

# THE RIGHTS OF PREGNANT & PARENTING TEENS

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A Guide to the Law in New York State

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# I. IMPORTANT TERMS

This booklet uses a number of important terms that are defined below.

**MINOR:** A minor is a person under the age of 18.<sup>1</sup> For the purposes of this booklet, “minor,” “teenager,” “teen,” “young people,” and “child” all refer to people under the age of 18.

**ADULT:** For this booklet, “adult” refers to anyone 18 years old or older.

**INFORMED CONSENT:** An agreement to medical treatment that a patient makes voluntarily, when she clearly understands the health condition and predictable risks and benefits of possible treatments (including the option of no treatment at all).<sup>2</sup>

**CONFIDENTIALITY:** If medical treatment is confidential, it means that information about the treatment cannot be disclosed to others without the permission of the person who consented to care.<sup>3</sup>

**EMANCIPATED MINOR:** If a minor is emancipated, this means that her parents generally do not have any rights over her. Emancipation has been defined as the renunciation of parental rights to a child,<sup>4</sup> and means that the child is entitled to some – but not all – adult rights and privileges. This means that the parent(s) can no longer make decisions for the child.

In New York State, there is no special procedure for a minor to “become” emancipated. Emancipation is determined by the facts in an individual case. Typically, a minor is emancipated if:

- He or she is married;<sup>5</sup>
  - He or she is in the armed services;<sup>6</sup>
  - He or she has established a home and is economically independent;<sup>7</sup> or
  - His or her parent has failed to provide parental support and the minor seeks emancipation. If the minor wishes to continue the parent–child relationship and receive support,
-

though, the failure of the parent to provide support without just cause does not emancipate the minor.<sup>8</sup>

Usually, a parent can “un-emancipate” a child by reasserting his or her parental authority. Then, the parent regains full legal rights over the child, including the duty to fully support the child.

Minors who are in foster care cannot be emancipated unless they get married or join the armed forces. A young person in foster care cannot emancipate herself by establishing a home and economic independence. The state will not discharge a young person from foster care to live on her own if she is under the age of 18.<sup>9</sup>



**KAREN** is 16 years old and has a one-year-old daughter. Is she emancipated?

**NOT NECESSARILY.** *While pregnant and parenting teens can make health care decisions for themselves and their children, they are not “emancipated” unless they also meet the criteria listed on page one. But a minor in New York who is living on her own as if she is in fact emancipated is generally considered to be emancipated for purposes of consenting to confidential health treatment.*

Youth providers, such as The Door, located in New York City (see Important Resources section), can help young people who wish to be emancipated by giving them letters of emancipation. These letters explain to doctors, schools, and others that the minor meets the legal criteria for emancipation and should therefore have the right to consent to health care, the right to retain his or her wages, and other rights.<sup>10</sup> A minor can seek more specific legal assistance from legal service centers like The Door.

## II. EDUCATION

### A PREGNANT STUDENT'S RIGHT TO EDUCATION

Every young person in New York State has the right to a free public education.<sup>11</sup> In fact, minors must go to school through the end of the school year during which they turn 16 years old (in some cities, like New York City, it's 17 years old).<sup>12</sup> Students can attend public school for free until they receive their high school diploma or they turn 21.<sup>13</sup>

A student cannot be asked to leave school because she is pregnant.<sup>14</sup> Both federal law (known as Title IX) and state law prohibit sex and pregnancy discrimination in schools that get money from the federal government. All public schools, and many private schools, receive federal or state money and are therefore subject to these laws. A school that receives public funds cannot exclude a student from classes or extracurricular activities because the student is pregnant, because she has had a child, because she has had an abortion, or because she is recovering from any of these conditions.<sup>15</sup>



**MARIE** is three months pregnant and a senior in public high school. She wants to stay in school and graduate but the principal has told her that she has to leave. The principal claims that the school's insurance would not cover them if she got hurt climbing the stairs because she is pregnant. Can Marie be kept out of school because she is pregnant?

**NO.** *Marie has the right to stay in school throughout her pregnancy. Marie cannot be kept out of the school or a school program simply because she is pregnant. That is discrimination and it is against the law. She has the same rights as other students to attend classes and participate fully in school activities, including graduation ceremonies.*

A school may ask a pregnant student to get a doctor's note stating that she is able to take part in school activities, but only if the school requires

a doctor's note of all students who have conditions that need medical care, such as asthma.<sup>16</sup>



**JESSICA** goes to a private Catholic school and just found out that she is pregnant. She told her guidance counselor and he told her that the school principal would make her leave. Can Jessica's school make her leave because she is pregnant?

**PROBABLY NOT.** *Although students in private schools may not have the same legal protections as students in public schools, they still have rights. Jessica's enrollment contract may forbid the school to ask her to leave because she is pregnant.<sup>17</sup> Private Catholic schools in New York have a written policy that says a student cannot be dismissed solely because she is pregnant.<sup>18</sup> Finally, some private schools receive federal or state funds. If Jessica's school receives any public money, then it cannot make her leave because she is pregnant.<sup>19</sup>*

## ALTERNATIVE SCHOOL PROGRAMS

It is up to a pregnant student to decide if she wants to remain in her regular school. Although schools can offer special programs for pregnant and parenting students, school officials cannot tell a young person that she must leave her home school or force her to transfer to an alternative program, like a General Educational Diploma (GED) program, or a school for pregnant and parenting teens.<sup>20</sup> If a pregnant student chooses to stay in regular classes, her school must let her.<sup>21</sup> If a pregnant student is offered an alternative program, it must be comparable to the education she would receive in her home school.<sup>22</sup>

In New York City, if a student wants to transfer to a special program for pregnant and parenting students, she must be told that it is her decision to go or not and that the transfer should be temporary.<sup>23</sup> She must also

be told how the transfer might affect aspects of her educational progress such as school credits, grades in class, moving to the next grade, graduation date, and any classes or credits she may need to graduate that are not available in the alternative program.<sup>24</sup>



**DIAMOND** is five months pregnant and her public school principal and guidance counselor want her to go to a special school for pregnant and parenting teens. They tell her that she would feel more comfortable at a school for pregnant teens, and that regular school is not safe for pregnant students. Does Diamond have to leave her school and transfer to a special program for pregnant students?

**NO.** *Diamond has a legal right to stay in her regular school, no matter what her principal, guidance counselor, or anyone else tells her. Schools cannot pressure pregnant or parenting teens into alternative programs. The decision to leave school to attend an alternative program is Diamond's alone. Her choice must be voluntary. If Diamond feels coerced to leave school, she can seek legal help to protect her rights.*

## THE GED (GENERAL EDUCATIONAL DIPLOMA)

The GED is the legal equivalent of a high school diploma.<sup>25</sup> To earn a GED, a person must pass a series of five tests that includes: Writing Skills, Social Studies, Science, Interpreting Literature and the Arts, and Mathematics.<sup>26</sup> A student should have at least 8th grade reading and math levels to be in a GED program.

However, a GED is a less thorough academic program than a regular high school diploma. As a result, employers and colleges often prefer a high school diploma. The decision to leave high school to get a GED should be taken very seriously.



## FORCED TESTS BY SCHOOL OFFICIALS

In New York City, school officials are not allowed to require students to take tests for pregnancy, sexually transmitted infections (STIs), or HIV.<sup>27</sup> Also, a school cannot require that a student get tested for pregnancy, STIs, or HIV before she can take part in a school program or activity, such as sports.<sup>28</sup> If a student does choose to take any of these tests, her school cannot make her or her doctor share the results.<sup>29</sup>



**ANIKA** is 17 and a senior in high school. After hearing rumors that Anika was pregnant, the school principal told Anika that she had to get tested for pregnancy and HIV and give him the results. Does she have to comply?

**NO.** *It is Anika's choice to get tested or not. If she does get tested, she and her doctor do not have to share the results with her school. Anika's principal cannot keep her from taking part in any school program on this basis.*

## NATIONAL HONOR SOCIETY

Courts have ruled that the National Honor Society cannot deny admission to or expel students because they are pregnant or because they have had a baby.<sup>30</sup> Also, students cannot be kept out because they have had or plan to have an abortion.



**ROSE** is three months pregnant and wants to have an abortion. She is afraid that if her National Honor Society chapter finds out, it will kick her out. Can she be asked to leave the Honor Society if she has an abortion?

**NO.** *The National Honor Society cannot ask Rose to leave simply because she decides to have an abortion.*

Some honor societies have rules against premarital sex. Still, an official school group may not use a student's pregnancy as its only way of finding out whether its members have had sex before marriage.<sup>31</sup> An honor society that does not ask non-pregnant, unmarried students who have had sex to leave cannot exclude pregnant students simply because they have had sex before marriage.<sup>32</sup>

## REASONABLE ACCOMMODATIONS, MEDICAL LEAVE AND HOME INSTRUCTION

### REASONABLE ACCOMMODATIONS

Schools must make sure that pregnant students can get the same educational opportunities as non-pregnant students.<sup>33</sup> For instance, pregnant students who cannot climb stairs must be allowed to use the school elevator, even if the elevator is reserved for teachers.<sup>34</sup> Pregnant students who miss school to go to the doctor must be given excused absences just as other students who miss school for medical appointments are excused. Also, when pregnant students ask for homework or need extra help to make up work they miss due to excused absences, their school must provide it if they provide such assistance to non-pregnant students.



**MARIA** had her baby the day before her final exam in math and could not take the test. Maria's teacher tells her that she will receive a failing grade because she did not take the final exam. Does Maria have the right to make up her math final?

**YES.** *Maria's school must let her make up her math final.*

### MEDICAL LEAVE

A school must let students take a leave of absence for health reasons such as pregnancy, childbirth, miscarriage, abortion, and recovery from any of these conditions.<sup>35</sup> A student may leave school for as long a period of

time as her doctor thinks is “medically necessary.”<sup>36</sup> This is true even if a school does not have a leave policy or if it has strict policy that fails students with a certain number of absences. A student should be given educational support while on her leave of absence, and when she returns from her leave of absence, she must be able to pick up where she left off with her studies.<sup>37</sup>

In New York City, a public school has to arrange for academic and guidance support to help a student who has recently given birth return to school.<sup>38</sup> Also, New York City provides for a transfer option that allows a student to stay at home and receive support services for the first two months after childbirth.<sup>39</sup>



**LIZ** is 16 years old and wants to graduate from her high school. She is six months pregnant and keeping up with all of her coursework. She is afraid that she will be kicked out if she misses too much school in order to have her baby. Does Liz have the right to take time off from school during her pregnancy and after she gives birth?

**IT DEPENDS.** *Pregnancy does not automatically excuse a student from going to school. But Liz has the right to take time off from school if her doctor thinks she should because of pregnancy-related health problems or childbirth. In that case, Liz’s school must give her an excused absence and let her make up the work she misses. Liz cannot be kicked out of school for being absent due to her pregnancy or giving birth.*

## HOME INSTRUCTION

Pregnant students are not entitled to home instruction just because they are pregnant. However, a pregnant student should be able to receive home instruction if her doctor states that she needs to stay home for four weeks or more during or after her pregnancy.<sup>40</sup>



**NINA** is seven months pregnant. Her doctor tells her that she needs to rest in bed until her baby is born. Nina is afraid that she will miss too much school and will not be able to graduate. What can Nina do?

*Nina can apply to her school district for home instruction. She should contact the office of home instruction and ask for an application form. She also needs to get a letter from her doctor that explains her health problem and how long she needs to stay in bed and out of school.*

A student usually must fill out an application form and send it to her school district in order to receive home instruction.<sup>41</sup> She must also send a letter from her doctor that explains her diagnosis and how long she needs home instruction.

Although school districts are required to provide home schooling when medically necessary for at least four weeks, its availability varies from district to district. Home instruction can last for as little as one hour per week.

## PHYSICAL EDUCATION

Schools cannot keep students out of gym or off of a sports team because they are pregnant or have children.<sup>42</sup> A student may be excused if her doctor decides that she cannot take part due to a health concern.



**MARY** is six months pregnant and her school requires every student to take gym class. This semester, Mary’s gym class is playing a lot of dodge ball. Mary does not feel able to run and is concerned about getting hit by the ball. Can she be excused from gym class?

**YES.** *Mary may be excused if her doctor writes a note stating that she should not play dodge ball.*



**LAURA** is three months pregnant and she is on the soccer team. Her coach tells her that she should not play while she is pregnant. This is Laura's senior year and her last chance to play in a championship game. Can Laura's coach exclude her from the game because she is pregnant?

**MAYBE.** *A school can require a medical exam before letting an athlete play. However, as long as a doctor says that Laura is fit to play, the coach cannot exclude her from the game. As with all health care, Laura can seek a second doctor's opinion about what she can do while pregnant.*

## CONFIDENTIAL COMMUNICATIONS WITH SCHOOL STAFF

### COMMUNICATIONS WITH A SCHOOL NURSE, SOCIAL WORKER, DOCTOR, AND PSYCHOLOGIST

Usually, a pregnant student's communications with a school nurse, social worker, doctor, and psychologist about her pregnancy must be kept confidential.<sup>43</sup> Under New York law, nurses, social workers, psychologists, and doctors have to keep patients' communications about their pregnancies private, unless a patient agrees otherwise<sup>44</sup> or the law requires or permits disclosure (for example, in the case of child abuse [See Child Abuse Reporting section for more information]).

Some school districts do not respect this confidentiality and ask school nurses, psychologists, and social workers to report a student's pregnancy to her parents and/or school officials. Such actions may violate New York law. Recently, a federal judge in New York upheld a Port Washington School District policy that required social workers to report students' pregnancies to their parents.<sup>45</sup> This judge suggested that communications to school social workers are not confidential. As of this guide's publication date, the case is still pending, so it is unclear what impact this case will eventually have on school employees' duty to keep a student's pregnancy confidential.

## COMMUNICATIONS WITH OTHER SCHOOL STAFF

Other school staff members, such as teachers, guidance counselors, and principals, do not have to keep most communications with students confidential. The law is unclear about whether public school teachers, guidance counselors, and principals may tell a student's parents that she is pregnant against her wishes.<sup>46</sup>

Most courts have ruled that the U.S. Constitution does not allow the government (including public schools) to force minors to involve their parents in the decision to continue or end a pregnancy without giving the minor an opportunity to "bypass" the notification requirement in certain cases.<sup>47</sup> The NYCLU believes that public school policies that notify parents in every case about a minor's pregnancy violate pregnant students' Constitutional right to privacy. However, in the Port Washington case mentioned above, the judge stated that a public school could share pregnancy information with a student's parents in all cases, even without the student's permission.<sup>48</sup> This ruling is being appealed; please check with the NYCLU for the latest legal updates.

If someone at a school threatens to tell or does tell parents that a student is pregnant without her permission, she should call the NYCLU or look for other legal help.

### III. CHILD CARE

Child care can be a part of a government public assistance program that is administered by local social service offices.<sup>49</sup> Teen parents are generally eligible for child care paid for by the government under the Child Care Block Grant. The rules and regulations of child care can be confusing; the following seeks to clarify the different available programs.

A teen parent may be eligible for government-funded child care in a number of types of settings. These include:

- Regulated child day care centers that are licensed and inspected by the government;<sup>50</sup>
- Regulated family day care homes, licensed and inspected by the state, where individuals care for children in their homes. These may take up to six children, but no more than two children may be under two years old (including the caretaker's own children);<sup>51</sup>
- Regulated group family day care homes, licensed and inspected by the state, where individuals care for children in their homes. These may take up to 10 children, but no more than four children may be under two years old (including the caretaker's own children);<sup>52</sup> and
- Informal child care (*e.g.*, from a neighbor or friend) not regulated by the city or state. In New York City, the Human Resources Administration (HRA) will only pay for informal child care if the provider is someone other than the children's parents or guardians and the provider is not on the same public assistance budget as the child. Informal child care may take no more than two unrelated children under age seven at the same time for more than three hours a day.<sup>53</sup>

To find good child care, a teen parent can call the Child Care Resource and Referral Service in her social service district or the New York State Parents Connection (*see* Important Resources section for more information). These agencies can let a teen parent know what her options are

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and what to look for in choosing good, safe care. They can provide a list of all the child care services in a specific neighborhood as well as instructions to apply for them. A teen parent can check them out and sign up for the waiting lists of the ones she likes.

### CATEGORIES OF TEEN PARENTS ELIGIBLE FOR PUBLICLY FUNDED CHILD CARE

“Eligible” means that a person has met certain criteria, such as age or income, and has the right to apply for a benefit or service. However, people who are eligible for some services are not always guaranteed them.

Teen parents in New York State are eligible for publicly funded child care if they need it in order to go to school, job training, work, or to look for work.<sup>54</sup> Parents are also eligible if they cannot care for their child because they are ill or incapacitated.<sup>55</sup> In New York City, the Administration for Children’s Services (ACS) regulates child care.

These are three categories of teen parents eligible for child care in order of priority status<sup>56</sup> (who get services first):

- Teens on public assistance with their own Family Assistance budget (*see* Teens and Public Assistance section) should receive child care funding as long as they are in a high school or other educational program, and/or a work program.<sup>57</sup> Teen parents who stop receiving public assistance can keep getting child care through the following year.<sup>58</sup>
- If a local social services district has funding left, it must provide child care for income-eligible teen parents who need it to attend high school or an education equivalency program.<sup>59</sup> Income-eligible teens include teens on their parents’ Family Assistance budget and teens in families with incomes up to 200% of poverty level.<sup>60</sup> In 2006, 200% of the poverty level for a family of one is a yearly income of \$19,600; for a family of two: \$26,400; a family of three: \$33,200; a family of four: \$40,000; a family of five: \$46,800; a family of six: \$53,600; of

seven: \$60,400; and of eight: \$67,200.<sup>61</sup> For each family member above eight, add another \$6,800 to get 200% of the poverty level. These income eligibility levels change frequently; check with a local public assistance office for the most current income eligibility levels.

- If a local district still has funding left after that, it may choose to provide child care for teen parents who need it because of work or looking for work, homelessness, illness or incapacity, or other education or job-training programs.

In addition, minor parents in foster care in New York City also get publicly funded child care through the New York City Administration for Child Services if they are in school or working. At the time of printing this guide, New York State has recently issued a new regulation that requires everyone who applies for child care to file for child support from the father (just like with public assistance). As with public assistance, exceptions to this rule exist to protect against potential domestic abuse (*see* Public Assistance section). If the minor parent does receive child support, the money must go to the parent, not a foster care agency.<sup>62</sup>

### SCHOOLS AND CHILD CARE

Some high schools provide free child care to teen parents. In New York City, the LYFE (Living for the Young Family through Education) program provides free care for children, ages two months to three years, of teen parents enrolled in high schools and alternative schools throughout the city.<sup>63</sup> There are no income requirements. Applications are accepted on a first-come-first-served basis. Some high schools outside New York City also provide child care for teen mothers.



**DESTINY** is 15 years old and in high school. She just had a baby and now wants to go back to school. Her family is not on public assistance, and she doesn't have child care. What are Destiny's options?

*Destiny can call her local school district and look into child care programs in high schools. In New York City, she could call the LYFE program (see Important Resources section). She can also speak to a case worker at ACS or her local social services office to go over all of her child care options.*

*Destiny may also be eligible for child care assistance, and she can apply for child care in her community. If there is a waiting list for these services, Destiny may have to be persistent and put her name on many waiting lists.*



**LORENA** enrolled her son in the LYFE program at her high school. Her vice principal told her that if she failed a class, she could no longer get child care through LYFE. Can her son be kicked out of the LYFE program if she fails a class?

**NO.** *Other students do not lose access to school programs and services if they fail one class. It would be illegal discrimination to deny Lorena access to the LYFE program for failing a class, missing classes, or doing anything else that would not cause another student to lose access to school programs and services.<sup>64</sup>*

## WORK ASSIGNMENTS AND CHILD CARE

A teen parent with her own family assistance case (see Teens and Public Assistance section) must be excused from work activities if she is unable to find a child care provider that is *appropriate, affordable, accessible and suitable*.<sup>65</sup>

*Appropriate* means the provider is open for the hours and days needed for the parent to participate in work activities and the provider is willing to care for her child, including any special needs her child has.<sup>66</sup>

*Affordable* means the parent has enough money to pay the family share for the child care services and/or to pay the cost of care above market rate. If child care is informal, affordable also means that the parent has enough money to pay the caregiver at least minimum wage and to provide benefits required by law.<sup>67</sup>

*Accessible* means that the parent is able to get the child to and from the child care provider by available public or private transportation. When considering whether a child care provider is accessible, the age and any special needs of the child must be taken into account.<sup>68</sup>

*Suitable* means the physical or mental condition of the provider or the physical condition of the house would not be dangerous to the health, welfare or safety of the child.<sup>69</sup>

In order to be excused from the work or school requirement because a parent cannot find suitable child care, she must show that she is actively looking for a suitable care provider and following up on all the referrals she is given. She also must let her case worker know in writing which providers she has looked into and in what way they were not appropriate, affordable, accessible or suitable. While she will be told to contact friends, relatives and neighbors, she cannot be required to use them if they would not be suitable.<sup>70</sup>

## IV. HEALTH CARE

The health care system can be frustrating, confusing, and intimidating to adults and minors alike. Teens can protect themselves by asking questions to learn more about their rights, their health, their pregnancy, and their options. Health care providers are required to provide this information to all patients, including teens, so that patients can make informed decisions about their health care. Pregnant and parenting teens who are not happy with their health care can decide to switch providers.

