

**Joint Hearing on Proposition 4:
Waiting Period and Parental Notification Before Termination of Minor's Pregnancy.
Initiative Constitutional Amendment.**

**Assembly Committee on Health
Senate Committee on Health**

**September 16, 2008
1:30 p.m.
State Capitol, Room 4202**

Summary

On November 4, 2008, voters will consider Proposition 4, which amends the California Constitution to forbid physicians from performing an abortion on anyone under the age of 18 until written notice has been delivered to her parent, adult family member, or legal guardian, as specified, and imposes a 48-hour waiting period. Specifically this constitutional amendment:

- 1) Adds to the constitution, the Child and Teen Safety and Stop Predators Act: Sarah's Law.
- 2) Prohibits an abortion on a pregnant unemancipated minor until written notice has been delivered to the parent or guardian, personally by the physician or his or her agent, and at least 48 hours after written notice has been delivered, or until the physician has received a copy of a judicial waiver of notification from a juvenile court.
- 3) Defines "abortion" as any means to terminate the pregnancy of an unemancipated minor known to be pregnant except for the purpose of producing a live birth, and excludes from the definition of abortion the use of a contraceptive drug or device.
- 4) Defines "unemancipated minor" as a female under the age of 18 years who is unmarried and is not currently serving active duty in one of the military services of the United States of America, or a female for whom a guardian has been appointed because of a finding of incompetency, or a female who has not been declared emancipated pursuant to state law.
- 5) Defines "parent" as a person who is either parent if both parents have legal custody, or the parent or person having legal custody, or the legal guardian of an unemancipated minor.
- 6) Defines "notice" as a written notification, signed by a physician or his or her agent and addressed to a parent, informing the parent that the unemancipated minor is pregnant and that she has requested an abortion.

- 7) Requires the physician to inform the unemancipated minor that her parent may receive the notice required by this constitutional amendment.
- 8) Permits a minor to seek a judicial waiver of this notice based on the court's finding of clear and convincing evidence of the minor's maturity or best interest.
- 9) Provides exceptions to the notification in cases of medical emergencies, parental waivers, or notification to an adult family member when a minor reports abuse.
- 10) Requires a physician to report known or suspected child abuse concerning the unemancipated minor to the appropriate law enforcement or public child protective agency.
- 11) Defines "adult family member" as a person at least 21 years of age who is the grandparent, stepparent, foster parent, aunt, uncle, sibling, half-sibling, or first cousin of an unemancipated minor.
- 12) Requires physicians to report to the Department of Health Services (DHS) abortions performed on minors, and requires the state to compile statistics on those reports, as specified.
- 13) Permits a minor to seek assistance from the juvenile court if anyone attempts to coerce her into having an abortion.
- 14) Imposes civil penalties on any person who performs an abortion in violation of this constitutional amendment, and permits the assessment of damages and attorney's fees against such a person related to any civil action brought by a parent wrongfully denied notification.
- 15) Provides that any person, other than the minor, her physician, or the physician's agent who knowingly provides false information to a physician or the physician's agent for the purpose of inducing the belief that the notice of an abortion has been provided to a parent or adult family member, or that a waiver of that notice has been obtained, is guilty of a misdemeanor punishable by a fine of up to \$2,000.

Background

Previous Propositions: Proposition 4 represents the third time that California voters will have considered the issue of a parental notification/waiting period for abortion. The two previous initiatives were California Proposition 85 (2006) and California Proposition 73 (2005). Proposition 4 is a revised version of Proposition 85, which voters rejected in November 2006 by a vote of 54% to 46%. Proposition 85 was a revised version of Proposition 73, which voters rejected in 2005 by a vote of 52% to 47%. The key difference between this measure and Proposition 85 in 2006 is that Proposition 4 permits a minor to have a family member other than a parent be notified of her intent to undergo an abortion at least 48 hours before the procedure. Proposition 4 requires the request for another family member to be notified to be based on a

history of past parental abuse of the minor that is detailed in a written statement and reported by the abortion provider to authorities and to the family member selected for notification.

