75 (2002)

Helena Silverstein & Kathryn Lundwall Alessi, *Religious Establishment in Hearings to Waive Parental Consent for Abortion*, 7 U. PA. J. CONST. L. 473 (2004)

Richard F. Storrow & Sandra Martinez, *"Special Weight" for Best-Interests Minors in the New Era of Parental Autonomy*, 2003 WIS. L. REV. 789

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J. SHOSHANNA EHRLICH, *WHO DECIDES? THE ABORTION RIGHTS OF TEENS* (2006)

CAROL SANGER, *Sending Pregnant Teenagers to Court*, in *ABOUT ABORTION: TERMINATING PREGNANCY IN TWENTY-FIRST CENTURY AMERICA* 154–84 (2017)

HELENA SILVERSTEIN, *GIRLS ON THE STAND: HOW COURTS FAIL PREGNANT MINORS* (2007)

REPORTS AND NON-PROFIT ORGANIZATION MATERIALS

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Elly Belle, *Activists Tell Their Abortion Stories to Get Justice for Jane*, TEEN VOGUE (Feb. 27, 2018), <https://www.teenvogue.com/story/activists-tell-their-abortion-stories-to-get-justice-for-jane>

Lauren Holter, *Detained Immigrant Women are Facing a Grueling Abortion Struggle*, BUSTLE (May 10, 2017), <https://www.bustle.com/p/detained-immigrant-women-are-facing-a->

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Stephanie Loraine & Caroline Reilly, *Florida Is Making It Even Harder for Young People to Get Abortions—Just Like Dozens of Other States*, REWIRE NEWS (April 10, 2019), <https://rewire.news/article/2019/04/10/florida-is-making-it-even-harder-for-young-people-to-get-abortions-just-like-dozens-of-other-states/>

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Molly Redden, *This Is How Judges Humiliate Pregnant Teens Who Want Abortions*, MOTHER JONES (Sept./Oct. 2014), <https://www.motherjones.com/politics/2014/10/teen-abortion-judicial-bypass-parental-notification/>

Caroline Reilly, *For Foster Teens Seeking Abortion, Going to Court May Be the Only Option*, REWIRE NEWS (June 19, 2017), <https://rewire.news/article/2017/06/19/foster-teens-seeking-abortion-going-court-may-option/>

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i. See GUTTMACHER INST., PARENTAL INVOLVEMENT IN MINORS' ABORTIONS (Sept. 1, 2018), <https://www.guttmacher.org/statepolicy/explore/parental-involvement-minors-abortion>.

ii. This Report uses a variety of terms—young persons, youth, petitioners, and minors—to describe the population of people seeking a judicial bypass and subject to parental involvement laws. It resists terms such as kids, teens, or teenagers, because, as highlighted in one of the Convening's sessions, that terminology has overtones of paternalism. Although "minors" can be somewhat legalistic, this Report uses the word because state laws and processes refer to young people as minors and because it captures the group of people to which parental involvement laws apply.

iii. See for example the law at issue in *Bellotti v. Baird*, referenced in note 5, MASS. GEN. LAWS ch. 112, § 12S ("A judge of the superior court department of the trial court who conducts proceedings under this section shall make in writing specific factual findings and legal conclusions supporting his decision and shall order a record of the evidence to be maintained including his own findings and conclusions.").

iv. In *Bellotti v. Baird*, 443 U.S. 622, 650 (1979), the U.S. Supreme Court upheld a Massachusetts parental involvement law because the statute included an option for minors to bypass parental consent. The Court held that laws must provide an alternative to parental involvement and decision-makers, such as judges, must consider the maturity of the minor making an abortion decision or whether judicial consent is in the best interests of the minor.

v. Stanley K. Henshaw & Kathryn Kost, *Parental Involvement in Minors' Abortion Decisions*, 24 FAM. PLAN. PERSP. 196, 200 (1992).

vi. Richard F. Storrow & Sandra Martinez, "Special Weight" for Best-Interests Minors in the New Era of Parental Autonomy, 2003 WIS. L. REV. 789, 805 (2003).

vii. *Mandatory Parental Involvement Laws Threaten Young Women's Safety*, NARAL PRO-CHOICE AM., <https://www.prochoiceamerica.org/wp-content/uploads/2017/01/1>.

viii. *Parents' Bill of Rights—for Public Schools*, TRUE TOLERANCE: A PROJECT OF FOCUS ON THE FAM., <https://www.trueintolerance.org/2012/parents-bill-of-rights-for-public-schools/> ("Parents should [] have the right to receive written notice and have the option to opt their child out of controversial instruction on topics such as sex education, sexual orientation and homosexuality-related instruction.").

ix. Six states allow a non-parent to give consent.

See, e.g., WIS. STAT. § 48.375(4)(1) (2018) (providing that an adult family member may give consent); WIS. STAT. § 48.375(2)(b) (2018) (noting that a grandparent, aunt, uncle, sister, or brother, age twenty-five or older, constitutes an adult family member).

x. PLANNED PARENTHOOD, HOW MUCH DOES AN ABORTION COST? (Dec. 30, 2014), <https://www.plannedparenthood.org/learn/teens/as-k-experts/how-much-does-an-abortion-cost>.

xi. Anna North, *Abortion Clinics Are Closing in Rural America. So Are Maternity Wards*, VOX (Sept. 7, 2017), <https://www.vox.com/policy-and-politics/2017/9/7/16262182/kentucky-clinic-abortion-maternity>.

xii. See DEL. CODE tit. 24, § 1784 (2010); NEB. REV. STAT. § 71-6903 (2009); WIS. STAT. § 48.257 (2009).

xiii. GUTTMACHER INST., U.S. TEEN PREGNANCY BIRTH, AND ABORTION RATES REACH THE LOWEST LEVELS IN ALMOST FOUR DECADES (May 4, 2016), <https://www.guttmacher.org/news-release/2016/us-teen-pregnancy-birth-and-abortion-rates-reach-lowest-levels-almost-four-decades>.

xiv. *Whole Woman's Health v. Hellerstedt*, 136 S. Ct. 2292 (2016).

xv. *Id.* at 2314–18.

xvi. See, e.g., Brief for National Abortion Federation as Amicus Curiae Supporting Petitioners at 17–18, *Whole Woman's Health*, 136 S. Ct. 2292 (No. 15-274).

xvii. *Garza v. Hargan*, 304 F. Supp. 3d 145 (D.D.C. 2018); *Garza v. Hargan*, 874 F.3d 735 (D.C. Cir. 2017) (en banc) (per curiam). See also Christopher Mele, *A.C.L.U. Goes to Court for 2 Undocumented Teenagers Seeking Abortions*, N.Y. TIMES (Dec. 15, 2017), <https://www.nytimes.com/2017/12/15/us/abortion-undocumented-aclu.html>. Please note that this report captures what was relevant in 2018 and does not include more recent developments.

xviii. This funding is the subject of a lawsuit brought by the American Civil Liberties Union. See *ACLU of N. California v. Azar*, No. 16-CV-03539-LB, 2018 WL 4945321 (N.D. Cal. Oct. 11, 2018).

xix. *Garza*, 304 F. Supp. at 151.

xx. See *Flores v. Lynch*, 828 F.3d 898, 901 (9th Cir. 2016).

xxi. Findings of Fact in Support of Amended Temporary Restraining Order at 1, *Garza v. Hargan*, No. 17-cv-02122 (D.D.C. Oct. 24, 2017), ECF No. 30.

xxii. *Id.*

xxiii. *Garza v. Hargan*, 874 F.3d 735 (D.C. Cir. 2017) (en banc) (per curiam).