It is often helpful for a minor to talk to a parent or other adult when making choices about health care. Open communication with a parent can be a great source of support. However, it is not always possible. Fortunately, young people in New York can receive a broad range of health services, including reproductive health care, on their own, without telling their parents or getting their permission if they do not feel comfortable talking to them about it.

### MINORS, CONSENT AND CONFIDENTIALITY

As a general rule, a minor cannot consent to his or her own health care. Usually, a minor's parents must consent for the care. This rule has some important exceptions under New York law:

- A minor who is **pregnant** can consent to **all health care services relating to the pregnancy and childbirth.**<sup>71</sup> Health care “relating to pregnancy and childbirth” can be broadly read to include almost all necessary health care.
- A minor who is a parent can consent to **all health care for him or herself and for his or her children.**<sup>72</sup>

Furthermore, **all minors in New York** have the right to consent to reproductive health care including:

- **Family planning services**<sup>73</sup> (birth control such as condoms, the Pill, the Ring, the Patch, Depo Provera, and emergency contraception<sup>74</sup>);
-

- **Abortion services;**<sup>75</sup>
- Testing and treatment for **sexually transmitted infections (STIs);**<sup>76</sup>
- Testing for **HIV/AIDS;**<sup>77</sup> and
- **Care following a sexual assault,** including rape crisis counseling, the examination of any injuries sustained during the assault, and forensic evidence collection.<sup>78</sup>

Finally, **all minors in New York** have the right to obtain certain other health care including:

- **Emergency health care;**<sup>79</sup>
- Some **mental health services;**<sup>80</sup> and
- Most **alcohol and substance abuse services.**<sup>81</sup>

When a minor seeks a health care service, the health provider must ask two questions:

First, does the minor have the **legal right to consent** to the care? In other words, does the minor or the health service fall into one of the categories listed above?

Second, does the minor have the **ability to give informed consent** to the health service? In order to give informed consent for her own health care, a minor needs to understand her condition, the nature and purpose of the proposed treatment, and the predictable risks and benefits of both the proposed treatment and the alternatives (including the option of no treatment at all).<sup>82</sup> The health provider decides whether the minor can give informed consent.

If the answers to these two questions are both “yes” – meaning that the minor has the legal right to consent to treatment and can give informed consent – then the treatment will generally be confidential.

*Confidentiality* means that the doctors, nurses, social workers and others providing treatment cannot tell anyone about the treatment without first getting permission from the patient. This means that teens can get care in

these situations without involving their parents. If a health care provider reveals private information without the patient’s consent, he or she could have his or her license suspended or revoked and could be sued.<sup>83</sup>

There are exceptions to this rule. For example, a health care provider can disclose information without a teen’s permission for some emergency treatment<sup>84</sup> and for reports of child abuse and neglect, both about the pregnant or parenting teen and about his or her child.<sup>85</sup>

In addition, insurance companies sometimes compromise confidentiality by listing services on records sent to the policy holder. This list of records is called an “explanation of benefits” (EOB). Some health care providers have methods to protect confidentiality, such as making sure that bills do not inform parents about confidential services received by minors. But not all providers will be able to ensure that a minor can keep her care private.

For a full discussion of the exceptions to rules about confidentiality, *please see Teenagers, Health Care and the Law*, 2nd Ed. (NYCLU Reproductive Rights Project 2002).

## PREGNANT MINORS AND CONSENT

A minor who is pregnant can consent to a broad range of health services relating to the pregnancy, including prenatal care and abortion services, and she can make decisions about her labor and delivery. She can also receive alcohol and substance abuse treatment. She cannot be forced to take an HIV test.

## ABORTION SERVICES

A teen in New York can get a confidential abortion without her parents’ permission. Although the U.S. Supreme Court has ruled that a state can require a minor to tell her parent(s) about an abortion or get parental permission,<sup>86</sup> New York State has never enacted such a law. Thus, a preg-



nant teen in New York can choose to have an abortion without her parents' knowledge as long as she understands the risks, benefits, and alternatives to the procedure, no matter what her age.

It is a crime for a doctor to release medical records relating to a teen's abortion to her parents or any other legal guardians without the teen's consent.<sup>87</sup>



**TABITHA** is pregnant and would like to get an abortion without involving her parents, but she is on her parents' private health insurance plan. Will her parents find out about the abortion if she uses their health plan to pay for it?

**THEY COULD.** *Tabitha should talk to her doctor and her health insurance plan about what she can do to protect her privacy. If Tabitha used her parents' health insurance to pay for her abortion, the insurance company will probably send an Explanation of Benefits (EOB) letter (see earlier discussion) to Tabitha's parents that may include information about Tabitha's abortion.*

*If Tabitha's doctor or insurance plan tells her that they cannot guarantee her privacy, Tabitha should consider other options for her treatment, such as using an abortion provider who accepts a reduced cash fee or who provides free services. (See Important Resources section.)*

## PRENATAL CARE, LABOR, AND DELIVERY

A pregnant teen can consent to confidential medical, dental, health, and hospital services relating to prenatal care.<sup>88</sup> Teens can also get confidential pregnancy tests and pregnancy counseling.



**TONYA** is 15 years old and pregnant. She wants to make sure she stays healthy, but she hasn't yet told her mother she's pregnant. Can Tonya get prenatal care without telling her mother?

**YES.** *Tonya can agree to all health care related to her pregnancy. This includes prenatal care if she chooses to have the baby, and abortion services if she chooses not to. Information about Tonya's pregnancy-related care cannot be released to her parents without her consent. While Tonya may want to tell her mother and ask for her support, she can make her own choices about her pregnancy. However, if Tonya is on her parents' health insurance plan, she should be aware that an Explanation of Benefits (EOB) letter might compromise the confidentiality of her care. (See earlier Confidentiality section.)*

Just about all necessary medical treatment that a pregnant teen receives could be seen as "relating to prenatal care." This is because most health care a pregnant teen needs will help her maintain a healthy pregnancy. Thus, a pregnant teen can make all or almost all of her health care decisions without involving her parents.<sup>89</sup>



**AMY** is 16 years old and three months pregnant. She goes to the hospital with a broken leg. The doctor needs to take x-rays, which can harm a fetus, so Amy tells him she is pregnant. She is worried because she hasn't told her parents that she's pregnant. Can she consent to her own care? Is it confidential?

**YES.** *A doctor may reasonably conclude that treatment for Amy's broken leg will affect her pregnancy. The doctor can treat her on her own informed consent without telling her parents.<sup>90</sup> In this case, the treatment will remain confidential.*

*If the doctor decides that the care was unrelated to prenatal care, Amy can still receive emergency treatment without her parents' consent.<sup>91</sup> In that case, the medical records for treating the broken leg may be given to her parents.<sup>92</sup> The doctor cannot, however, tell anyone (including Amy's parents) about her pregnancy without Amy's permission.*

A pregnant minor can consent to labor and delivery on her own. She can also sign herself and her infant out of the hospital after delivery without a parent or guardian. Some hospitals may ask the teen to prove that she is bringing her new baby to a safe home environment to make sure that the baby will be well cared for.



**LAUREN** is 15 years old and pregnant. Can she decide whether to have a cesarean section or a vaginal delivery?

**YES.** Doctors may advise a young woman to seek an adult's help when making a hard choice like this one. But if Lauren understands the risks and benefits of, as well as the alternatives to, having a cesarean section, then she can make the decision herself.

### ALCOHOL AND SUBSTANCE ABUSE TREATMENT FOR PREGNANT WOMEN

It is against the law to refuse to treat someone for an alcohol or drug addiction because she is pregnant.<sup>93</sup> These types of treatment must be open to people who are pregnant in the same way they are open to other people.

Parents of any age can always consent to their own alcohol and substance abuse treatment without their parent or guardian knowing. A pregnant teen can do the same, so long as the provider believes treatment is related to prenatal care.<sup>94</sup>

If a minor is not a parent and her provider does not believe the treatment is related to prenatal care, she can still get confidential non-medical alcohol and substance abuse care, like counseling.<sup>95</sup> She also may be able to get medical substance abuse treatment (like detox and methadone) without her parents' consent if her provider thinks that involving her parent(s) would have a harmful effect on treatment.<sup>96</sup> All information about alcohol and substance abuse treatment is strictly confidential in programs that receive federal dollars and cannot be shared with the police.<sup>97</sup>



**CAROLINE** is 16 years old and seven months pregnant. She wants to enroll in an in-patient program for drug treatment. The head of the program says that they cannot admit her because she is pregnant and none of their staff doctors know how to give prenatal care or deliver babies. Also, he says that treatment like methadone would hurt the fetus. Can he keep her from joining the program?

**NO.** Caroline has the right to get treatment at the program on the same basis as men and as women who aren't pregnant.<sup>98</sup> It is up to Caroline to weigh the risks and benefits of any medical treatment to herself and to her fetus in deciding what treatment to get.

### HIV TESTING

A doctor may not test anyone for HIV without first getting informed consent in writing.<sup>99</sup> This is true even when the patient is pregnant or in labor. A doctor may not threaten to withhold treatment from someone until she consents to HIV testing, because consent must be fully voluntary in order to be valid. However, a state law requires that hospitals test all newborn babies for HIV, even without consent from a parent or guardian.<sup>100</sup> If the baby tests positive, this reveals the mother's HIV status.



**FATIMAH** is eight months pregnant. Her doctor tells her that she must agree to get tested for HIV before she gives birth. The doctor says that if Fatimah won't consent, she will test the baby right after birth, whether or not Fatimah wants her to. Does Fatimah have to agree to get tested?

**NO.** *While there are many reasons why Fatimah may want to get tested, the choice is hers to make. The doctor cannot test her for HIV unless Fatimah gives her consent in writing, after getting counseling from the doctor. But the doctor is required by law to test Fatimah's baby for HIV right after birth, even if Fatimah doesn't give permission.*

## MINORS' RIGHTS TO MAKE HEALTH CARE DECISIONS FOR THEIR CHILDREN

Teen parents can make all health care decisions for themselves<sup>101</sup> and their children.<sup>102</sup> An unmarried father must establish paternity before he can make health care decisions for his child.<sup>103</sup> For more information about establishing paternity, see Rights and Responsibilities of Teen Parents section.



**NIKKI** is 16 years old, and she has a two-month-old daughter. She visits the doctor with her daughter and her mother. During the visit, the doctor keeps talking to Nikki's mother about the baby. The doctor wants the baby to be put on medication. Who can consent to this?

*As the parent, Nikki, not Nikki's mother, is the one who has the right to make all health care decisions for her child. Nikki can decide whether or not to seek the advice of her own mother in making those decisions. Nikki can consent to her daughter's health care with or without her mother's input.*

## WHEN OTHERWISE CONFIDENTIAL CARE MAY NOT BE CONFIDENTIAL: CHILD ABUSE REPORTING

Sometimes, a health care provider may not be able to keep information relating to a minor's care completely confidential because of laws that require or permit them to breach confidentiality in order to report certain things. For example, a provider can breach confidentiality if a patient intends to hurt himself or someone else.

Confidentiality is often incorrectly breached for pregnant and parenting teens in the area of child abuse reporting, as discussed below. Under New York's mandatory child abuse reporting law, health providers, among others, are considered "mandatory reporters."<sup>104</sup>

Mandatory reporters are required to make a report to the State Central Register for Child Abuse and Maltreatment when they have a reasonable suspicion<sup>105</sup> that a minor patient, or a patient's child, is abused or neglected.

A minor is abused or neglected when a parent or other person responsible for her care harms her; allows someone else to harm her (meaning that the parent knew or "should have known about the abuse and did nothing to prevent or stop it"<sup>106</sup>); fails to provide necessary health care, putting her at substantial risk of harm; or fails to provide adequate food, clothing, shelter or education.<sup>107</sup> For a full discussion of the limits of confidentiality when minors seek health care, see *Teenagers, Health Care & the Law*, 2nd Ed. (NYCLU Reproductive Rights Project 2002).

## UNDERAGE SEX IS NOT REPORTABLE AS CHILD ABUSE

The child abuse reporting law does not automatically apply every time a minor is a victim of a crime—it only applies when parents (or others legally responsible for a child's care) directly harm their minor child or allow someone else to harm their child.

New York courts have ruled that a teen who simply has had sex or is pregnant has not necessarily been abused or neglected and cannot be

reported on this basis alone to the State Central Register.<sup>108</sup> This means that even though it may be a crime for some teens to engage in voluntary sexual activity (sometimes called “statutory rape”),<sup>109</sup> consensual underage sex is usually not child abuse.<sup>110</sup>

It also means that even if parents know that their minor child has chosen to be sexually active and they do nothing to stop it, it still generally will not be considered child abuse.<sup>111</sup> Of course, a report would be proper where the teenager is having sexual relations with a family member, where a parent knows that the sex is forced and does not intervene, or where there is other evidence of abuse.

Therefore, mandatory reporters should not make reports to the State Central Register based solely on the fact that a minor patient is sexually active or pregnant without other evidence of abuse. Doing so would be an improper disclosure of confidential health information (which is professional misconduct) (see discussion on pages 20–21) and also might be a false reporting crime.<sup>112</sup>



**LESLIE** is 15 years old and in a consensual sexual relationship with her 20-year-old boyfriend, Tom. Her mother knows about the relationship and has not tried to stop it. Leslie has told her doctor about Tom.

Must the doctor report Leslie's mother to the State Central Register?

**NO.** In order to make a child abuse or neglect report, a mandatory reporter must have reasonable suspicion of abuse or neglect. Failure to take steps to stop or prevent a child from having consensual sex is not by itself abuse or neglect. But if the doctor learned of something else that suggested that Leslie's mom abused her, though, such as that she knew Tom was forcing Leslie to have sex and did not try to stop or prevent that abuse, the doctor would have to report Leslie's mother.

Must the doctor report Leslie's boyfriend to the police for committing “statutory rape”?

**NO.** Although Tom may have committed “statutory rape,” there is no law in New York State that requires or permits a health care provider to breach confidentiality to inform the police that a crime has been committed, even against a minor patient. Because there is no such law, the doctor should keep Leslie's medical information confidential and cannot report this crime to the police.

## HEALTH INSURANCE PROGRAMS

Several government health insurance programs are available to pay for confidential health care for pregnant and parenting teens.<sup>113</sup> These include three comprehensive medical insurance programs: regular Medicaid, the Prenatal Care Assistance Program (“PCAP”), and Child Health Plus (“CHPlus”).<sup>114</sup> In addition, the government offers two insurance programs that cover family planning services: the Family Planning Benefits Program (FPBP) and the Family Planning Extension Program (FPEP).<sup>115</sup>

### HEALTH INSURANCE FOR PREGNANT TEENS, TEEN PARENTS, NEWBORNS, AND CHILDREN

Three different government health insurance programs provide benefits to children and young people under the age of 19: Medicaid, PCAP and Child Health Plus.

#### Medicaid

Medicaid is a health insurance program for low-income New Yorkers. Medicaid is a comprehensive health insurance program, which means that it pays for all medically necessary care. Many teens qualify for Medicaid because they have little or no income or assets. A teen parent who is already covered by regular Medicaid before she becomes pregnant continues to receive Medicaid benefits during and after her pregnancy without doing anything.

Her baby automatically will be enrolled in Medicaid and her health plan.<sup>116</sup>

### PCAP

The Prenatal Care Assistance Program (PCAP) is a special Medicaid program for pregnant New York women. PCAP has simpler eligibility rules than regular Medicaid. Almost all pregnant teens, including immigrants, will qualify for PCAP, because eligibility is based solely on the pregnant woman's income, regardless of her age or immigration status.<sup>117</sup> PCAP covers comprehensive prenatal care (this includes nearly all medical care a pregnant teen may need) for pregnant women who earn up to 200 percent of the federal poverty level (see page 14 for a list of the 2006 federal poverty levels). Pregnant teens who are uninsured can often use PCAP to pay for an abortion.<sup>118</sup>

A pregnant teen can enroll in PCAP without her parents' consent. The income of a pregnant teen's parent(s) is not considered when establishing the teen's income eligibility. If she is married, her eligibility will depend on the combined income of her and her spouse.

A teen who enrolls in PCAP during her pregnancy will continue to receive coverage for 60 days after giving birth. Her baby will automatically be enrolled in and covered by regular Medicaid for one year.<sup>119</sup> The teen parent can apply to stay on regular Medicaid and keep getting full benefits beyond the 60 days after the end of her pregnancy.

Babies born to women who have Medicaid or PCAP should receive their own Medicaid cards and identification numbers within two weeks of birth. The parents then can use the baby's Medicaid card to cover all of the baby's health care. Until the baby receives a Medicaid card of his or her own, a mother can use her Medicaid card to cover the baby's medical care.<sup>120</sup> It is illegal for health care providers to refuse to treat a baby if his or her mother has a valid Medicaid identification number, even if the mother has not yet received her new baby's card.

### Child Health Plus

Child Health Plus (CHPlus) is a publicly funded insurance program for people under the age of 19 who do not qualify for Medicaid because they

earn too much money or do not have satisfactory immigration status.<sup>121</sup>

Many teen parents who are not eligible for Medicaid will be eligible for CHPlus. Teen parents may enroll themselves and their children in CHPlus without parental or guardian consent.<sup>122</sup> However, if they are still supported by their parents, they will have to submit their parents' financial information to be considered for CHPlus eligibility. To apply for CHPlus, teens can go to a community-based enrollment center or call the CHPlus enrollment number at 1-800-698-4543. (See Important Resources section for more information.)

**KIM** is 17 years old. She and her three-month-old son live with her parents. Her family is not on Medicaid. She does not have health insurance. Can she enroll her son in Child Health Plus? Can she enroll herself?

**IF KIM QUALIFIES** for CHPlus and is not eligible for Medicaid, then yes, she and her son can enroll in CHPlus. Kim should call the CHPlus Info Line: 1-800-698-4543.

*If a Pregnant Teen is Already on Medicaid or CHPlus.*

If a pregnant teen is already on Medicaid or CHPlus, her health care is already covered. She can get comprehensive prenatal care or an abortion with her Medicaid or CHPlus card.

**JANE** is on Medicaid. Her Medicaid managed care plan is religiously affiliated and does not pay for abortions. What can she do?

*Jane is still entitled to get an abortion that is paid for by Medicaid. Jane should take her Medicaid card to any abortion provider that accepts Medicaid and her abortion will be covered. Almost all Planned Parenthood clinics accept Medicaid. (See Important Resources section.)*

### *Additional Family Planning Insurance Programs*

The government operates two additional insurance programs that pay for family planning benefits:

The first program is called the Family Planning Benefits Program (FPBP). FPBP provides confidential family planning services to teens and other New Yorkers. In addition to comprehensive contraceptive services (including prescription birth control and emergency contraception), FPBP also covers STI and HIV screening, and pregnancy testing and counseling. Abortion is not included in this program.

The second program is called the Family Planning Extension Program (FPEP). This program extends Medicaid coverage for two years after a pregnancy ends for family planning services (not abortion services) at participating health care clinics, even if the patient is not eligible for Medicaid.<sup>123</sup> After those two years, a teen can apply for confidential family planning services through the FPBP, described above. (See Important Resources section for more information about FPBP and FPEP.)

### **SIGNING UP FOR HEALTH INSURANCE**

A pregnant teen can go to an office called a “facilitated enroller” for help signing up for PCAP or another kind of health insurance. A teen can also sign up at a family planning clinic (such as Planned Parenthood or The Door). (See Important Resources section at the back of this book.) If she signs up for PCAP with a health provider who accepts PCAP insurance, she can receive health care right away. There are many PCAP providers throughout New York, so pregnant teens should never have to go to a Medicaid office to sign up for PCAP.

### *If a pregnant teen is uninsured and cannot enroll in an insurance program*

Many clinics have a sliding fee scale (where the cost of a service is based on the patient’s ability to pay) or help low-income and uninsured people pay for abortions for patients who are not eligible for any government-funded programs.

**DENISE** is 15 years old and 10 weeks pregnant. She wants to take good care of herself while she’s pregnant, but she does not have health insurance. How can she obtain the prenatal care she needs?



*Denise can go to either a PCAP or a Medicaid prenatal health care provider and apply for assistance. She can receive prenatal services as soon as she applies. If her PCAP application is then approved, she can continue to receive full prenatal care throughout her pregnancy and for 60 days after she delivers her baby.*

Pregnant teens will continue receiving PCAP coverage for 60 days after giving birth and can apply for family planning coverage (not including abortion care) through the Family Planning Extension Program (FPEP) for two years following the end of their pregnancy, regardless of whether the pregnancy ended in a live birth, still birth, miscarriage or abortion.<sup>124</sup>

### **HEALTH INSURANCE FOR IMMIGRANTS**

This section uses the term *documented* to refer to immigrants who live in the U.S. legally, and *undocumented* to refer to immigrants who live in the U.S. illegally.

Most immigrant youth under 19 years of age residing in New York State are eligible for some form of free or low-cost health insurance, provided they meet the other eligibility rules for these programs (for example, if they are income eligible for the program).

### *CHPlus for Immigrant Teens*

Immigrant teens, including undocumented teens, under 19 years of age are eligible for health care under CHPlus as long as they meet the income guidelines, live in New York, and do not qualify for Medicaid.<sup>125</sup> Applicants have to answer questions about their immigration status. However, the parents of an immigrant teen do not need to disclose their

own immigration status to apply for CHPlus for their children.

### *PCAP for Immigrant Teens*

PCAP, the special Medicaid program available to pregnant women and teens, is available to all immigrants, including undocumented immigrants, as long as they are otherwise eligible. Further, a pregnant teen does not have to provide information regarding immigration status on her PCAP application.



**PHUONG** is an undocumented immigrant who is 17 years old and four months pregnant. She is nervous about going to the doctor because of her immigration status. Can Phuong receive health care under PCAP? Will PCAP report her to The United States Citizenship and Immigration Services (USCIS, formally the Immigration and Naturalization Service or INS)?

*Phuong can apply for PCAP without disclosing her immigration status. As a pregnant teen, if she meets the income limits, Phuong can receive PCAP right away and begin her prenatal care. The New York State Department of Health, which runs the PCAP program, will not report her to USCIS. After her baby is born, Phuong will continue to receive health care coverage for 60 days, and her baby will be covered for one year. After the 60 days, Phuong can apply for CHPlus to continue getting health coverage for herself (until she turns 19).*

*After one year, Phuong can apply for Medicaid for her baby. Because the baby was born in the U.S., he is a citizen, and therefore there is no immigration restriction for him to apply for Medicaid. Phuong only needs to show documentation for the baby.*

*If the baby is screened and does not qualify for Medicaid because Phuong's household makes too much income, Phuong can apply for CHPlus for her baby. Phuong's parents will not have to provide any immigration information.*

### *Medicaid for Immigrant Teens*

Medicaid is not available to undocumented teens or short-term visa holders (such as visitors, foreign students or tourists). Medicaid is available to most other lawful immigrants, including Lawful Permanent Residents (Green Card holders) and persons who are “permanently residing under color of law” (PRUCOL), like applicants for asylum or persons with Temporary Protected Status.<sup>126</sup> To apply for Medicaid, applicants must provide proof of their immigration status.



**SONYA** is a Lawful Permanent Resident (Green Card holder) and just had a baby in New York. USCIS has granted her boyfriend, Raul, Temporary Protected Status. Under this immigration status, he cannot get a Green Card. Can Sonya and Raul apply for Medicaid for themselves and for their baby even though they are not citizens?

*Sonya can apply for Medicaid for her baby, who is a citizen because he was born in the U.S. Only the baby's documentation is needed for the baby to qualify for Medicaid. As a Lawful Permanent Resident, Sonya can apply for Medicaid for herself. As a PRUCOL immigrant, Raul also can apply for Medicaid.*

### *Family Planning Benefits Program for Immigrant Teens*

The FPBP program has the same immigration rules as regular Medicaid. See “Medicaid for Immigrant Teens” above.

### *Applying for Public Health Insurance Should Not Endanger a Teen's Immigration Status*

Using Medicaid or CHPlus should not put an immigrant's status in the United States in danger.<sup>127</sup> In New York, teen parents who are immigrants can apply for health insurance for their children and, in many cases, for themselves, whether they are documented or undocumented. Immigrant pregnant women, including teens, are eligible for PCAP without having to show that they are in the U.S. legally.<sup>128</sup> PCAP and CHPlus applica-

tions do not require an undocumented applicant to provide a social security number or immigration documents.<sup>129</sup> However, after a teen has given birth, she may have to answer questions about her immigration status in order to keep getting health insurance (e.g., through Medicaid).

An applicant's immigration status should remain confidential, unless there is evidence that she has given false information. The instructions for the joint Medicaid/CHPlus/PCAP application form state:

The Immigration and Naturalization Service (INS) [now known as USCIS] has said that enrollment in Child Health Plus A or B, Medicaid, PCAP or Family Health Plus CANNOT affect a person's ability to get a green card, become a citizen, sponsor a family member, or travel in and out of the country (except if Medicaid pays for long-term care in a place like a nursing home or psychiatric hospital).

The State will not report any information on this application to the INS. (*Emphasis theirs.*)<sup>130</sup>



**TSERING'S** family is Tibetan. They applied for asylum in 2001, but USCIS has not made any decision about their application. Tsering would like to apply for CHPlus but is worried that it will ruin her chances to be granted asylum. Is she right?

**NO.** Using CHPlus, Medicaid, PCAP or FPBP will not affect Tsering's asylum application. She cannot be deported or denied asylum because she has used a public insurance program. In addition, she can travel outside of the United States.<sup>131</sup>

## V. RIGHTS AND RESPONSIBILITIES OF TEEN PARENTS

Teen parents—both mothers and fathers—have the same rights and responsibilities as adult parents. They must care for their children and provide financial and emotional support. They also have the right to make decisions for their children. For example, they can make decisions about medical issues and schooling. Teen parents have custody rights above all others, including the grandparents of their children.

### ESTABLISHING PATERNITY

“Establishing paternity” means legally deciding who is the child's father. When paternity is established, the father joins the mother in taking legal responsibility for the child. This means that the father, like the mother, must provide financial support for the child and make sure that the child is well cared for.

### MARRIED PARENTS

When a man is married to a child's mother, it is presumed that he is the child's father and no other steps need to be taken to establish paternity.<sup>132</sup> He has all the legal and responsibilities rights of fatherhood. By law he must help the mother support the child financially.

### UNMARRIED PARENTS

A man who has a child with a woman to whom he is not married has few legal rights or responsibilities with regard to the child unless paternity is established. When a father is not married to the child's mother, he must “establish paternity” in order to have a legal relationship to the child. Establishing paternity gives an unmarried father the duty to support the child financially and the right to seek visitation and to ask for custody.

Simply putting the father's name on the birth certificate does not estab-



lish paternity.<sup>133</sup> The last name of the child does not determine paternity, either. The child can take the mother’s last name or the father’s last name without changing paternity.

There are two options for establishing paternity for an unmarried couple:

**Acknowledgement of Paternity:** This is the easiest way to establish paternity. As long as the father and mother agree that the man is the father, they can sign an “Acknowledgement of Paternity.”<sup>134</sup> The Acknowledgement of Paternity must be signed in front of two people unrelated to the couple. Those people must also sign the paper.

An Acknowledgement of Paternity establishes paternity and responsibility for financial support.<sup>135</sup> Based on the Acknowledgement of Paternity, a family court can grant visitation rights and/or custody rights.<sup>136</sup> Under the law, both the possible father and the mother of the child have the right to change their minds about the Acknowledgement within 60 days of signing it.<sup>137</sup> After that, it is final.

If the child is born at the hospital and both parents are present, the hospital staff must provide the forms and arrange to have the signed Acknowledgment of Paternity filed with the right office.<sup>138</sup> These forms may also be filed by parents on their own and can be obtained from the registrar of vital statistics in the country where the birth occurred.<sup>139</sup>

**Court Order of Filiation:** When a couple does not agree that a man is the father, either person<sup>140</sup> can take the case to a Family Court judge to decide the question.<sup>141</sup> Sometimes blood tests are taken to prove paternity. If the Family Court decides that the man is the father, it will make a formal decision that he is the father and issue an “Order of Filiation.”<sup>142</sup> After that, the court can order him to give money toward the child’s support. The father will also have the rights of parenthood, including visitation and/or custody, although the couple might need a court to help them work out the details.

It is very important for parents to comply with notices or warrants in paternity or child support hearings. A court may order the Department of Motor Vehicles to suspend the driver’s license of a parent who fails to come to court when there is a child support case against him or her.<sup>143</sup>

**MIGUEL and TINA** are both 17 years old and unmarried. Tina just had a baby, and Miguel wants to establish paternity. How does he do this? What are his responsibilities?

*If Miguel and Tina agree that he is the father, then they can sign an “Acknowledgement of Paternity.”*

*If Miguel and Tina do not agree about whether he is the father, he can take the case to Family Court and ask the court to declare that he is the father.<sup>144</sup> If the Family Court decides that Miguel is the father, it may issue an order stating that he is the father, called an “Order of Filiation.”<sup>145</sup>*

*Once paternity is established, the court can order Miguel to give money toward the child’s support. Miguel will also have the right to seek visitation and/or custody.*

## THE RIGHT TO CUSTODY

A parent who has legal custody has the right to make decisions for the child, such as where the child lives. Having custody of a child also brings responsibilities, such as providing for the child’s support and well being. Custody rights can be given or taken away when a judge thinks it is necessary to protect a child. Since the government has a duty to protect children from abuse or neglect, it can step in and take away custody rights if it thinks that a child is in danger.

- Natural parents (who are fit) have a right to the custody of their children.<sup>146</sup>

- An unmarried mother automatically has legal custody of her child. Her age does not matter.
- An unmarried father also has custody rights, but those rights cannot be claimed until paternity is established. Once a child's father establishes paternity, the father has an equal right to claim custody. (See previous section, Establishing Paternity.)
- Married parents share equal custody of their children.

Both parents have custody rights “superior” to all others, including the child's grandparents. In other words, no matter how old the parent is, the law will assume that the parent gets custody before any other person does.



**JAMIE** is 16 years old. She just gave birth and wants to care for her child. Her boyfriend's parents say that she is too young; they want to raise Jamie's child themselves. They say they have rights because their son is the father. Can they take Jamie's child from her?

**NO.** Unless Jamie's boyfriend establishes paternity, his parents have no legal relationship to the child at all—they have no more rights than any other stranger.

*Even if Jamie's boyfriend has established paternity, his parents would have to go to court to ask for custody of the child. The judge would require his parents to show some extraordinary circumstance before even considering their request.<sup>147</sup> Jamie's age alone would not be an extraordinary circumstance.*

When two parents disagree about custody, the court will look at “the best interest of the child” to make the decision.<sup>148</sup> In thinking about “best interests,” a court will look at many factors. Some of these factors are the emotional bonds between the child and each parent, the parent's ability to provide for the child (financially and otherwise), and the wishes of the

child. There is no set way to decide what is in a child's “best interest,”<sup>149</sup> but courts must consider evidence of domestic violence in making these decisions.<sup>150</sup>



**KATRINA** is 16 years old, and her boyfriend Jim just turned 19. They fight all the time and are in the process of breaking up. Jim threatens to take their baby away. He says that because he is an adult, he should have custody. Would a court award custody to Jim just because he is an adult and Katrina is a minor?

*The court would consider the “best interest of the child” in deciding which parent gets custody. When looking at “the best interest of the child,” a court will take into account other factors besides the age of the parents. There is no rule that says that a minor cannot get custody, but age may be a factor in determining the child's best interests. Before Jim can ask for custody, he must establish paternity.*

## CHILD SUPPORT

Both parents are expected to provide financial support for the care and education of their children until the children turn 21 years old.<sup>151</sup>

Becoming a parent is often a difficult decision for a teen, because many responsibilities come along with the benefits. One of the main legal responsibilities of parents is the duty to provide financial support for the child. Married fathers are presumed to be the father of the child and must support the child along with the mother. Unmarried fathers must provide financial support only after paternity is established. If the unmarried father is not willing to acknowledge paternity or pay child support, the mother can bring him to court.

Even if the mother is not seeking child support from her baby's father, the government will try to get the father to contribute to the baby's support and medical care if the mother receives or applies for public assistance or public health insurance. See "How Receiving Child Support Can Affect Financial Eligibility for Public Assistance" for a more detailed discussion.

In most cases, if there is only one child, the amount of child support a father has to pay depends upon how much each parent makes. The general formula to calculate the amount of child support is to add the income of both parents and then take 17 percent of that income. The father will have to pay a portion of the 17 percent that reflects how much of the total income he makes.<sup>152</sup>



**JUAN and ELENA** have a child and each of them makes \$5,000 a year. How much will Juan have to pay for child support?

*Juan will have to pay \$850 per year. (Juan and Elena's combined income is \$10,000. Seventeen percent of that income is \$1,700. Because Juan earns half of their combined income, he will have to pay \$850 a year—half of \$1,700.)*



**JOHN** just became a father and is not married to his new baby's mother. He's scared because he doesn't have a job and doesn't have much money. Does he have to pay child support?

**YES**, if paternity has been established, John must pay child support. He can be taken to court if he does not. If John's paternity is not established, the baby's mother can sue to establish paternity and request child support payments. In most cases, he would be required to pay a portion of 17 percent of

*the combined parental income. Even if John is unemployed, he could still be required to pay child support.<sup>153</sup>*

## UNMARRIED PARENTS' RIGHTS TO VISITATION

The law encourages unmarried fathers to maintain a relationship with their children as long as paternity has been established.<sup>154</sup> Of course, two parents can always work together to schedule visits. However, when parents cannot agree on visits, either parent can go to court to obtain an Order of Visitation. A court may deny visitation rights only if it decides that visitation could harm the child.<sup>155</sup> If one parent wishes to have the other parent pay child support, the court may grant visitation rights as part of the child support case.<sup>156</sup>



**NICK** is 16 years old and had a daughter with his 16-year-old girlfriend, Tamara. They broke up and he moved out. Does he have any rights to visit his daughter?

*Tamara may allow Nick to visit his child. If she doesn't, Nick can go to Family Court to obtain an Order of Visitation. As long as Nick has established paternity, the court will grant Nick visitation rights unless the court finds that it would be harmful to the child. If Nick gets an Order of Visitation, Tamara must obey it.*

## ADOPTION

When a woman becomes pregnant, she can choose to have an abortion or to carry the pregnancy to term. When she has a baby, she can choose to raise the child or to place the child for adoption.

Once a parent has consented to the release of a child for adoption it is not easy for a parent to change her decision.<sup>157</sup> A parent can put a child up for adoption no matter how old the parent is, and the decision is up to the baby's parent, not the baby's grandparents. Once the adoption process is started, it can be very difficult to stop. It is very important that young parents learn about their rights and understand the consequences of their choices.

There are two types of adoption: private and judicial. Often, adoptive parents go through both types of procedures.

### PRIVATE OR EXTRAJUDICIAL CONSENT ADOPTION

Private adoption is performed outside of court. When parents sign an extrajudicial consent, it means that the biological and adoptive parents have agreed to a private adoption outside of a courtroom. There is no contact with a judge and no hearing.

In this case, a parent can change her mind and try to stop the adoption by revoking the consent within 45 days after it is signed.<sup>158</sup>

However, a revocation within the 45 days does not mean that the child will automatically be returned to the birth parent. Instead, a court hearing will decide the best interests of the child if the adoptive parents still want to adopt the baby.<sup>159</sup> The birth mother no longer has a special claim to custody. She is now placed in an equal position with the adoptive parents, and the court will decide who can provide the baby with the best, safest home.<sup>160</sup>

### JUDICIAL CONSENT ADOPTION

Adoption involving judicial consent is more formal than an extrajudicial consent adoption. The consent form is signed in a courtroom where a judge explains the impact of signing the form. The judge must inform the birth mother of her right to representation by a lawyer of her choice and of her right to receive supportive counseling.<sup>161</sup> If the birth mother

consents to the adoption before a judge who has informed her of the legal consequences of the act, then she cannot revoke her consent.<sup>162</sup>

If the teen parent is in foster care, she can only place her child up for adoption through a court.<sup>163</sup>

There are rare cases when even judicial consent is invalid. A mother's consent to an adoption is not valid if it is the result of duress, coercion, or fraud, *i.e.*, if someone pressures, manipulates, or forces her into agreeing to the adoption.<sup>164</sup> Consent is also not valid if it is given before the baby is born.<sup>165</sup>

**MICHELLE** is 15 years old. She decided to have her aunt adopt her baby. A few months later, she has changed her mind. Can she do that?



*She can try but she may not be able to get her baby back. If consent was outside of a formal legal proceeding, she can revoke it within 45 days. But a court will have a hearing to determine the best interests of the child.*

*For either type of adoption, Michelle can ask a court to investigate whether her consent was voluntary. Michelle should be able to get the adoption invalidated if she can show one of the following: she did not have a full understanding of the effect and consequences of the adoption; she consented to the adoption as a result of duress, coercion, or fraud; or she gave consent before the baby was born. Although the court will look harder at the voluntariness of a young mother's consent, the mere fact that Michelle is a minor is not enough to invalidate the consent and get her baby back.*

### UNMARRIED FATHERS AND ADOPTION

The law about unmarried fathers and adoption is complex. An unmar-

ried father, no matter what his age, must assume either primary custody or substantial responsibilities for the baby if he wants to prevent adoption. An unmarried father must act quickly to protect his rights. He must establish paternity and help the mother financially during the pregnancy and once the child is born, even if the mother is on public assistance and/or Medicaid.

An unmarried mother can place a child under six months of age for adoption without the father's consent. The father can attempt to block the adoption only if he seeks full custody of the child. In that case, a court will decide whether to award custody to the father based on factors such as:

- Whether the father claimed to be the father prior to the birth;
- Whether he paid any portion of the pregnancy and birth expenses; and
- Whether he took legal responsibility for the child.

In other words, the court will decide based on the father's commitment to the child.<sup>166</sup>

The rule is different if the child is placed with the adoptive parents more than six months after its birth. In that case, the consent of the unmarried father to the adoption of the child is only required if the father can show that he has maintained a substantial and continuous relationship with the child. This includes financial support and regular visits or communication with the child or the mother if he does not live with them.<sup>167</sup> If there is evidence that the father planned to give up his parental rights by not keeping in contact with either the mother or their child, the mother can place the child with an adoptive family without his consent.<sup>168</sup>

## VI. TEENS AND PUBLIC ASSISTANCE

Public assistance is money or other assistance that the government gives to people who do not have enough money to pay their rent, buy food, or obtain other necessary things. In order to receive public assistance, a person must fill out an application. In New York City, the Human Resources Administration oversees public assistance. Applications are filed at job centers, where all information is reviewed to determine eligibility.

There is widespread confusion about public assistance eligibility rules for teenagers. As a result, young people are often wrongly denied benefits or even the right to apply for benefits. A young person who knows his or her rights, questions decisions that seem unfair, and persists in seeking information and assistance may be able to conquer some of the obstacles.

### TYPES OF PUBLIC ASSISTANCE

There are three types of public assistance:

**Family Assistance (FA):** FA is a cash benefit for households with children under 18 (or under 19 if still in high school, or in vocational or technical school full-time) and for women, including certain minors, who are pregnant.<sup>169</sup> A household can receive FA for a total of five years.<sup>170</sup> This is a lifetime limit (which means that a recipient is eligible to receive assistance for five years total over their entire lifetime).

**Safety Net Assistance–Cash (SNA):** SNA–cash is a cash benefit for single people (including minors, if they are living alone) or couples without children. A person can receive SNA–cash for a total of two years.<sup>171</sup> This is a lifetime limit.

**Safety Net–Non-Cash Assistance (SNA-NC):** FA families that use up their five years of aid, or SNA–cash households that use up their two years of aid, should be eligible for Safety Net Assistance–non–cash.<sup>172</sup> This

program does not have a time limit. Instead of giving money to recipients every month, this public assistance program generally:

- Pays rent directly to the landlord;
- Pays utility bills directly to the utility company;
- Provides the remainder of the grant in cash to the recipient.

When all of these pieces of the SNA-non-cash grant are added together, the total value will be the same as the household's cash grant when it was receiving FA or SNA-cash.

Recipients are sometimes incorrectly told that no further assistance is available after reaching the time limit for FA or SNA-cash. This is wrong. Because of the SNA-non-cash benefit, recipients can still get assistance; the form of the benefit will change, but the total value of the grant remains the same.<sup>173</sup>

Note that if someone under 21 receives public assistance as part of his or her parents' budget, it does not count toward the five-year time limit if he or she later needs Family Assistance as an adult.<sup>174</sup> (See next section.)

## THE RIGHT TO APPLY FOR PUBLIC ASSISTANCE

Everyone has the right to apply for public assistance, even minors.<sup>175</sup> A person can apply at any time at a job center. Although a job center never has the right to prevent someone from filing an application, job center workers often make it difficult for young people to apply. There is no minimum age to apply, but only people who are 16 years old or older have the right to receive benefits in their own names.

When a young person applies for public assistance, she can also apply for food stamps and medical assistance (e.g., Medicaid). Remember, not everyone who applies for public assistance is eligible. For example, some people are ineligible for public assistance due to their immigration status, and some people are ineligible because their household income is too high. However, they may still be eligible for Medicaid, CHPlus or food stamps.

## SPECIAL CIRCUMSTANCES FOR MINORS TO RECEIVE ASSISTANCE

Minors under the age of 16 cannot receive public assistance benefits on their own behalf. A minor parent between the ages of 16 and 18 may, in some circumstances, be able to receive benefits on behalf of his or her child. For example, if a teen parent over 16 is exempted from the "living at home" requirement because of one of the exceptions listed on page 50, that teen may receive her public assistance directly.<sup>176</sup>

In addition, a minor parent over 16, who is already receiving public assistance on a parent's case, may be eligible for benefits on behalf of herself and her infant.<sup>177</sup> In this case, the minor would receive benefits only for her portion of the household grant (the money designated for the teen and her child). In other words, the total amount of money given to the household would not change. Parents over 18 (or over 19, if they are still in secondary school) should be able to receive benefits directly.

**RAISA** is 17 years old and four months pregnant. Can she apply for public assistance?



*Raisa has the right to receive an application, fill it out, submit it, and have it processed. If she is at least four months pregnant and has medical verification of the pregnancy, she can also request a pregnancy allowance (\$50) to be added to any benefits she may receive.<sup>178</sup> Once the child is born, she must immediately notify her public assistance caseworker so that the pregnancy allowance can be discontinued and the baby added to the budget.*

*Even if Raisa were not pregnant, she would have the right to apply for public assistance. Raisa's eligibility depends on who lives in her household, who is counted on the budget, and how much income the household has.*

## SPECIAL GRANTS

Even before the application has been processed, a public assistance applicant may be eligible for some types of immediate assistance, such as:

**Expedited Food Stamps:** These should be available within seven days if the household meets the income and resource requirements,<sup>179</sup> which are that the applicant must have less than \$100 in cash and must have made less than \$150 in the previous month.<sup>180</sup>

**Immediate Needs Grant:** This is a small cash allowance for an applicant who has no money for food, transportation or other immediate necessities.

**Emergency Assistance:** This is a cash allowance that may be provided if the applicant is at risk of being evicted or losing utility service.

## PARENTAL LIVING REQUIREMENTS AND TEENS

If a teen is under 18 years old, unmarried, and has a child or is pregnant, she can only receive public assistance in her own name if she lives with a parent, guardian or other adult relative. But teens can get an exception from this rule if:

- No parent or guardian is available for the teen to live with;
- No parent or guardian is willing to take the teen in;
- The teen is or was being subjected to “serious physical or emotional harm or sexual abuse” at the parent’s or guardian’s home;
- Living with the parent or guardian might put the teen or her child at risk of serious harm; or
- For some other reason, it would be in the best interest of the teen not to make her comply with the rule.<sup>181</sup>

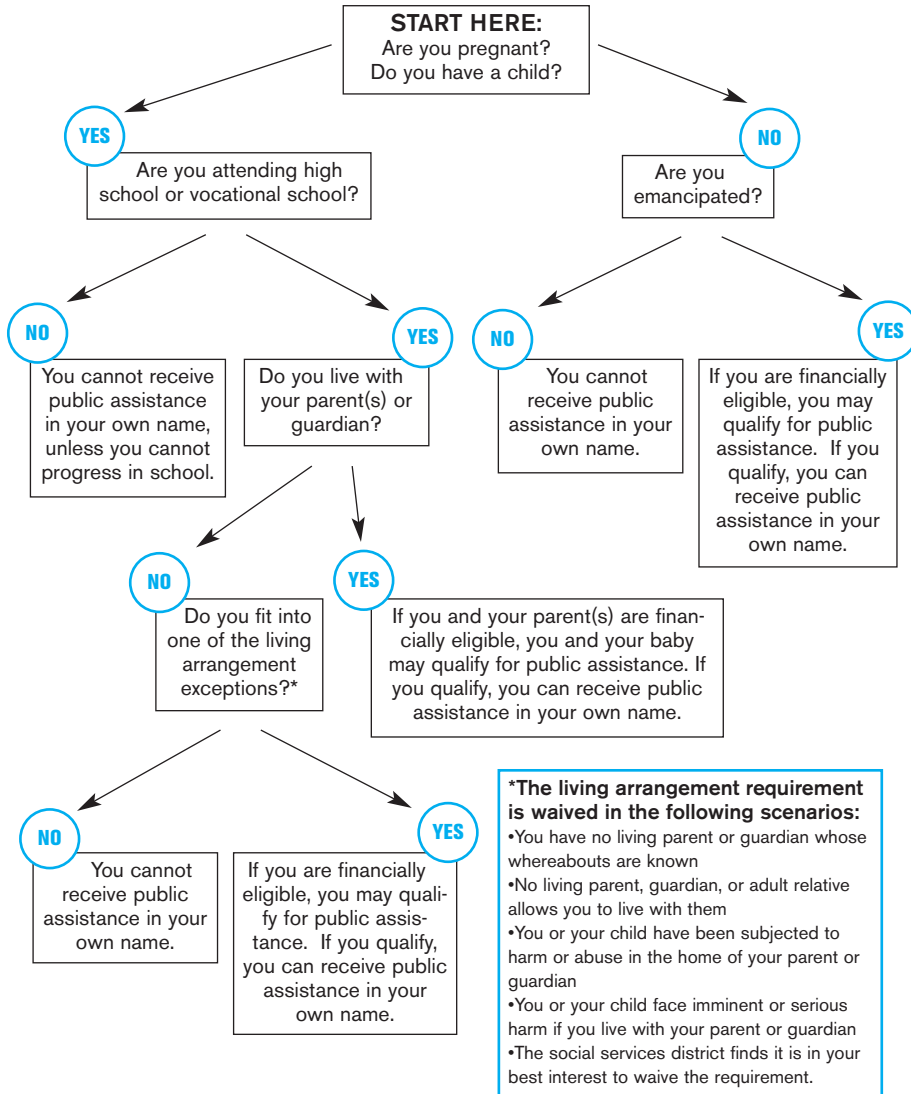
If the job center decides that the teen does not have to move back in with a relative or guardian to get assistance, it must help her find a supervised living arrangement, unless her current living situation is appropriate.<sup>182</sup>

If a pregnant or parenting teen applies for public assistance and claims that she should not be required to live with an adult relative or guardian, the social services district must investigate her claim and continue to process her application. If they investigate and disagree with her claim but she refuses to live with the adult, then the application can be rejected. However, the teen is entitled to a hearing within 30 days to appeal the decision.<sup>183</sup>

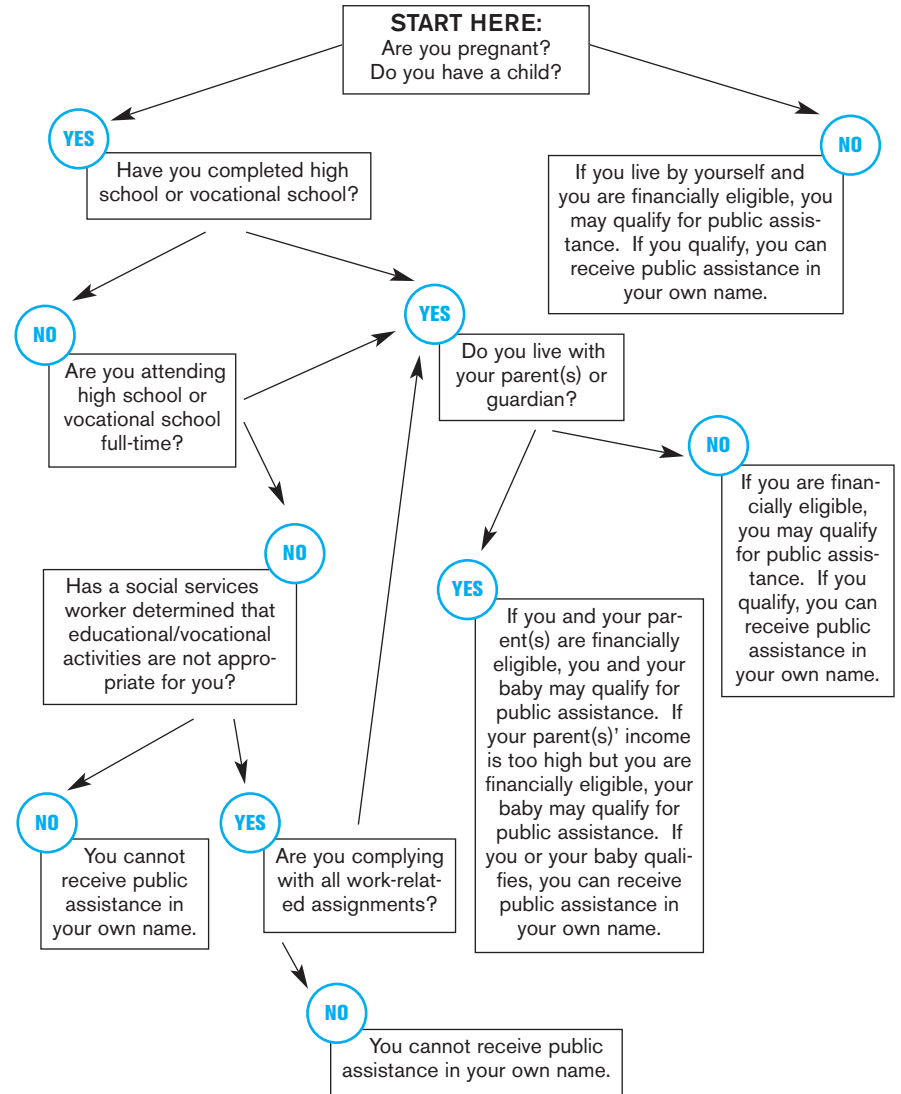
Parents are still legally responsible for the support of a teen who is under 21, lives apart from her parents, and receives public assistance. In this case, public assistance may require her to cooperate with the Office of Child Support Enforcement in trying to obtain support payments from the parents.

The following flow charts describe these rules, based on the age of applicant:

**I AM 16 OR 17 YEARS OLD.  
CAN I RECEIVE PUBLIC ASSISTANCE IN MY OWN NAME?**

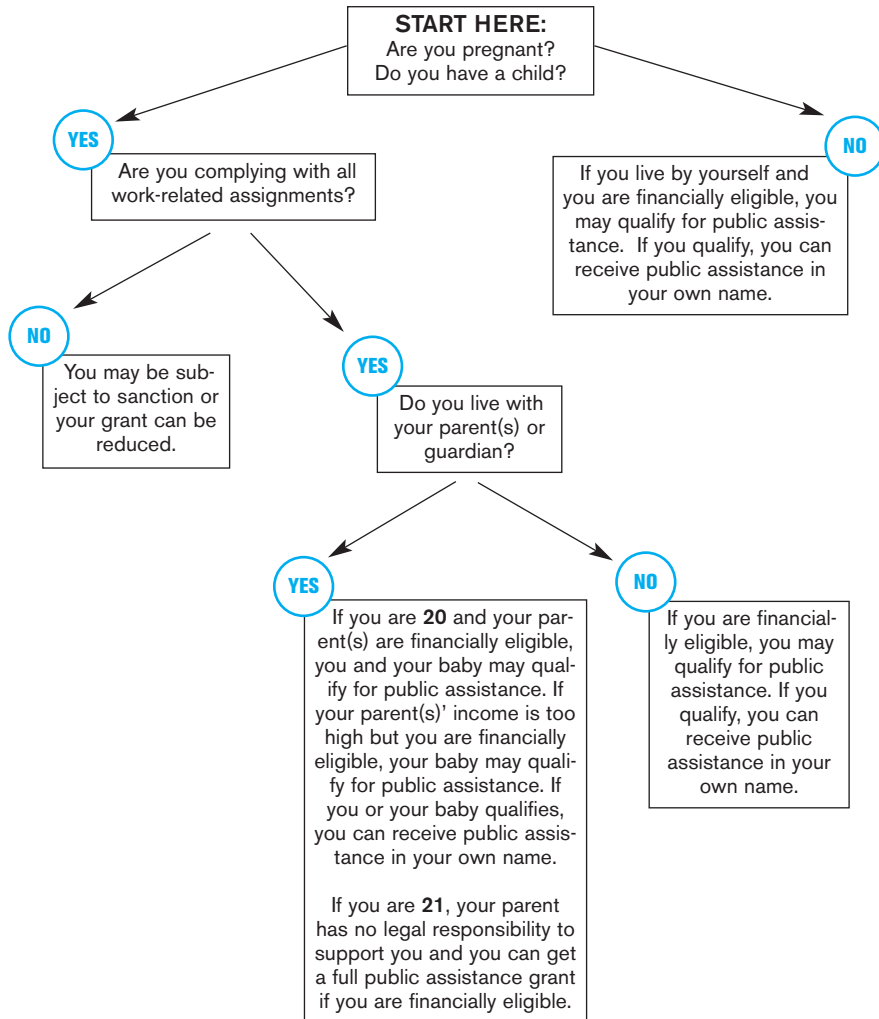


**I AM 18 OR 19 YEARS OLD.  
CAN I RECEIVE PUBLIC ASSISTANCE IN MY OWN NAME?**





## I AM 20 OR 21 YEARS OLD. CAN I RECEIVE PUBLIC ASSISTANCE IN MY OWN NAME?



**TRACY** is 17 years old and is on her mother's public assistance budget. She has a baby and wants to open her own public assistance case for herself and her child. What can she do?

*Tracy should go to a job center to apply for public assistance. The job center will prefer to provide Tracy's parents with the entire grant. In some cases, Tracy might be able to argue that she needs to receive her share of the grant separately. Even if she is able to get her share of the grant in her own name, the total grant amount to the family will not change<sup>184</sup> – Tracy will receive a portion of her parents' grant, and her parents' grant will be reduced by that amount.*

### FINANCIAL ELIGIBILITY AND TEENS

To be eligible for public assistance, a person must be financially in need, according to certain income guidelines. If a household has enough money, the application will be denied.

In New York State, parents are responsible for their children's support until the children reach the age of 21. Therefore, income from a parent living in the household will be taken into account when the job center determines if a teen is eligible.<sup>185</sup>

If a teen is under 18 years old and lives with her parent(s), she and her baby will have her parents' income counted as if it were available to both of them.<sup>186</sup> In other words, the job center will look at the parents' income to figure out whether the teenager under 18 and her baby are financially needy. If the parents are working and making enough money, the teen and her baby may be ineligible for public assistance.

If a teen is over 18 years old but under 21 years old, then her parents' income will be counted as available to her, but not to the baby.<sup>187</sup> In that case, even if she is ineligible for public assistance, she may be able to obtain some assistance for the baby.



**NINA** is 19 years old and has a 5-month-old son. She wants to open up a public assistance case for herself and her baby. She lives at home with her mother, who works part-time as a home health aid. What can she do?

*Nina has the right to apply for public assistance for herself and her son. She can go to a job center to apply. The job center will want to know how much income her mother has and will count that as “available” to Nina, but not to her son. If Nina has no other income of her own, she should be able to obtain assistance for the baby.*

A teen who is about to leave foster care, because she is aging out or otherwise, can apply for public assistance if she wishes to establish a source of income once she is out of foster care.<sup>188</sup>

#### CHILD SUPPORT AND FINANCIAL ELIGIBILITY FOR PUBLIC ASSISTANCE

Unmarried mothers who seek public assistance may have to provide information about the baby’s father so the State can attempt to collect child support. When an unmarried mother applies for public assistance, she will be sent to the Human Resource Administration’s Office of Child Support Enforcement (OCSE). The office will ask if she receives child support. If she does not, the office will ask for the name and address of the father and authorization to seek child support from him. Social services will usually sue the father to get this money.

In most cases, the woman is required to give the name of the father and his location, and/or place of work, or she risks a penalty. If the OCSE finds that she is not cooperating in locating the father, they may reduce her household’s public assistance by 25%, or may withhold her benefits entirely until she provides this information about the father.<sup>189</sup>

But there are important exceptions. For example, a mother cannot be

denied public assistance if she does not know this information about the father. Even if a woman does know who and where the father is, she is not required to disclose it if she has “good cause” not to.<sup>190</sup> “Good cause” includes fear that she or her child would be placed in physical or emotional danger if she gave information about the father. This exception is supposed to protect victims and potential victims of domestic abuse.

If a woman cannot show that she has “good cause” for refusing to cooperate, the public assistance office can impose a penalty like those described above until she provides this information.<sup>191</sup>

Even if a woman has her public assistance grant reduced or eliminated for refusing to provide information about the father, the public assistance office must still give support payments for her children (if the household is otherwise eligible). This means that Social Services will give only the amount needed by the child and will not include the mother’s needs because of her failure to cooperate.<sup>192</sup>



**MICHELLA** is applying for public assistance for herself and her baby. The public assistance office wants to know who the father is in order to sue him for child support. She does not want to reveal the name of the father. Does she have to give the father’s name in order to receive benefits?

**IT DEPENDS.** *In most cases, Michella needs to report whatever she knows about the father, including where he is located. However, if she has “good cause” to believe that sharing the father’s name would place her or her child in danger, she can refuse.*<sup>193</sup>

*If Michella does not have good cause for refusing to tell, the public assistance office can reduce benefits to her household or refuse to give benefits at all until she cooperates.<sup>194</sup> Michella’s child will still continue to receive support in the form of pro-*

*ective payments if the child is otherwise entitled to receive support. If Michella believes her benefits are being reduced wrongly, she can request a fair hearing.*

## THE RIGHT TO A FAIR HEARING

Almost any time a person feels that the welfare department (including Human Resources Administration or any public assistance agency—not just the job center) has done something improperly or refused or failed to do something it should have done, that person can request a fair hearing. People most commonly ask for fair hearings if their applications are rejected or if they receive a notice that their benefits are going to be terminated or reduced.<sup>195</sup>

## ASSIGNING TEENS ON WELFARE-TO-WORK ACTIVITIES

Public assistance rules require that recipients participate in work activities in order to continue to receive public assistance. Generally, though, teenagers are not supposed to be assigned to work activities. Here are some of the key rules:

- A person 15 years old or younger cannot be required to engage in work activities.<sup>196</sup>
- A person 18 years old or younger who is enrolled full-time in high school, vocational, or technical school cannot be required to participate in work activities.<sup>197</sup> This exemption should include people in GED (General Education Degree) programs.
- Young people 19 years old and younger who are not in school and who have not received a high school diploma or GED must be assigned to an educational activity unless it appears that they will not benefit from further schooling.<sup>198</sup>
- Any person (whatever age) who lacks “basic literacy” must be encouraged or required to participate in educational activities instead of or in combination with work activities.<sup>199</sup>

A teenager who thinks she has been wrongfully assigned to work can request a fair hearing.

## PURSUING A COLLEGE EDUCATION UNDER WELFARE LAWS

Unfortunately, the public assistance laws do not encourage young people (or anyone else) to pursue a college education. When a person receiving public assistance is called on by the job center to participate in a workfare program, he or she will almost never be excused because of attendance at a four-year college.<sup>200</sup> However, attending a two-year college will sometimes excuse a public assistance recipient from a work program.<sup>201</sup> The recipient must argue that the education will lead to better job opportunities or a specific trade in order to get this work exemption.<sup>202</sup>

In New York City, there are somewhat different rules that make it a little easier for public assistance recipients to go to college.<sup>203</sup> Generally, a person will be excused from workfare assignments for up to one year in order to participate in an education or training program, including two-year colleges.<sup>204</sup> Even after one year, the person should be able to participate in education or training in addition to other work assignments. Under New York City’s workfare rules, recipients generally must engage in 35 hours of work activity per week.<sup>205</sup> This means that recipients in New York City who get a work exemption to go to college may have to participate in additional work activities to complete 35 hours. The law does require that internship and work-study hours, even as part of a four-year college program, can count toward the 35-hour requirement.<sup>206</sup>

## CHILD CARE AND WORK ASSIGNMENTS

Public assistance recipients assigned to work activities have a right to child care.<sup>207</sup> This means that if they demonstrate that they are unable to obtain child care on their own, the job center must offer them at least two child care options, one of which must be a regulated provider. The law requires that the child care be appropriate, suitable and reasonably close to the recipient’s home.<sup>208</sup> The agency cannot pressure anyone to use

informal child care (using a friend or relative, for example) unless the parent is satisfied with that arrangement. (See Child Care section for more information.)

If appropriate child care is not available, a person cannot be required to work.

A public assistance recipient assigned to work activities is entitled to special assistance to pay for “supportive services.” This includes money for case management, child care,<sup>209</sup> and travel (both to and from work and to and from child care that a recipient needs in order to comply with the work requirement). These costs are sometimes referred to as “training-related expenses” or TREs.

## VII. TEENS IN FOSTER CARE

### ACCESS TO HEALTH CARE

A teen in foster care, like any other minor, can consent to confidential reproductive health services on her own. In addition, the law specifically requires foster care agencies to provide teens in their care access to family planning services, including prescription and over-the-counter drugs, professional counseling services, and medical supplies prescribed by a physician, nurse practitioner, or physician’s assistant.<sup>210</sup>

A teen in foster care can also obtain an abortion without notifying anyone or obtaining parental or agency consent before doing so. Medical records regarding a minor’s abortion cannot be released to her parent or guardian without her consent.<sup>211</sup>

**KELLY** is 17 years old and in foster care. She recently found out that she is pregnant. Kelly does not want to have the baby. Can she have an abortion?

**YES.** Kelly has a right to have an abortion. As long as she is capable of informed consent, she does not need to notify or get consent from her natural parents or her foster care caseworker before she makes that choice.

Young people in foster care have the right to family planning and abortion even when they are placed with foster care agencies that are run by a religious organization. Family planning and abortion information, services, and counseling must be made available.<sup>212</sup>



**JAMILIA** is in a Catholic group home. She just had a baby and now wants to go on birth control. She talks to one of the staff members she trusts, who tells her that since the group home is Catholic-affiliated, Jamilia won't be able to get a prescription for birth control. Will Jamilia be able to get the medication she needs?

**YES.** *Jamilia has a right to family planning services, including contraceptive care and counseling, even if her foster care is Catholic-run. If the health center at her group home cannot provide her the care she needs, they must give her a referral for an outside provider. No matter what, Jamilia may not be denied family planning services, contraceptive care, or counseling while in foster care.*

*Law Guardian:* Once a young person enters foster care, the Family Court judge must assign a lawyer—called a “law guardian”—to protect his or her rights and serve as an advocate in the court.<sup>213</sup> If a young person does not know who her law guardian is, she can find out (*see* Organizations to Contact for Legal Assistance in Important Resources section).

## CONFIDENTIALITY OF CARE

Foster care agencies must keep complete health records for the youth in their care and ask doctors—both those who work at health centers run by a foster care agency and those off-site—to fill out forms about the care they provide.<sup>214</sup> Foster care agencies must share all medical records in their possession with prospective foster or adoptive parents.<sup>215</sup> For this reason, teens who get medical care at their group home's or foster care agency's health center will probably not be able to keep information about it fully confidential.

Teens in foster care who do not want to share information about their reproductive health care with their group home, foster care agency or foster or adoptive parents should seek care from off-site providers. Even if their foster care agency asks the off-site doctor to fill out a form, that doc-

tor may only include information about reproductive health care provided if the teen agrees to it. The only exception is that doctors do not need the teen's permission to tell a foster care agency about the teen's HIV status or care.<sup>216</sup> However, particularly if the teen does not want her HIV status disclosed, doctors should only disclose HIV information without the teen's permission if they think the teen needs the agency's help to manage her care. Teens in foster care cannot be required to submit to an HIV test without their consent.<sup>217</sup> Also, a foster care agency may not share records about a teen's HIV status with a parent or guardian, unless the teen has agreed in writing or does not have the capacity to consent.<sup>218</sup>

## THE RIGHT OF A TEEN PARENT IN FOSTER CARE TO A PLACEMENT WITH HER CHILD

A young woman cannot be kicked out of the foster care system because she becomes pregnant or she has a baby.

A foster care agency must make every effort to keep an infant child and minor parent in foster care together, except when it would create an imminent risk of abuse or maltreatment.<sup>219</sup> The right to be housed together does not mean that the baby is “in foster care.” That can only happen if the teen parent is charged with neglect or abuse and a Family Court judge decides that her baby should be placed in foster care temporarily, or if the mother agrees to a “voluntary placement” (*see* page 66). Every parent, including teen parents in foster care, has the right to the custody of her children, unless she is shown unfit to be a parent.

When a young woman in foster care becomes pregnant and is ready to discuss her options, a Service Plan Review (SPR) should be scheduled right away to address her needs, including placement with her child. The SPR is a meeting between family members, agency caseworkers, and professionals involved in the direct care of a child or teen in foster care. The meeting is supposed to identify the needs of the young person in foster care and to make a plan to meet those needs.

A foster care agency must hold an SPR whenever a major life event occurs. Thus, a young person who is pregnant has a right to an SPR to start the process of talking about her options and making plans.

## TYPES OF PLACEMENTS

There are several types of foster care placements for pregnant and parenting teens:

**Foster Care Families:** When a young woman living in a foster home becomes pregnant, she can remain in the home throughout her pregnancy if she and her foster family want her to stay. She can also live there after she gives birth.

If a young woman is forced to leave her current foster home while pregnant or after giving birth, but she would like to live in another foster home, the foster care agency should look for another foster family for her.

**Maternity Residences for Pregnant Teens:** If a pregnant teen cannot remain in her current foster home, and no other foster home can be found or the teen does not want to live in another foster home, then she must be transferred to a maternity shelter/residence.

Young women in foster care who become pregnant while residing in group homes or residential treatment centers are also moved into maternity residences in order to stay in a safe setting with more individualized care throughout their pregnancy. On site at each maternity shelter, pregnant teens are offered many services, such as counseling, family planning, instruction in baby care and nutrition, and preparation for independent living, including job training.

A pregnant teen who moves to a maternity residence can still decide to get an abortion. The foster care agency must provide her with information and services.

**Mother-Child Residences:** Mother-child residences are group homes for young mothers in foster care and their children. A young woman will

be placed in a mother-child residence if she does not want to live in a foster home or if a foster home cannot be located. Many services like those offered in maternity shelters are available.

**LORETTA** is in foster care and just had a baby. They are still in the hospital. Loretta wants to find a placement for herself with her baby. Is she entitled to placement with her baby?



**YES.** *Loretta has custody of her baby and is entitled to a joint placement. Loretta cannot be separated from her baby against her will, unless she poses a danger to her baby. The foster care agency is responsible for finding them an appropriate placement in a timely manner. The planning and search for a joint placement should start early at a Service Plan Review.*

*Once Loretta gives birth, her caseworker must make efforts right away to place Loretta and her newborn baby together, either in a foster home or in a mother-child residence.*

## HOSPITAL DELAYS AND THE LACK OF MOTHER-CHILD RESIDENCES

While foster care agencies are responsible for finding appropriate placements for mothers with newborns, often these mother-child placements (also called “joint placements”) are in short supply. Unless agency planning begins early in the pregnancy, young mothers and their babies may be forced to spend weeks in the hospital until a joint placement is found. This is bad practice and should not happen.

Sometimes a young mother will be asked to choose between staying in the hospital or accepting “temporary” separate placements. If she decides to stay at the hospital, she has a right to receive school instruction while waiting for a placement.<sup>220</sup>

A teen mother in foster care may be asked to agree to temporary sepa-

ration from her new baby if the newborn stays in the hospital once the teen is discharged to her foster home or maternity shelter. However, it is illegal for these separations to become long term.<sup>221</sup> The law requires timely and appropriate placements.

A young mother who runs into these problems, *i.e.*, is separated from her baby or stuck in a hospital waiting for placement, can contact her court-appointed law guardian.



**DAWN** is told that she cannot leave the hospital with her new baby until a mother-child placement is found. Can Dawn still get a joint placement if she leaves the hospital? What if Dawn wants to go to school during the day?

*Before making any decisions about placement, Dawn should speak to her law guardian. If Dawn leaves the hospital without her baby while waiting for a joint placement, she may be separated from her baby for a long time. Depending on the delay, this separation could be against the law. If Dawn leaves the hospital, she has the right to attend her school and to visit her baby. If Dawn decides to stay with her baby in the hospital, she will be taught on-site by a certified Department of Education teacher and will receive school credits based on her attendance, completion of assignments, and exam results. Again, it could be against the law to fail to provide her proper support services.*

### SIGNING A “VOLUNTARY PLACEMENT AGREEMENT”

Sometimes new mothers in foster care are asked to sign “voluntary placement agreements” to put their babies into foster care. An agency may ask a young mother to sign such an agreement because a joint placement is not available. This is not right. It is against the law for a fit teen parent to be pressured or forced to sign a voluntary placement agreement because the agency does not have a joint placement.<sup>222</sup>

Signing a voluntary placement agreement can have severe and permanent consequences. A young person should never sign a voluntary placement agreement without first talking to her law guardian.

When a parent signs a voluntary placement agreement for her child, she transfers her care and custody rights to the state or city child protection agency. In other words, the baby is placed in foster care and the teen parent no longer has custody of her child. The agreement states that the parent is not able to care for the child but does not explain that the foster care agency could not find a joint placement, even if that was the reason for the voluntary placement agreement.

Once the foster care agency obtains custody of the baby, it can make decisions for the child, including where the child lives. A voluntary placement may also make it harder for the teen mother to be placed with her baby later.

Signing a voluntary placement agreement may sometimes be an appropriate choice for a teen parent. If a young mother feels that she cannot adequately care for her child, she should speak with her law guardian about her options. The voluntary placement agreement can include a certain date when the child is to be returned to the parent.<sup>223</sup> The written voluntary placement agreement must provide the parents with meaningful visitation rights.<sup>224</sup> If the minor parent does not visit the child, her parental rights may be terminated.<sup>225</sup>



**JODY** is in foster care and just had a baby. The agency told her that it has no place for Jody and her baby together, but that her baby can be placed separately in a foster home. Jody is urged to sign a voluntary placement agreement for her child and is told that she could be “charged with neglect” if she does not sign this form. Jody wants to be placed with her baby. What does it mean if she signs the voluntary placement form? Would she still have custody of her baby?

*If Jody signs the voluntary placement agreement, she will not have custody of her baby. The foster care agency would have custody of her baby. Signing it may make it even harder for her to receive a mother-child placement. No matter what, Jody should never sign the paper without speaking with a lawyer.*

*The foster care agency cannot file charges of neglect against Jody simply because she refuses to sign a voluntary placement agreement.<sup>226</sup> The fact that no joint placement can be found for Jody and her baby is not Jody's fault; therefore she cannot be charged with neglect (putting her baby at risk).*

## THE RIGHTS OF FATHERS IN FOSTER CARE

As noted before, when young people enter foster care, they do not give up any parental rights. Therefore, a father in foster care has the same rights as other fathers. This means that he should be able to visit or even ask for custody of his child (*see* Rights and Responsibilities of Teen Parents section).

However, young fathers who are in foster care are often discouraged from being involved in the day-to-day lives of their infants. Strict rules and curfews in some group homes and mother-child residences strain the frequency and quality of the contact between young fathers and their children. A young father who faces such problems can seek the help of his law guardian and case-worker.

## VIII. JUVENILE DETENTION AND ACCESS TO HEALTH SERVICES FOR PREGNANT AND PARENTING TEENS

### CONSTITUTIONAL RIGHT TO MEDICAL SERVICES

If a young person is arrested or found guilty of having committed a crime, she may be placed in a juvenile detention facility if the act she is charged with committing occurred before she turned 16. She may be placed in an adult prison or jail if the crime she is accused of happened when she was 16 or older.

While she is in custody at such facilities she still has rights under the United States Constitution.<sup>227</sup> For example, she has the right to receive adequate medical care, including services relating to childbirth, pregnancy, abortion and reproductive health.<sup>228</sup> Officials at a juvenile or adult detention facility cannot deliberately ignore a young person's need for these medical services.<sup>229</sup> This means that officials cannot:

- Intentionally deny a youth's access to care;<sup>230</sup>
- Take too long to arrange medical treatment;<sup>231</sup>
- Purposefully interfere with treatment prescribed by a medical professional, such as a doctor or nurse or pharmacist;<sup>232</sup>
- Refuse to provide care in order to punish the person in custody;<sup>233</sup>
- Cause a young person to suffer;<sup>234</sup> or
- Seriously fail to provide necessary medical assistance when they are fully aware of that need.<sup>235</sup>





After a jury decides that **LISA** has committed a crime, she is sentenced to juvenile detention. While she is detained in the facility, Lisa experiences very unusual pain and menstrual cramps. When she tells an official that she is experiencing pain and wishes to see a doctor, the official ignores her. Does Lisa have a right to see a doctor or a nurse about the pain she is feeling?

**YES.** Under the U.S. Constitution, Lisa has a right to see a health care professional and the official cannot ignore her request to receive medical attention.



**YOLANDA** is pregnant when she is sentenced to a juvenile detention center. Can Yolanda decide how to proceed with her pregnancy?

**YES.** Yolanda can choose to either carry the pregnancy to term or to have an abortion.

Yolanda decides that she wishes to have an abortion. She informs the health care professionals of her decision and they make an appointment for Yolanda to go to a local hospital for the procedure the following week. That day, the official on duty refuses to allow Yolanda to be released to have the procedure, claiming that Yolanda misbehaved the night before and that the official disagrees with Yolanda's decision. Is the official required to allow Yolanda to leave the facility for the procedure?

**YES.** The officials at the juvenile detention facility cannot intentionally interfere with Yolanda's ability to access an abortion, even if the official disagrees with Yolanda's choice to terminate her pregnancy. The official also cannot deny Yolanda's access to medical treatment in order to punish her.

## YOUNG PEOPLE IN DETENTION IN NEW YORK CITY

In New York City, when a young person under age 16 is first arrested, she might be remanded by a judge to a juvenile detention center operated by the New York City Department of Juvenile Justice (DJJ). If she is later found guilty of having committed a crime, she might be able to stay in the community on probation, or might be placed in (sentenced to) a facility run by the New York State Office of Children & Family Services (*see* Office of Children & Family Services, next section) or in a residential setting in a private agency that has a contract with OCFS. Young people who are charged with crimes that occurred when they are ages 16 or over are prosecuted in the adult system and can go to jail or prison.

DJJ is responsible for providing medical care to juveniles detained in DJJ facilities.<sup>236</sup> DJJ has a health services unit and is legally required to provide care 24 hours per day.<sup>237</sup> In addition, the New York City Health and Hospitals Corporation provides emergency health services to young persons in detention in certain circumstances.<sup>238</sup>

If a young person was receiving medical care before she entered a detention facility, she has a right to continue to receive that care. DJJ must continue to provide medication and treatment a young person was receiving before she was admitted to juvenile detention,<sup>239</sup> unless the agency's doctors reevaluate the young person and determine that different treatment is needed. It is important for young people, their parents or guardians if they are involved, and their lawyers to press for correct medical care, as it is not always given in accordance with legal requirements.

During the first three days after entering a DJJ detention facility, a young person should receive a complete health examination.<sup>240</sup> This will include testing for sexually transmitted infection (STIs) and, for girls, a gynecological examination;<sup>241</sup> if the young person tests positive for an STI, she should receive the proper treatment.<sup>242</sup>



**NICKY** is 15 and was arrested and entered a juvenile detention facility on a Monday night. She still has not seen a doctor by Friday, but she is experiencing some discomfort and is worried that she may have an STI. Does Nicky have a right to receive medical attention?

**YES.** Nicky should have received a physical examination within three days of entering the facility. At the time of the examination, she should receive care for any gynecological health needs including treatment for STIs.

If a young person who is in a juvenile detention facility is pregnant, she has a right to receive health care relating to her pregnancy.<sup>243</sup> She can carry the pregnancy to term if she so chooses.<sup>244</sup> Once she gives birth, she can either transfer temporary or permanent custody of the child to her custodial parent or guardian or to the father of the child.<sup>245</sup>



**EVIE** is 17 and gives birth to a child while she is in detention. Evie wishes to grant custody of the child to the child's father while her case is being decided in the courts. Can Evie do so?

**YES.** Evie has the right to grant custody to the father for the remainder of her time in detention.

A young person in custody after arrest also has a right to an abortion.<sup>246</sup> She may have an abortion without the permission of her parent or custodial guardian as long as she is informed of and understands the risks, benefits and alternatives to terminating the pregnancy, no matter what her age is.<sup>247</sup>



**CARMEN** is 15 when she is arrested. When she has her initial physical examination at the detention facility, the doctor tells her she is pregnant. The doctor fully informs her of all of her options relating to her pregnancy, including the risks and benefits of terminating her pregnancy. Carmen wishes to have an abortion and, understanding all of her options and everything the doctor told her, she consents to an abortion. Does Carmen have a right to an abortion?

**YES.** Carmen has a right to have an abortion, even while she is being detained on charges that she committed a crime and even though she is 15 years of age. As long as she consents with a full understanding of her options and the risks and benefits involved, Carmen may choose to terminate her pregnancy.

Can the officials at the detention center inform Carmen's parents of her decision?

**NO.** Carmen has a right to keep this medical care confidential.

## OFFICE OF CHILDREN & FAMILY SERVICES

In New York State, some young people who have been found by a court to be juvenile delinquents (Family Court) or juvenile offenders (adult court) and who have been sentenced to confinement are placed in residential facilities run by the State's Office of Children & Family Services (OCFS).<sup>248</sup> Young people who reside in these facilities, or in the private facilities operated under contract with OCFS, have constitutional rights to medical care, as discussed above.

Under New York State law, a young person in placement in an OCFS facility also has a right to:

- Access good quality, efficient health care;
- Continue receiving the same treatment she was receiving

prior to entering the facility;

- Receive a prompt health assessment by a licensed physician or health care professional upon entering the residential setting; and
- Receive gynecological care, including, for example, pap tests.<sup>249</sup>



Before she entered an OCFS facility, **AMBER** was receiving medical attention for complications she experienced in giving birth to her child the year before. As part of her treatment, Amber's doctor prescribed her medication. Can Amber continue taking that medication and receiving medical attention for her health condition even when she is confined to the facility?

**YES.** *The facility must continue to provide Amber with the medication and treatment she was previously receiving.*

## IX. IMPORTANT RESOURCES

These organizations and agencies offer services and/or information. While the NYCLU does not vouch for these organizations, they may provide useful help. If you try to get help and are treated poorly or are given wrong information from any of these places, please contact the NYCLU Reproductive Rights Project at 212-607-3300.

This list is by no means comprehensive. It simply offers a starting point, listing a few key contacts for those seeking individual legal help or more information on the topics covered in this booklet. Many of these resources are for New York City; for more information in other areas, contact local service agencies.

### LEGAL HELP

#### [New York Civil Liberties Union, Reproductive Rights Project](#)

Defends and expands reproductive rights through impact litigation, advocacy, education and outreach.

212-607-3300

<http://www.nyclu.org>

#### [The Door, Legal Services Center](#)

Free legal services to adolescents in NYC including dedicated staff for pregnant teens in foster care.

212-941-9090, ext. 3280

<http://www.door.org>

#### [Lawyers for Children](#)

Represents foster children and provides free legal and social work services to children.

212-966-6420

<http://www.lawyersforchildren.org>

#### [The Legal Aid Society, New York City](#)

Provides free legal services to residents of NYC.

212-577-3300

<http://www.legal-aid.org>

#### [Legal Services of New York City](#)

Provides free legal services to residents in NYC.

212-431-7200

<http://www.lsnyc.org>

**Gay Men's Health Crisis**

Specializes in providing legal assistance to HIV-positive people.  
212-367-1040  
212-367-1000  
<http://www.gmhc.org>

**CHILD CARE****Living for Young Families through Education (LYFE) Programs in NYC Info Line**

A citywide network of 46 child care centers for teen parents in high school.  
212-348-0608

**Child Care Resources & Referral Agencies (CCRRS) operate on a county-wide basis (or on a city-wide basis in NYC).**

To find the CCRRS nearest you, call New York State Parent Connection: 518-690-4217 or 800-345-KIDS (5437).  
A full directory of CCRRS in New York State (by county) is available on-line at: <http://www.ocfs.state.ny.us/main/beccs/referralagencys.asp>.

**New York State Parent Connection**

800-345-KIDS (5437)  
[http://www.ocfs.state.ny.us/main/beccs/think\\_about/places.htm](http://www.ocfs.state.ny.us/main/beccs/think_about/places.htm)

**PUBLIC BENEFITS AND HEALTH INSURANCE****Human Resources Administration (HRA) Infoline (New York City)**

877-472-8411 (toll-free)

**New York Medicaid Choice**

800-505-5678

**"New York State Growing Up Healthy" Hotline**

Information about Child Health Plus (CHPlus), Medicaid, and PCAP.  
800-522-5006

**Child Health Plus (CHPlus) Hotline**

800-698-4KIDS (800-698-4543)

**Family Planning Benefits Program (FPBP)**

800-541-2831

Call the local department of social services (in New York City, the office to contact is the Human Resources Administration) for more information about FPBP.

**BIRTH CONTROL, EMERGENCY CONTRACEPTION & ABORTION SERVICES****Planned Parenthood of NYC**

Comprehensive reproductive care, including family planning and abortion services at three clinics in Brooklyn, downtown Manhattan and the Bronx.  
212-965-7000  
<http://www.ppnyc.org>

**For other Planned Parenthood offices across New York State:**

800-230-PLAN or 800-230-7526  
<http://www.plannedparenthood.org>

**Emergency Contraception Hotline**

Information on emergency contraception, including where to get EC in your area.  
888-NOT-2-LATE  
<http://not-2-late.com>

**Montefiore Medical Center, Teen Pregnancy Clinic, The Bronx.**

718-920-2064

**COMPREHENSIVE HEALTH CENTERS FOR TEENS****The Door, Adolescent Health Center**

Free health care services for young people ages 12-21, including nutrition, hygiene, sexuality and pregnancy options, STI and HIV testing and counseling, medication and birth control. Located in Manhattan, serving teens in all 5 boroughs.  
212-941-9090, ext. 3222  
<http://www.door.org>

**Callen-Lorde Health Outreach to Teens (HOTT)**

Comprehensive health care in a Lesbian, Gay, Bisexual, Transgender and Questioning friendly environment. Ages 13-24. Manhattan.  
212-271-7200  
<http://callen-lorde.org/>

**Community Healthcare Network**

Comprehensive primary care, mental health and social services including free and confidential reproductive health services for teens, including gynecological exams,

pregnancy testing, STI screening and treatment, HIV counseling and testing, contraceptives. Locations in the Bronx, Brooklyn, Manhattan and Queens.

212-366-4500

<http://www.chnyc.org>

**Family Planning Center, Columbia School of Public Health & NY Presbyterian Hospital**

Confidential reproductive health care for young women ages 13-21. Northern Manhattan.

212-342-3232

**Health and Education Alternatives for Teens (HEAT)**

Free and confidential comprehensive care for young people 13-21. Brooklyn.

718-467-4446

<http://www.downstate.edu/HEAT/>

**The Mount Sinai Adolescent Health Center**

Confidential medical services for young people 12-21. Upper East Side.

212-423-3000

[http://www.mountsinai.org/msh/msh\\_program.jsp?url=clinical\\_services/ahc.htm](http://www.mountsinai.org/msh/msh_program.jsp?url=clinical_services/ahc.htm)

**SEXUAL ASSAULT AND DOMESTIC VIOLENCE CARE**

**Safe Horizon Crime Victims Hotline**

866-689-HELP (4357) or 212-577-7777

**Safe Horizon Domestic Violence Victims Services Hotline**

800-621-HOPE (800-621-4673)

**Safe Horizon's Rape, Sexual Assault & Incest Hotline 212-227-3000**

TDD Phone Number for all Safe Horizon hotlines

800-810-7444

**New York Asian Women's Center**

888-888-7702

**Sakhi for South Asian Women Domestic Violence Program (M-F, 10AM-6PM)**

212-868-6741

**New York State Hotline**

English 800-942-6906

Spanish 800-942-6908

**The National Domestic Violence Hotline**

800-799-SAFE (7233) or 800-787-3224

**Crime Victims Board Hotline**

800-247-8035

**NYC Police Department Sex Crimes Hotline**

212-267-7273

**STIS & HIV/AIDS (SEE ALSO COMPREHENSIVE HEALTH CENTERS ABOVE)**

**CDC National STD & AIDS Hotline**

Hotline for questions and referrals related to STIs and HIV/AIDS.

Anonymous and Confidential. 24 hours a day, 7 days a week.

800-342-AIDS (800-342-2437)

800-344-7432 (Spanish-language)

**800-TALK-HIV (800-825-5448)**

Information on HIV testing locations and payment options.

**Bronx AIDS Services**

Free and confidential HIV testing for young people; special support program for adolescent women.

718-295-5690

**Asian & Pacific Islander Coalition on HIV/AIDS (APICHA)**

Free and confidential HIV testing, comprehensive primary care to HIV infected individuals, sliding scale STI screening and treatment

866-APICHA-9 (274242-9) or 212-334-7940, ext. 256

**MENTAL HEALTH COUNSELING SERVICES**

**800-LIFENET (800-543-3638)**

Mental health referrals and information for New York State.

**NYC Youthline**

Crisis intervention hotline staffed by young people offering information, services and referrals to other young people.

800-246-4646

## COMMUNITY ORGANIZATIONS

### Brooklyn Childcare Collective

Legal information and social support for pregnant and parenting teens in Brooklyn.  
718-362-1792  
<http://www.brooklynchildcarecollective.org>

### Inwood House

School-based pregnancy program, maternity residence for homeless, pregnant teens, providing training on parenting, arrange after-care plans, young fathers program.  
212-861-4400  
<http://www.inwoodhouse.com/>

### Sistas on the Rise

Advocacy, organizing, and after-school programs for students in Pregnancy schools in the Bronx.  
718-991-6003  
<http://www.sistasontherise.org>

### Sista II Sista

Organization of young women of color in Brooklyn.  
718-366-2450, ext. 0#  
<http://www.sistaiisista.org>

## TO LOCATE YOUR LAW GUARDIAN

(If you don't know who your law guardian is or what agency he or she is with, you should call the numbers listed below.)

### Legal Aid Society, Juvenile Rights Division

212-577-3300

### Lawyers for Children

212-233-4311  
212-966-6420  
<http://www.lawyersforchildren.org>

### The 18B Panel

212-676-0066

## NEW YORK CIVIL LIBERTIES UNION CHAPTER DIRECTORY

### CAPITAL REGION CHAPTER

90 State Street, Albany, NY 12207  
518-436-8594 | <http://www.nyclu-crc.org/>

### CENTRAL NEW YORK CHAPTER

753 James Street, Suite 8, Syracuse, NY 13203  
315-471-2821 | <http://www.nyclu.org/>

### GENESEE VALLEY CHAPTER

121 North Fitzhugh Street, Suite 300, Rochester, NY 14614  
585-454-4334 | <http://www.gvclu.org/>

### NASSAU COUNTY CHAPTER

33 Willis Avenue, Suite 100, Mineola, NY 11501  
516-741-8520 | <http://www.nyclu.org/nassau/>

### SUFFOLK COUNTY CHAPTER

150 Broadhollow Road, Suite PH5, Melville, NY 11747  
631-423-3846 | <http://www.suffolknyclu.org/>

### LOWER HUDSON VALLEY CHAPTER

2 William Street, Suite 200, White Plains, NY 10601  
914-997-7479 | <http://www.nyclulhv.org/>

### WESTERN REGIONAL OFFICE

The Ansonia Center, 712 Main Street, Buffalo, NY 14202  
716-852-4033 | <http://www.nyclubuffalo.org/>

1. N.Y. Gen. Oblig. Law § 1-202 (McKinney's 2006); N.Y.C.P.L.R. 105(j) (McKinney's 2006).
  2. N.Y. Pub. Health Law § 2805-d (McKinney's 2006); N.Y. Mental Hyg. Law § 80.03(c) (McKinney's 2006).
  3. 8 N.Y.C.R.R. § 29.1 (2006).
  4. *Gittleman v. Gittleman*, 81 A.D.2d 632, 438 N.Y.S.2d 130 (2d Dep't 1981); *Wayne County Dep't of Soc. Serv. v. Schultz*, 81 Misc.2d 603, 366 N.Y.S.2d 845 (Fam. Ct. Wayne County 1975).
  5. *Cochran v. Cochran*, 196 N.Y. 86, 89 N.E. 470 (1909); *Matter of Williams*, 106 Misc.2d 280, 431 N.Y.S.2d 334 (Fam. Ct. Monroe County 1980); *Bach v. Long Island Jewish Hosp.*, 49 Misc.2d 207, 267 N.Y.S.2d 289 (Sup. Ct. Nassau County 1966).
  6. *Zuckerman v. Zuckerman*, 154 A.D.2d 666, 546 N.Y.S.2d 666 (2d Dep't 1989); *Fausser v. Fausser*, 50 Misc.2d 601, 271 N.Y.S.2d 59 (Fam. Ct. Nassau County 1966).
  7. *Roe v. Doe*, 29 N.Y.2d 188, 272 N.E.2d 567, 324 N.Y.S.2d 71 (1971); *Knoll v. Kilcher*, 100 A.D.2d 686, 473 N.Y.S.2d 887 (3d Dep't 1984); *Giovagnoli v. Ft. Orange Const. Co.*, 133 N.Y.S. 92 (3d Dep't 1911); *Rosemary N. v. George B.*, 103 Misc.2d 1036, 427 N.Y.S.2d 553 (Fam. Ct. Dutchess County 1980); *Bickford v. Bickford*, 83 Misc.2d 571, 371 N.Y.S.2d 782 (Fam. Ct. Schenectady County 1975), *rev'd on other grounds*, 389 N.Y.S.2d 430 (3d Dep't 1976).
  8. *Gittleman v. Gittleman*, 81 A.D.2d 632, 438 N.Y.S.2d 130 (2d Dep't 1981); *Murphy v. Murphy*, 206 Misc.2d 228, 133 N.Y.S.2d 796 (Sup. Ct. Broome County 1954).
  9. See 18 N.Y.C.R.R. §§ 430.12, 431.8.
  10. For example, in New York City, The Door's Legal Services Center provides such letters for young people.
  11. N.Y. Const. art. XI, § 1 (McKinney's 2006).
  12. N.Y. Educ. Law § 3205(1)(a) (McKinney's 2006) ("In each school district of the state, each minor from 6 to 16 years of age shall attend upon full time instruction"). In some school districts in New York, anyone who is 17 years old or younger must go to school. *Id.* § 3205(3) (empowering local boards of education to require compulsory attendance through the end of the school year during which the student becomes 17). See, e.g., Regulation of the Chancellor of the City School District of the City of New York, No. A-210, § 1.1, *Attendance Law* (2000) (requiring same).
  13. N.Y. Educ. Law § 3202(1) (McKinney's 2006).
  14. 20 U.S.C. § 1681 (2005) ("Title IX"); 34 C.F.R. § 106.40 (2005) (implementing regulations of Title IX); N.Y. Educ. Law § 3201-a (McKinney's 2006) ("no person shall be refused admission into or be excluded from any course of instruction offered in the state public and high school systems by reason of that person's sex"); Regulation of the Chancellor of the City School District of the City of New York, [hereinafter "NYC Chancellor's Regulation"] No. A-740, § 3.2 (2004).
  15. 34 C.F.R. § 106.40(b)(1) (2005). See also, N.Y. Educ. Law § 3201-a (McKinney's 2006); *Id.* § 313(1)
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8 N.Y.C.R.R. § 100.2(k) (2006); NYC Chancellor's Regulation, No. A-740, § 3.3 (2004).

16. *Id.*

17. See *Carr v. St. John's Univ.*, 17 A.D.2d 632, 633, 231 N.Y.S.2d 410, 413 (2d Dep't 1962), *aff'd* 12 N.Y.2d 802, 235 N.Y.S.2d 834 (1962) ("When a student is duly admitted by a private university, secular or religious, there is an implied contract between the student and the university that, if he complies with the terms prescribed by the university, he will obtain the degree which he sought. The university cannot take the student's money, allow him to remain...and then arbitrarily expel him or arbitrarily refuse, when he has completed the required courses, to confer on him that which it promised, namely, the degree") (citations omitted).

18. Archdiocese of New York, "Pregnancy Policy for Schools in the Archdiocese of New York" (December 1997).

19. Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1682, *et seq.* (2005). See also, *Horner v. Kentucky High School Athletic Assoc.*, 43 F.3d 265, 271 (6th Cir. 1994) ("Title IX prohibits sex discrimination under any education program or activity receiving federal funds"). Sex discrimination under Title IX includes discrimination on the basis of pregnancy. *Pfeiffer v. Marion Ctr. Area Sch. Dist.*, 917 F.2d 779, 784 (3d Cir. 1990).

20. 34 C.F.R. § 106.40(b)(1) (2005). See also, N.Y. Educ. Law § 3201-a (McKinney's 2006); *id.* § 313(1); 8 N.Y.C.R.R. § 100.2(k) (2006).

21. *Id.*

22. 34 C.F.R. § 106.40(b)(3) (2005) ("A [school] which operates a portion of its education program or activity separately for pregnant students, admittance to which is completely voluntary on the part of the student as provided in paragraph (b)(1) of this section, shall ensure that the instructional program in the separate program is comparable to that offered to non-pregnant students").

23. Regulation of the Chancellor of the City School District of the City of New York, No. A-740, § 4.4 (2004).

24. *Id.*

25. 8 N.Y.C.R.R. § 100.7 (2006).

26. New York State Education Department, Elementary, Middle, Secondary and Continuing Education, Overview of GED Testing Office, at <http://www.emsc.nysed.gov/ged/overview.shtml> (last modified Apr. 20, 2005).

27. Regulation of the Chancellor of the City School District of the City of New York, No. A-740, § 2.2 (2004).

28. *Id.* § 2.4.

29. *Id.* § 2.3.

30. See 34 C.F.R. § 106.40(b)(1) (2005) ("A recipient [of federal funding] shall not discriminate against

any student, or exclude any student from its education program or activity, including any class or extracurricular activity, on the basis of such student's pregnancy, childbirth,...termination of pregnancy or recovery therefrom, unless the student requests voluntarily to participate in a separate portion of the program or activity of the recipient"). See *Chipman v. Grant Co. Sch. Dist.*, 30 F.Supp.2d 975 (E.D. Ky. 1998); *Wort v. Vierling*, Case No. 82-3169, slip op. (C.D. Ill. 1984), *aff'd*, 778 F.2d 1233 (7th Cir. 1985); *Cazares v. Barber*, Case No. 90-0128, slip op. (D. Ariz. 1990), *aff'd*, 959 F.2d 753 (9th Cir. 1992). There are no reported cases in the Second Circuit on the issue of excluding pregnant and parenting teens from honor societies. Keeping pregnant or parenting students out of honor societies also violates equal protection guarantees under the United States Constitution. See *Wort v. Vierling*, Case No. Civ. 82-3169, slip op. (C.D. Ill. 1984), *aff'd*, 778 F.2d 1233 (7th Cir. 1985) (holding that denial of admission to National Honor Society due to pregnancy violated the equal protection clause of the Fourteenth Amendment); *Cazares v. Barber*, Case No. Civ. 90-0128, slip op. (D. Ariz. 1990), *aff'd*, 959 F.2d 753 (9th Cir. 1992) (holding that denial of admission to National Honor Society due to pregnancy violated equal protection under the Fifth Amendment).

31. The National Honor Society handbook requires that students be selected on the basis of scholarship, service, leadership and character. See *Pfeiffer v. Marion Center Area Sch. Dist.*, 917 F.2d 779, 782 (3d Cir. 1990). Leadership is determined by whether a student has qualities that directly influence others for good conduct, and character is judged by whether a student upholds principles or morality and ethics. However, male and female students must be treated the same with regard to premarital sex.

32. *Pfeiffer*, 917 F.2d at 785-786 (reasoning that evidence of an illegal double standard would exist if an unmarried male student father is not asked to resign from the honor society, whereas an unmarried pregnant student is asked to leave).

33. New York City middle, junior high and high school principals are required to pick a faculty member who is responsible for informing students of their educational rights and responsibilities, including "the right to fully participate in educational programs and activities including any class or extra curricular activity for which they are otherwise eligible without requiring a specific certificate of medical clearance simply because they are pregnant or parenting." Regulation of the Chancellor of the City School District of the City of New York, No. A-740, §§ 1.1, 3.3 (January 2004).

34. *Id.* at § 3.4 (providing that, in New York City, "If a pregnant student has a medical reason to limit her participation in her regular school program, it is the responsibility of the student/parent to provide the school with appropriate documentation from his or her medical provider. The designated faculty member shall establish procedures to develop an educational plan consistent with the health care provider's instructions, in collaboration with the student, her parent or guardian, and other participants, as appropriate. ... [s]chools should make reasonable accommodations when provided with such information in the same manner as is provided to any other student with a health condition"); see also, 34 C.F.R. § 106.40 (b)(4) (2005) ("A recipient shall treat pregnancy, childbirth,...termination of pregnancy and recovery therefrom in the same manner and under the same policies as any other temporary disability with respect to any medical or hospital benefit, service, plan, or policy which such recipient administers, operates, offers, or participates in with respect to students admitted to the recipient's educational program or activity").

35. 34 C.F.R. § 106.40(b)(5) (2005).

36. *Id.* Under New York State Regulations, a school may require a second medical opinion if a student is absent from school for three months or longer, due to a physical disability. 8 N.Y.C.R.R. § 101.4(a)(1)(i) (2006).



37. *Id.*; see also n. 33 and 34, *supra*.

38. Regulation of the Chancellor of the City School District of the City of New York, No. A-740, § 3.6 (2004).

39. Memorandum from Lester W. Young, Jr., Senior Executive of the Office of Youth Development & School-Community Services of the NYC Department of Education, to Regional Superintendents, Local Instructional Superintendents, Directors of Regional Operations Centers, Regional Directors of Student Placement, Youth and Family Support Services, and all Principals (Sept. 8, 2003) (on file with author).

40. 8 N.Y.C.R.R. § 200.6 (2006).

41. See *e.g.*, Regulation of the Chancellor of the City School District of the City of New York, No. A-170, *Procedures for referral to NYC Board of Education Home Instruction Services* (2000).

42. 34 C.F.R. 106.40(b)(1) (2005).

43. See Memorandum from Donald P. Berens, General Counsel, New York State Department of Health, to Barbara McTague, Director, Division of Family Health 15-17 (October 4, 2005).

44. Section 18 of the Public Health Law requires written authorization before the release to a third party of a patient's medical information. N.Y. Pub. Health Law §§ 18(6) (McKinney's 2006); see also *Mantica v. N.Y.S. Dep't of Health*, 94 N.Y.2d 58, 62 (1999) (“[S]ection 18(6) seeks to prevent . . . the disclosure of confidential medical records to third parties.”). This includes protection from disclosure to parents of information related to care to which minors may consent on their own, such as pregnancy-related care. See *N.Y. Pub. Health Law* §§ 18(1)(d), 18(1)(e), 18(2)(c) (permitting parents to access minors' medical information only for care “for which the consent of such parent or guardian was obtained or where care was provided without consent in an emergency which was the result of accidental injury or the unexpected onset of serious illness”).

In addition, social workers and other medical professionals are bound by statute to keep confidential patient communications private. N.Y.C.P.L.R. § 4504 (McKinney's 2006) (“Unless the patient waives the privilege, a person authorized to practice medicine, registered professional nursing [or] licensed practical nursing . . . shall not be allowed to disclose any information which he acquired in attending a patient in a professional capacity, and which was necessary to enable him to act in that capacity”); *id.* § 4507 (McKinney's 2006) (confidential relations and communications between a psychologist and patient); *id.* § 4508 (confidential communications between a certified social worker and client). These professionals may be held civilly liable if they breach that confidentiality. See, *e.g.*, *Doe v. Cmty. Health Plan-Kaiser Corp.*, 268 A.D.2d 183, 187 (N.Y. App. Div. 3rd Dep't 2000); *Wheeler v. Comm'r of Soc. Servs.*, 233 A.D.2d 4, 8-9 & n.3 (N.Y. App. Div. 2d Dep't 1997). See also *Doe v. Roe*, 93 Misc. 2d 201, 208 (N.Y. Sup. Ct. 1977) (protection of medical confidentiality is “the public policy of this State expressed in numerous statutes and regulations”).

45. See *Port Washington Teachers' Assoc. v. Bd. of Ed. of Port Washington*, 361 F. Supp.2d 69 (E.D.N.Y. 2005). In this case, the Plaintiffs requested a preliminary injunction prohibiting the school from instituting its policy of requiring school social workers to notify parents of students' pregnancies. The court denied the preliminary injunction by ruling that the Plaintiffs did not have standing to challenge the policy. In *dicta*, the judge stated that he thought the Plaintiffs were unlikely to succeed on the merits, noting, *inter alia*, that the privilege statute governing social workers may not apply in a school setting. The NYCLU

disagrees with this legal determination and the case is on appeal.

46. See *id.* (noting that the question of the legality of a parental notification policy of pregnancy status is a novel question and commenting on the question in *dicta*).

47. Federal case law permits a state to require parental notice of a minor's access of family planning or abortion services only when the state provides for a confidential way to bypass that involvement, such as allowing a minor to appeal to a judge or doctor to decide if an abortion is in the minor's interest. See *Bellotti v. Baird*, 443 U.S. 622, 99 S.Ct. 3035 (1979).

48. *Port Washington Teacher's Ass'n*, 361 F.Supp.2d at 78-79.

49. N.Y. Soc. Serv. Law § 61 (McKinney's 2006).

50. *Id.* § 390(2)(c).

51. *Id.* § 390(2)(e).

52. *Id.* § 390(2)(d).

53. See Human Resources Administration, Form W-574EE (attached to HRA Policy Bulletin #05-139-OPE).

54. N.Y. Soc. Serv. Law § 410-w(1)(a) (McKinney's 2006).

55. *Id.*

56. NYS Office of Children and Family Services, Local Commissioner's Memorandum, 99 OCFS LCM 28 (1999).

57. N.Y. Soc. Serv. Law § 332-a (McKinney's 2006). New York State Office of Children and Family Services, “Need Help Paying for Day Care?” <http://www.ocfs.state.ny.us/main/beccs/paying.asp> (visited Feb. 26, 2004).

58. N.Y. Social Services Law § 410-w(3) (McKinney's 2006). New York State Office of Children and Family Services, “Need Help Paying for Day Care?” <http://www.ocfs.state.ny.us/main/beccs/paying.asp> (visited Dec. 1, 2005).

59. N.Y. Soc. Serv. Law § 410-w(1)(a) (McKinney's 2006).

60. *Id.* § 410-w(1)(b)-(d) (note pending legislation to increase eligibility to teens in families with incomes up to 300% of the poverty level, see A.B. 5589, 228th Leg. Sess. (N.Y. 2005)).

61. Vol. 71 Fed. Reg. pp. 3848-3849 (Jan. 24, 2006).

62. New York State Office of Children and Family Services Administrative Directive, 94 ADM-12.

63. <http://www.ed.gov/pubs/Compendium/ch1e.html>.

64. 20 U.S.C. § 1681 (2005), sex discrimination: “no person in the United States shall, on the basis of

sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance, except” for some specific programs; 34 C.F.R. § 106.40 (2005), discrimination in education: “Discrimination on the Basis of Sex in Education Programs or Activities Prohibited”; N.Y. Educ. Law § 313 (McKinney’s 2006), discrimination in education.

65. 18 N.Y.C.R.R. § 415.8(b) (2006).

66. *Id.* § 415.8(l)(2).

67. *Id.* § 415.8(l)(6).

68. *Id.* § 415.8(l)(3).

69. *Id.* § 415.8(l)(5).

70. N.Y. Soc. Serv. Law § 342(1) (McKinney’s 2006).

71. N.Y. Pub. Health Law § 2504(3) (McKinney’s 2006) (“Any person who is pregnant may give effective consent for medical, dental, health and hospital services relating to prenatal care”).

72. *Id.* § 2504(1), (2).

73. The United States Supreme Court has held that the federal constitutional right of privacy in matters relating to the use of contraception protects minors as well as adults. *Eisenstadt v. Baird*, 405 U.S. 438 (1972); *Griswold v. Connecticut*, 381 U.S. 479 (1965). In *Carey v. Population Services Int’l*, 431 U.S. 678, 691–96 (1977) (plurality opinion), the Court flatly rejected the notion that the state could legitimately impede access to contraceptive services as a means of discouraging sexual activity. *Alfonso v. Fernandez*, 195 A.D.2d 46, 606 N.Y.S.2d 259 (2d Dep’t 1993) does not change this rule. The Second Department’s holding in *Alfonso* that a condom availability program in a public school must contain a parental opt-out provision – thereby requiring parental consent – is limited to that narrow context. The decision cannot be read to abrogate minors’ previously well-established rights under state law or the Constitution to consent to health care in other contexts.

74. Hospitals that provide emergency treatment to a female rape survivor of child-bearing age must tell her about and give her EC if she wants it. N.Y. Pub. Health Law § 2805-p2(c) (McKinney’s 2006).

75. See “Abortion Services” discussion *infra*.

76. N.Y. Pub. Health Law § 2305(2) (McKinney’s 2006).

77. *Id.* §§ 2780(5), 2781(2). Because the capacity to consent to HIV testing is determined without regard to age, a minor has the right to consent to – or to refuse – HIV testing.

78. Minors already have the right to consent to many components of treatment following a sexual assault. In addition to essential family planning and STI care, minors also can consent to rape crisis counseling. N.Y. C.P.L.R. 4510(a)(3) (McKinney’s 2006) (defining the rape crisis client, without regard to age, as “any person who is seeking or receiving the services of a rape crisis counselor for the purpose of securing counseling or assistance concerning any sexual offenses”), and to forensic evidence collection, Department of Health, Department of Social Services, *Child and Adolescent Sexual Offense Medical Protocol*

33 (n.d.) (directing providers to obtain consent from sexual assault survivors, including capable minors, before collecting sexual offense evidence). Requiring parental consent for non-reproductive health services following a sexual assault would violate laws protecting the confidentiality of the essential reproductive health services included in treatment following a sexual assault. Furthermore, New York law governing sexual assault treatment standards specifically includes “evidence which is associated with the hospital’s treatment of injuries sustained as a result of a sexual offense” within its definition of “privileged sexual offense evidence.” 10 N.Y.C.R.R. § 405.9(c)(4) (2006).

79. N.Y. Pub. Health Law § 2504(4) (McKinney’s 2006).

80. Minors may consent to outpatient mental health services if a parent or guardian is not reasonably available, the provider determines that parental involvement would be detrimental to the course of treatment, or the parent or guardian refuses consent and a physician determines that treatment is necessary and in the best interests of the minor. N.Y. Mental Hyg. Law § 33.21(c) (McKinney’s 2006). Minors who are over 15 years old can consent to their own inpatient mental health treatment. *Id.* § 9.13(a). Teens should be aware that even if they have been admitted to an inpatient mental health facility on the basis of their own consent, they still cannot necessarily leave whenever they wish. Once they notify the facility of their desire to leave in writing, they can be held for up to 72 hours, during which time the facility can petition a court for involuntary commitment. A facility may only do so if there are reasonable grounds to believe that the teen has a serious mental illness and, because of that illness, is dangerous to herself or others, and that there are no less restrictive alternatives. *Id.* § 9.13(b); *O’Connor v. Donaldson*, 422 U.S. 563 (1975); *Rodriguez v. City of New York*, 72 F.3d 1051 (2d Cir. 1995).

81. See “Alcohol and Substance Abuse Treatment” discussion *infra*.

82. N.Y. Pub. Health Law § 2805-d (McKinney’s 2006); N.Y. Mental Hyg. Law § 80.03(c) (McKinney’s 2006).

83. See sources cited *supra* note 44; N.Y. Educ. Law § 6509-6510.

84. N.Y. Pub. Health Law § 18(2)(c) (McKinney’s 2006).

85. N.Y.C.P.L.R. 4504(a) (McKinney’s 2006); 8 N.Y.C.R.R. § 29.1(b)(8) (2006).

86. *Planned Parenthood v. Casey*, 505 U.S. 833, 899–900 (1992); *Hodgson v. Minnesota*, 497 U.S. 417, 458 (plurality opinion) (O’Connor, J., concurring) (1990); *Planned Parenthood Assoc. v. Ashcroft*, 462 U.S. 476, 490 (1983); *Bellotti v. Baird*, 443 U.S. 622, 642–43 (1979) (plurality opinion).

87. N.Y. Pub. Health Law § 12-b, 17 (McKinney’s 2006).

88. *Id.* § 2504(3).

89. If a medical provider does not interpret the minor patient’s treatment as relating to her pregnancy, parental consent may be required.

90. N.Y. Pub. Health Law § 2504(3) (McKinney’s 2006).

91. *Id.* § 2504(4).

92. *Id.* § 18(2)(c). However, a physician can deny a parent or guardian access to emergency care records

when “the health care provider determines that access to the information requested by such parent or guardian would have a detrimental effect on the provider’s professional relationship with the infant, or on the care and treatment of the infant, or on the infant’s relationship with his or her parent or guardian.” *Id.*

93. *Elaine W. v. Joint Diseases N. Gender Hosp., Inc.*, 81 N.Y.2d 211, 213 (N.Y. 1993) (unless the hospital can establish that its blanket exclusion of pregnant women is medically warranted); McKinney’s Exec. Law, art. 15, § 296 2.(a); *see also*, 14 N.Y.C.R.R. § 820.4(d)(1) (2006) (No youth shall be denied admission to a residential chemical dependency program for youth ...or on the basis of any other arbitrary criteria).

94. N.Y. Pub. Health Law § 2504(3) (McKinney’s 2006).

95. Minors may receive non-medical alcohol and substance abuse treatment, such as counseling, without parental notification or consent. Memorandum from Donald P. Berens, General Counsel, New York State Department of Health, to Barbara McTague, Director, Division of Family Health 18 (October 4, 2005).

96. N.Y. Mental Hyg. Law § 22.11(c) (McKinney’s 2006). Providers may also treat minors without parental consent when they are unable to locate the parents or guardians after reasonable efforts or when the parent or guardian refuses to consent and a physician believes that treatment is necessary to the minor’s best interests.

97. Confidentiality of substance abuse treatment that is received in programs receiving federal funding is particularly strict. *See* 42 U.S.C. § 290dd-2 (2005); *see also*, *Comm’r of Social Servs. v. David R.S.*, 436 N.E.2d 451 (N.Y. 1982).

98. *See Elaine W.*, 82 N.Y.2d at 213.

99. 10 N.Y.C.R.R. § 63.3(a) (2006).

100. *Id.* § 63.3(b)(2)(vi); N.Y. Pub. Health Law § 2500-f (McKinney’s 2006) (the commissioner shall establish a comprehensive program for the testing of newborns for HIV).

101. *Id.* § 2504(1).

102. *Id.* § 2504 (2).

103. *See* “Custody and Paternity” discussion *infra*.

104. Mandatory reporters are health and educational professionals, among others, who are required by law to report possible cases of child abuse or neglect to the State Central Registry. Mandatory reporters include, among others, doctors, emergency medical technicians, psychologists, licensed counselors, therapists, nurses, dentists, school officials, social services workers, day care workers, police officers and district attorneys. N.Y. Soc. Serv. Law § 413(1) (McKinney’s 2006).

105. Reports must be based upon a reasonable suspicion of abuse or neglect. A reasonable suspicion must be based upon “articulable facts which, when examined objectively, would lead others to the...conclusion” that a child who has come before them in their professional capacity has been abused or neglected. *Vacchio v. St. Paul’s United Methodist Nursery Sch.*, N.Y.L.J., July 21, 1995, at 32 (Sup. Ct. Nassau

County) (Alpert, J.), citing *People v. Brooks*, 88 A.D.2d 451, 454 (2d Dep’t 1982).

106. *In re Katherine C.*, 122 Misc.2d 276, 279, 471 N.Y.S.2d 216, 219 (N.Y. Fam. Ct. Richmond County 1984) (finding a mother guilty of neglect because she should have known that her daughter was being sexually abused by the stepfather and failed to act to protect her).

107. N.Y. Fam. Ct. Act § 1012(e)-(f) (McKinney’s 2006).

108. *In re Comm’r of Soc. Servs. ex rel. Leslie C.*, 161 Misc.2d 600, 614 N.Y.S.2d 855 (N.Y. Fam. Ct. Kings County 1994) (dismissing charges of abuse and neglect against the mother of a sexually active fifteen-year-old girl).

109. Under New York law, a person commits at least the misdemeanor crime of sexual misconduct when he or she has sex without the other person’s consent. Because New York law states that people under the age of 17 lack the capacity to consent, any sexually active person sixteen years old or younger is technically considered a victim of sexual misconduct. N.Y. Penal Law §§ 130.05(3), 20(1) (McKinney’s 2006). This crime is commonly known as “statutory rape.”

110. *In re Philip M.*, 589 N.Y.S.2d 31 (App. Div. 1st Dep’t 1992), *aff’d*, 82 N.Y.2d 238 (1993) (noting that at trial, the court found that a 15-year-old with a sexually transmitted disease could not be presumed to be the victim of child abuse because the minor’s age indicated that he could have been engaged in “consensual sexual activity”); *In the Matter of Tomi D.*, 579 N.Y.S.2d 181 (N.Y. App. Div. 3d Dep’t 1992) (affirming the dismissal of a petition of abuse and neglect against the parents of a sexually active thirteen-year-old girl whose boyfriend was twenty-three).

111. *In the Matter of Leslie C.*, 161 Misc.2d 600, 610, 614 N.Y.S.2d 855, 862 (N.Y. Fam. Ct. 1994) (finding that mother, who knew that her 15-year-old daughter was sexually involved with a 21-year-old man, had not committed child abuse by failing to intervene in the relationship).

112. N.Y. Penal Law § 240.50(4) (McKinney’s 2006).

113. Medicaid Assistance Program Office of Eligibility Information Services, Medicaid Training Workbook (1992). New York State Department of Social Services, Center for Development of Human Services, Buffalo State College, Determining Presumptive Medicaid Eligibility for Pregnant Women: City of New York Human Resource Administration, “PCAP Documentation Update,” PCAP Update Seminar, July 31, 1996; New York State Department of Health, Medicaid Reference Guide, at 37-38, 495, 501-03 (1999), available at [http://www.health.state.ny.us/health\\_care/medicaid/reference/mrg/](http://www.health.state.ny.us/health_care/medicaid/reference/mrg/).

114. For Medicaid, *see* N.Y. Soc. Serv. Law § 365-a(2) (McKinney’s 2006); *see also* 18 N.Y.C.R.R. § 505.2(e) (2006) (abortion care covered). For a description of Medicaid coverage for contraception and family planning services, *see* N.Y. Soc. Serv. Law § 365-a(3)(d) (McKinney’s 2006); 18 N.Y.C.R.R. § 505.13 (McKinney’s 2006). For PCAP, *see*, N.Y. Pub. Health L. § 2520 *et seq.* (Benefit package described at N.Y. Pub. Health Law § 2522 (McKinney’s 2006) (comprehensive prenatal care services available under PCAP include: prenatal risk assessment, prenatal care visits, lab services, health education, referral for pediatric care, referral for nutrition services, mental health services, transportation services for prenatal care, labor and delivery, post-partum services including family planning, inpatient care, dental services, emergency room services, home care and pharmaceuticals). For CHPlus, *see* N.Y. Pub. Health Law § 2511 (McKinney’s 2006); *see also* NYS Department of Health, Child Health Plus Benefits Package (revised Jan. 2000). For CHPlus, *see* N.Y. Pub. Health Law § 2511 (McKinney’s 2006); *see also* NYS Department of Health, Child Health Plus Benefits Package (revised Jan. 2000).

115. For the FPEP, see N.Y. Soc. Servs. L. § 366(4)(5)(w) New York State Department of Health Medicaid Reference Guide, at 42 (updated February 25, 2005). For the FPBP, see State of New York Dep't of Health, Administrative Directive 02 OMM/ADM-7, to Commissioners of Social Services, Dec. 10, 2002 (benefits include all FDA-approved birth control methods, devices and supplies and related testing and procedures; screening for sexually transmitted diseases, HIV and cervical cancer; breast and testicular exams; emergency contraceptive services and follow-up; and pregnancy testing and counseling).

116. N.Y. Soc. Serv. Law § 366-g (McKinney's 2006); 18 N.Y.C.R.R. § 360-3.3(c)(6) (2006).

117. *Woe v. Perales* 1987, No. Civ.-87-646T, 1987 WL 108983, at \*6 (W.D.N.Y. Oct. 29, 1987). N.Y. Pub. Health Law § 2521(3) (McKinney's 2006); NYS Department of Social Services, Center for Development of Human Services, Buffalo State College, Determining Presumptive Eligibility for Medicaid for Pregnant Women (1995).

118. If a minor's (and/or her spouse's) income is less than the federal poverty level, her PCAP coverage will include the full range of regular Medicaid services, including abortion care. Since most minors do not earn an income that is greater than federal poverty level, abortions will be covered almost all of the time for minors enrolled in PCAP.

119. N.Y. Pub. Health Law § 2521(3) (McKinney's 2006); 8 N.Y.C.R.R. § 360-3.3(c)(6) (2006). See also N.Y. Soc. Serv. Law § 366-g (McKinney's 2006).

120. 42 U.S.C. § 1396a(e)(4) (2005); 42 CFR § 435.117(a) (2005). See also, N.Y. Soc. Serv. Law § 366-g(4) (McKinney's 2006) (“[A] child under the age of one year whose mother is receiving medical assistance, or services under the prenatal care assistance program...shall be deemed to be enrolled in the medical assistance program regardless of the issuance of a medical assistance identification card or client identification number to such child or other proof of the child's eligibility”).

121. N.Y. Pub. Health Law §§ 2510, 2511 (McKinney's 2006).

122. *Id.* §2511 (statutory provision does not require parental consent).

123. It does not matter whether the pregnancy ends in childbirth, miscarriage or abortion.

124. N.Y. Pub. Health Law § 2521(3) (McKinney's 2006); Letter from Jo-Ann A. Constantino, Deputy Commissioner Division of Medical Assistance, New York State Dep't of Social Services, to “provider” (Jan 22, 1991) (discussing payment for PCAP services for women whose pregnancies end in other than live births) (on file with NYCLU).

125. N.Y. Pub. Health Law §§ 2510, 2511 (McKinney's 2006).

126. *Aliessa v. Novello*, 96 N.Y.2d 418 (2001); see also New York State Dept. of Health, 04 OMM/ADM-7 (October 26, 2004). The New York State Department of Health defines a PRUCOL immigrant as someone who is permanently residing in the United States with the knowledge and permission or acquiescence of the USCIS and whose departure from the United States USCIS does not contemplate enforcing. See *id.* at 7.

127. See U.S.C.I.S. “A Quick Guide to ‘Public Charge’ and Receipt of to Public Benefits, October 18, 1999, available at: <http://uscis.gov/graphics/publicaffairs/summaries/Public.pdf>.

128. While federal law no longer requires it, see *Lewis v. Thompson*, 252 F.3d 567 (2d Cir. 2001), New York State continues to provide coverage for prenatal care regardless of the individual's immigration and citizenship status. N.Y. Soc. Serv. Law § 364-j(11) (McKinney's 2006); *id.* § 365-a(6) (“nothing in this subdivision shall be deemed to affect payment for such services if federal financial participation is not available for such care, services and supplies solely by reason of the immigration status of the otherwise eligible woman.”); *id.* § 366(4).

129. New York Department of Health Form DOH-4220-I 8/04, Application entitled “Access NYHealth Care: Health Insurance and Nutrition Application for Children, Adults and Families”, Application Section at 5, available at <http://www.health.state.ny.us/nysdoh/fhplus/pdf/4220.pdf>.

130. *Id.* Instructions Section at 3, available at <http://www.health.state.ny.us/nysdoh/fhplus/pdf/4220i.pdf>.

131. See U.S.C.I.S. “A Quick Guide to ‘Public Charge’ and Receipt of to Public Benefits, October 18, 1999, available at: <http://uscis.gov/graphics/publicaffairs/summaries/Public.pdf>.

132. N.Y. Fam. Ct. Act § 417 (McKinney's 2006).

133. See *In re Strong's Estate*, 6 N.Y.S.2d 300, 306 (1938), *aff'd*, 11 N.Y.S.2d 225 (1939) (“The fact of birth may be established by a birth certificate, although such certificate is not admissible to establish parentage”); *Stanford v. Union Labor Life Ins. Co.*, 345 N.Y.S.2d 928, 934 (1973) (“It is the rule in New York that a birth...certificate is admissible as a public document only to show the fact of birth...and not as evidence of the additional facts recited therein pursuant to law”).

134. N.Y. Soc. Serv. Law § 111-k(1)(a) (McKinney's 2006); N.Y. Pub. Health Law § 4135-b(1)(a) (McKinney's 2006); N.Y. Fam. Ct. Act § 516-a(a) (McKinney's 2006).

135. N.Y. Fam. Ct. Act § 516-a(a) (McKinney's 2006); N.Y. Pub. Health Law § 4135-b(1)(a) (McKinney's 2006).

136. *Id.* § 4135-b(1)(a).

137. *Id.* § 4135-b(1)(a), (b).

138. *Id.* § 4135-b(1)(a). The registrar then files it with the Department of Health and the Putative Father Registry. *Id.* § 4135-b(3)(b).

139. N.Y. Fam. Ct. Act § 516-a(a) (McKinney's 2006).

140. Either the mother or the potential father (often called the “putative father”) can bring an action for paternity, regardless of age. This is unusual; in most cases you must be over the age of 18 to bring a lawsuit. Proceedings to establish paternity may also be brought by an “incorporated society doing charitable or philanthropic work,” or by the Department of Social Services where the mother or the child is, or is likely to be, on welfare. N.Y. Fam. Ct. Act § 522 (McKinney's 2006).

141. *Id.* § 542(a).

142. *Id.*

143. *Id.* § 548-a(a).
144. *Id.* § 542.
145. *Id.*
146. See *Santosky v. Kramer*, 455 U.S. 745, 753 (1982) (recognizing as a fundamental liberty interest the right of a fit parent to the custody of a child); *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923) (deeming the right to conceive and raise one's children "essential").
147. Extraordinary circumstances include "surrender, abandonment, persisting neglect, unfitness, and unfortunate or involuntary disruption of custody over an extended period of time" and must be established by the non-parent seeking custody. See *Matter of Bennett v. Jeffreys*, 356 N.E.2d 277, 281 (N.Y. 1976). Even if the court finds extraordinary circumstances, custody will not be transferred to a third party unless it is in the best interests of the child. *Id.* at 283. It is presumptively in a child's best interest to be raised by a fit parent. See, e.g., *Matter of Spence-Chapin Adoption Serv. v. Polk*, 274 N.E.2d 431, 436 (N.Y. 1971).
148. N.Y. Dom. Rel. Law § 70(a) (McKinney's 2006); see also, *McGrath v. Collins*, 608 N.Y.S.2d 556, 558 (1994).
149. See *Eschbach v. Eschbach*, 56 N.Y.2d 167, 171 (1982); *Friedenwitzer v. Friedenwitzer*, 55 N.Y.2d 89, 93-95 (1982).
150. See N.Y. Dom. Rel. Law § 240(1)(a) (McKinney's 2006) (mandating consideration of domestic violence as a factor in custody determinations).
151. See N.Y. Fam. Ct. Act § 413 (McKinney's 2006).
152. See N.Y. Dom. Rel. Law § 240(1-b)(b)(3) (McKinney's 2006); *id.* § 240(1-b)(c)(2). For two children, the percentage is 25%, for three children, it's 29%, for four it's 31%, and for five or more children, it's not less than 35%. *Id.* §240(1-b)(b)(3).
153. N.Y. Fam. Ct. Act § 413(1)(g) (McKinney's 2006) mandates a minimum child support obligation of \$25; however, this sum can be lowered where the circumstances require it. See *Rose v. Moody*, 83 N.Y.2d 65, 67, 607 N.Y.S.2d 906, 907 (N.Y. 1993) (holding § 413(1)(g) to be in conflict with federal enabling law). A proposed bill would amend § 413(1)(g) to delete the \$25 minimum payment. See Bill No. 5117, 2005 Assem., 228th Sess. (N.Y. Feb. 16, 2005).
154. See N.Y. Fam. Ct. Act § 549(a) (McKinney's 2006); *In re Juan R.*, 84 Misc.2d 580, 588, 374 N.Y.S.2d 541, 548 (N.Y. Fam. Ct. 1975) (postponing question of visitation rights until paternity is established); see also *Ronald FF v. Cindy GG*, 70 N.Y.2d 141, 142, 517 N.Y.S.2d 932 (N.Y. 1987) (holding that visitation rights may not be granted to a biological stranger when the mother has custody and there are no issues relating to the mother's parental fitness).
155. See *Anonymous v. Anonymous*, 56 Misc.2d 711, 712, 289 N.Y.S.2d 792, 794 (N.Y. Fam. Ct. 1968); *E.R. v. D.T.*, 77 Misc.2d 242, 245, 353 N.Y.S.2d 612, 615 (N.Y. Fam. Ct. 1974).
156. N.Y. Fam. Ct. Act § 549(a) (McKinney's 2006).
157. See *In re Sarah K.*, 66 N.Y.2d 223, 233, 496 N.Y.S.2d 384, 388 (N.Y. 1985).
158. N.Y. Dom. Rel. Law § 115-b(3) (McKinney's 2006).
159. *Id.*
160. See *In re Sarah K.*, 66 N.Y.2d 223, 233, 496 N.Y.S.2d 384, 388 (N.Y. 1985); N.Y. Dom. Rel. Law § 115-b(6)(d)(v) (McKinney's 2006); *In re Adoption of Baby Boy*, 175 Misc.2d 7, 14-15, 667 N.Y.S.2d 635, 640 (N.Y. Surr. Ct. 1997), *aff'd*, 252 A.D.2d 971, 676 N.Y.S.2d 391 (4th Dep't 1998).
161. N.Y. Dom. Rel. Law § 115-b(2)(b) (McKinney's 2006).
162. *Id.* § 115-b(2)(a); see *In re Ricky AA*, 146 A.D.2d 433, 435, 541 N.Y.S.2d 264, 265-66 (3d Dep't 1989) (judicial consent in which the mother signed the agreement and judge explained her rights could not be revoked), *aff'd*, 75 N.Y.2d 885, 554 N.Y.S.2d 473 (N.Y. 1990).
163. N.Y. Dom. Rel. Law § 115-(b)(1) (McKinney's 2006).
164. *Id.* § 115-b(7).
165. See *In re Adoption of Stephen*, 168 Misc.2d 943, 945, 645 N.Y.S.2d 1012, 1014 (N.Y. Fam. Ct. 1996).
166. See *In re Raquel Marie X.*, 76 N.Y.2d 387, 408, 559 N.Y.S.2d 855, 865 (N.Y. 1990). In *Raquel Marie X.*, the Court of Appeals held that § 111(1)(e) of the New York Domestic Relations Law, which had required an unmarried father of a child under six months of age to have lived with the child's mother for a six-month period prior to the adoption in order to acquire the right to consent was unconstitutional. *Id.* at 406, 559 N.Y.S.2d at 864. Although the case was decided over a decade ago, the Legislature has failed to amend the Domestic Relations Law and the Court's language in *Raquel Marie X.* is the standard to be applied in the adoptions of newborns. See e.g., *In re M./B. Children*, 7 Misc.3d 272 (Fam. Ct., King's Co. 2004); *In re Lily R.*, 283 A.D.2d 901, 903, 724 N.Y.S.2d 231, 234 (4th Dep't 2001); *In re Carrie GG*, 273 A.D.2d 561, 562, 709 N.Y.S.2d 247, 248 (3d Dep't 2000); *John E. v. Doe*, 164 A.D.2d 375, 379, 564 N.Y.S.2d 439, 442 (2d Dep't 1990). Two proposed bills would eliminate the residency requirement. See Bill No. 4583, 2005 Assem., 228th Sess. (N.Y. Feb. 10, 2005) and Bill No. 4589, 2005 Assem., 228th Sess. (N.Y. Feb. 10, 2005).
167. N.Y. Dom. Rel. Law § 111(1)(d) (McKinney's 2006). This provision was held to be unconstitutional as applied in *In re M./B. Children*, 7 Misc.3d at 283-84 (finding that imposing financial support and visitation requirements on unmarried father, who had in other ways established a substantial and significant relationship with his children, constitutes denial of equal protection because such requirements are not imposed on mothers and married fathers).
168. N.Y. Dom. Rel. Law § 111(2)(a) (McKinney's 2006); see *In re Eugene "MM,"* 132 A.D.2d 780, 781, 517 N.Y.S. 2d 326, 328 (3d Dep't 1987) (holding that father, who had minimal contact with mother and child, had failed to pay any child support, and had not communicated with the child for two years failed to meet the threshold criteria needed to require his consent to the adoption under § 111(d) and further abandoned the child pursuant to § 112(a)).
169. N.Y. Soc. Serv. Law §349 (McKinney's 2006); 18 N.Y.C.R.R. § 369.1.(b) (2006).
170. N.Y. Soc. Serv. Law §350(2)(a) (McKinney's 2006); 18 N.Y.C.R.R. § 369.4(d) (2006).

171. N.Y. Soc. Serv. Law § 159(2) (McKinney's 2006); 18 N.Y.C.R.R. §370.4(b)(2)(ii) (2006). For a general description of eligibility requirements for SNA, see N.Y. Soc. Serv. Law §§ 157-159 (McKinney's 2006), 18 N.Y.C.R.R. § 370 (2006). Note that to be eligible for SNA one must be ineligible for FA (this includes having exceeded one's lifetime limit of FA).

172. N.Y. Soc. Serv. Law §159(1)(b) (McKinney's 2006); 18 N.Y.C.R.R. §370.4(b)(2) (2006).

173. *Id.* §370.4(b)(2).

174. N.Y. Soc. Serv. Law §350(2) (McKinney's 2006).

175. 18 N.Y.C.R.R. §350.3(a) (2006).

176. *Id.* §369.3(a)(4).

177. Regulations governing grants to minors are found at 18 N.Y.C.R.R. § 369.3(4) (2006).

178. N.Y. Soc. Serv. Law §131-a(5)(e) (McKinney's 2006); 18 N.Y.C.R.R. §352.7(k) (2006).

179. 7 U.S.C. § 2020(e)(9) (2005); 7 C.F.R. § 273.2(i) (2005).

180. 7 U.S.C. § 2020(e)(9)(A) (2005).

181. 18 N.Y.C.R.R. §369.2(i)(1)(i-v) (2006).

182. *Id.* §369.2(i)(2).

183. *Id.* §369.2(i)(3).

184. Cooperative budgeting is covered in 18 N.Y.C.R.R. §352.32(c) (2006). The minor parent who is at least 16 years old, but under 18 years old, who has no siblings eligible for family assistance, can be made the grantee of her portion of the case. *Id.* §369.3(4)(i)(b).

185. N.Y. Soc. Serv. Law §101 (McKinney's 2006) (setting forth the support obligation for children up to age 21); *id.* §131-c; 18 N.Y.C.R.R. §352.30(a), §352.31(a)(2), and §352.32(e)(1) (2006). However, if a parent or a sibling receives SSI benefits, their income is not counted. N.Y. Soc. Serv. Law §131-c(1) (McKinney's 2006); 18 N.Y.C.R.R. §352.30(a) (2006).

186. 18 N.Y.C.R.R. §352.30(c) (2006). Income from the minor parent's non-applying parent will be determined pursuant to 18 N.Y.C.R.R. §352.14 (2006).

187. *Id.* §352.30(c)(2) (2006).

188. *Reynolds v. Giuliani*, 2005 WL 342106 (S.D.N.Y. Feb. 14, 2005); *Id.* 35 F.Supp.2d 33 (S.D.N.Y. 1999).

189. *Id.* § 351.2(e)(2)(iv) ("When an applicant for or recipient of public assistance ... willfully fails or refuses to cooperate by furnishing information or aid to the local child support enforcement unit in establishing a support obligation, enforcing a support order or establishing paternity, the social services official shall reduce by 25 percent the public assistance otherwise available to the household for so long

as such cooperation is withheld."); *id.* § 369.2(b)(3) (denying public assistance to applicant who does not provide information necessary to pursue child support, in the absence of a good cause exception or waiver, but providing for protective payments for the child).

190. N.Y. Soc. Serv. Law § 369-b(1)(b) (McKinney's 2006). Examples of "good cause" include where cooperation would place the mother or child in physical danger or emotional danger. See also 18 N.Y.C.R.R. § 351.2(l)(7)(iii) (2006) (allowing waiver of cooperation requirements for victims of domestic violence).

191. *Id.* §§ 351.2(e)(2)(iv), 352.30(d)(4).

192. Although the woman could lose public assistance if she refuses to give information regarding the father, assistance for which her child is eligible would be furnished through protective payments. See *id.* § 369.2(b)(3).

193. *Id.* § 349-b(1)(b). Examples of "good cause" include where cooperation would place the mother or child in physical danger or emotional danger. See also, 18 N.Y.C.R.R. § 351.2(l)(7)(iii) (2006) (allowing waiver of cooperation requirements for victims of domestic violence).

194. See 18 N.Y.C.R.R. §§ 351.2(e)(2)(iv), 352.30 (d)(4), and 369.2 (2006).

195. Fair Hearing provisions: see generally, N.Y. Soc. Serv. Law §22 (McKinney's 2006), 18 N.Y.C.R.R. Part 358.1 (2006); the right to a hearing, N.Y. Soc. Serv. Law §22(3), (5) (McKinney's 2006) & 18 N.Y.C.R.R. §358-3.1 (2006).

196. N.Y. Soc. Serv. Law §332(1)(b) (McKinney's 2006), 12 N.Y.C.R.R. §1300.2(b)(3) (2006).

197. *Id.*

198. N.Y. Soc. Serv. Law §336-a(4)(b) (McKinney's 2006), 12 N.Y.C.R.R. §1300.9(c)(2)-(7) (2006).

199. N.Y. Soc. Serv. Law §335(2)(b) and §335-a(2)(b) (McKinney's 2006), 12 N.Y.C.R.R. §1300.6(a)(4) and §1300.7(a)(4) (2006).

200. N.Y. Soc. Serv. Law § 336(1)(h) (McKinney's 2006). Specifically excludes Baccalaureate and advanced degree programs from being counted among the educational activities that count as "work activities" required for recipients of public benefits. See 42 U.S.C. § 607(d) (2005); N.Y. Soc. Serv. Law § 332-3 (McKinney's 2006).

201. N.Y. Soc. Serv. Law § 336(1)(n), 336-a (McKinney's 2006).

202. *Id.* § 336-a(1) (McKinney's 2006).

203. *Davila v. Eggleston*, Index No. 407163/96 (N.Y. Sup. Ct. N.Y. County 1996 Judge Braun) (Stipulation and Order of Settlement and Principles of Agreement).

204. *Id.* Principles of Agreement at § III.B.1.b.i.

205. 42 U.S.C. § 607 (2005); N.Y. Soc. Serv. Law, § 335-b (McKinney's 2006).

206. *Davila*, Index No. 407163/96 (Principles of Agreement § III.C).
207. N.Y. Soc. Serv. Law § 332-a (McKinney's 2006), 12 N.Y.C.R.R. § 1300.4(a) (2006), 18 N.Y.C.R.R. § 415.2
208. 18 N.Y.C.R.R. Part 415 (2006).
209. N.Y. Soc. Serv. Law § 332-a (McKinney's 2006), 12 N.Y.C.R.R. § 1300.4(a)(1) (2006).
210. 18 N.Y.C.R.R. § 505.13(a)(1) (2006).
211. N.Y. Pub. Health § 17 (McKinney's 2006).
212. 18 N.Y.C.R.R. §§ 441.22(a), 507.1(a) (2006); *Armeth v. Gross*, 699 E.Supp. 450, 452 (S.D.N.Y. 1988) (holding that [m]inors have a constitutional privacy right to practice artificial conception absent compelling state considerations to the contrary, and this is not diminished because they are in foster care). Every child in foster care is entitled to comprehensive medical and health services. This entitlement includes providing or arranging for requested family planning services within 30 days of the request. 18 N.Y.C.R.R. § 507.1(c)(9) (2006).
213. N.Y. Fam. Ct. Act § 249(a) (McKinney's 2006) sets forth a child's statutory right to counsel in the context of child protective proceedings.
214. 18 N.Y.C.R.R. § 507.1(e) (2006).
215. N.Y. Soc. Serv. Law § 373-a (McKinney's 2006).
216. N.Y. Pub. Health Law § 2782(1)(h) (McKinney's 2006); N.Y. Soc. Serv. Law § 372(8) (McKinney's 2006).
217. Like everyone else, teens in foster care who have the capacity to consent to an HIV test cannot be tested without their written permission. See 18 N.Y.C.R.R. § 441.22(b)(4) (2006) ("Procedures related to HIV testing").
218. See N.Y. Pub. Health L. § 2782 (McKinney's 2006); see also 18 N.Y.C.R.R. § 357.3(b)(5) (2006).
219. *Id.* § 423.4(g)(2).
220. N.Y. Educ. Law § 4002(2)(h) (McKinney's 2006); 8 N.Y.C.R.R. § 116.1 *et seq.* (2006) (Education Commissioner's regulations regarding provision of educational services to children in foster care). Each hospital maintains a certified Board of Education teacher on staff who provides classes to the young mothers. Once a joint placement has been located for the young mother and her baby, the young mother can return to school. The hospital on-site teacher should then provide the receiving school with all information to assist with the transfer. When a young mother is ready to return to school, she should contact her caseworker to ensure the transfer process. Students who have special educational needs have additional rights under the federal Individuals with Disabilities Education Act ("IDEA") and the New York laws and regulations implementing the IDEA.
221. Betsy Krebs and Nedda De Castro, Youth Advocacy Center, Inc., *Caring for Our Children: Improving the Foster Care System for Teen Mothers and their Children*, (1995) 25.
222. N.Y. Soc. Serv. Law § 384-a(2)(c)(ii) (McKinney's 2006).
223. *Id.* § 384-a(2)(c)(iii). If no date is specified, the parent or guardian has a right to the return of the child within twenty days of a request for return, unless otherwise ordered by the court. *Id.*
224. N.Y. Soc. Serv. Law § 384-a(2)(c)(iv) (McKinney's 2006). To be meaningful, visitation must be "frequent and regular." *Daghir v. Daghir*, 82 A.D.2d 191, 194 (2d Dep't 1981); *Cardia v. Cardia*, 203 A.D.2d 650, 652 (3d Dep't 1994).
225. N.Y. Soc. Serv. Law § 384-a(2)(c)(vi) (McKinney's 2006).
226. *Id.* § 384-a(2)(c)(ii).
227. *Hernandez v. Coughlin*, 18 F.3d 133, 136 (2d Cir. 1994).
228. *Estelle v. Gamble*, 429 U.S. 97, 104 (1976) (holding that "deliberate indifference to serious medical needs of prisoners constitutes the unnecessary and wanton infliction of pain" in violation of the 8th Amendment); *Bryant v. Maffucci*, 923 F.2d 979, 984 (2d Cir. 1991); *Langley v. Coughlin*, 888 F.2d 252, 253 (2d Cir. 1989) (noting that prisoners generally have a due process right to adequate medical treatment, including the right to have an abortion while in custody); Monmouth County Correctional Inst. *Inmates v. Lanzaro*, 834 F.2d 326 (3d Cir.), *cert. denied*, 486 U.S. 1006 (1988) (holding that abortion is a serious medical need for women prisoners and denial of access to abortion likely constitutes an 8th Amendment violation); *Archer v. Dutcher*, 733 F.2d 14 (2d Cir. 1984) (explaining that failure to provide adequate medical care, when rising to level of deliberate indifference to medical needs of a prisoner, violates the Eighth Amendment).
229. *Estelle v. Gamble, supra*.
230. *Id.*
231. *Hathaway v. Coughlin*, 841 F.2d 48, 50-51 (2d Cir. 1988).
232. *Estelle*, 429 U.S. at 104-05; *Gill v. Mooney*, 824 F.2d 192, 196 (2d Cir. 1987); *Todaro v. Ward*, 565 F.2d 48, 52 (2d Cir. 1977).
233. *Gill*, 824 F.2d at 196.
234. *Archer v. Dutcher*, 733 F.2d 14, 16 (2d Cir. 1984).
235. *Langley v. Coughlin*, 715 F.Supp. 522, 536 (S.D.N.Y. 1989).
236. 41 N.Y.C.R.R. § 3-01 *et seq.* (2006)
237. <http://www.nyc.gov/html/dij/html/faq.html>.
238. *Id.*
239. 41 N.Y. C.R.R. § 3-01 (c) and § 3-03 (a) (2006).
240. <http://www.nyc.gov/html/health.html>.

- 241. *Id.*
- 242. *Id.*
- 243. Telephone conversation with Herman Dawson, General Counsel, New York City Department of Juvenile Justice, April 11, 2005.
- 244. *Id.*
- 245. *Id.*
- 246. *Id.*
- 247. *Id.*; N.Y. Pub. Health Law § 17 (McKinney's 2006).
- 248. N.Y. Exec. Law § 508 (McKinney's 2006).
- 249. 9 N.Y.C.R.R. § 180.9(b) (2006).

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