Previous Legislative Proposals: California Civil Code Section 34.5 was enacted in 1953 and gave minors the right to consent to hospital, medical, and surgical care related to the prevention or treatment of a pregnancy without the consent of their parents. Bills to require parental notification have been introduced in the California Legislature a number of times, including AB 2274 (Frazee) Chapter 1237, Statutes of 1987, which was subsequently found by the California Supreme Court to be in violation of the California Constitution. In 1997, ACA 38 (Leonard) would have amended the California Constitution to prohibit any abortion from being performed upon an unemancipated minor without written consent from the minor and one of her parents or legal guardian, except in a medical emergency requiring immediate medical attention or upon court authorization, as specified. ACA 38 failed passage in the Assembly Committee on Health by a vote of 8-8. SCA 17 (Leslie) of 1998 would have required a physician to obtain the written consent of a minor and one of her parents or guardian, or in the alternative the minor's consent and authorization of the court, prior to providing an abortion and included an exception for medical emergencies. SCA 17 failed passage in the Senate Committee on Judiciary by a vote of 3-4. Several similar bills have been introduced in the Assembly, but were never heard. AB 2582 (Thompson) of 1998 would have reenacted the provisions of AB 2274 after the California Supreme Court ruling and would have become operative only if an unspecified constitutional amendment were to be adopted. In 2001, ACA 5 (Wyman) and ACA 23 (Briggs) would have prohibited, except in the case of an emergency, an abortion from being performed on an unemancipated minor until the physician has first notified one of her parents or her legal guardian pursuant to specified requirements, or a court permitted waiver of these requirements, if any of certain circumstances were found to exist.

State Case Law: The California Supreme Court held in American Academy of Pediatrics v. Lungren, 16 Cal. 4th 307 (1997), that the 1987 parental consent statute enacted in AB 2274 (Frazee) violated the special right of privacy specifically guaranteed under the California Constitution. AB 2274 (Frazee) required that physicians obtain parental consent prior to performing an abortion on a minor and contained a judicial bypass provision through which a minor may receive court approval to obtain an abortion without parental involvement. The California Supreme Court held that the California Constitution provides greater privacy protection than the U.S. Constitution, including protecting a woman's right to choose whether to continue her pregnancy. The Court held that a minor who is pregnant also has a protected privacy interest under the California Constitution in making the decision of whether to continue or to terminate her own pregnancy. After finding that a minor has a reasonable expectation of privacy, the Court found that AB 2274 would be a serious invasion of the minor's privacy interest. The Court went on to find that the parental consent requirements in AB 2274 could not be sustained on the grounds that its requirements are necessary to protect the health of a pregnant minor or to protect the minor's relationship with her parent. The Court noted that the evidence introduced at trial overwhelmingly indicated that AB 2274 would not serve, but rather impede, the state's interests in protecting the health of minors and enhancing the parent-child relationship.

Federal Case Law: The U.S. Supreme Court has upheld some state parental notification statutes that require minors seeking an abortion to notify a parent prior to obtaining an abortion, subject

to a judicial bypass provision that permits a minor to ask a court for permission to bypass a state's parental notification requirement. [Lambert v. Wicklund, 520 U.S. 292 (1997).]

Other States: Thirty-four states require parental involvement in a minor's decision to have an abortion. Two U.S. Supreme Court rulings prohibit parents from having absolute refusal over their daughters' decision to have an abortion, and most states with parental involvement laws require the consent or notification of only one parent, usually 24 or 48 hours before the procedure. Many of these laws also include a medical emergency exception and a judicial bypass procedure, through which a minor may receive court approval to obtain an abortion without parental involvement. Two states require the consent or notification of both parents and one lacks a judicial bypass. Six states permit grandparents or other adult relatives to act in place of parents; and in cases of neglect or abuse, some states waive the consent or notification requirement altogether. Finally, some state courts have enjoined laws that they have concluded violate their constitution. Please refer to Appendix A for a chart that summarizes state parental involvement laws (please note that the chart does not include this information for all states).

Proposition 4 Overview

Notification Requirement: Proposition 4 requires a physician (or his or her representative) to notify one parent or legal guardian of a pregnant unemancipated minor, as defined, at least 48 hours before performing an abortion on that minor. Physicians would be permitted to provide notification through a written notice to the parent or guardian in person or through certified mail. If the notification is made through certified mail, it must also be sent by first-class mail. Notification is presumed to be made as of noon on the second day after the notice is mailed. Proposition 4 provides for the following exceptions to the notification:

- *Medical Emergencies:* The notification requirements do not apply if the physician certifies in the minor's medical record that the abortion is necessary to prevent the minor's death or that a delay would "create serious risk of substantial and irreversible impairment of a major bodily function."
- *Parent/Guardian Waiver:* A minor's parent or guardian may waive the notification requirements, including the waiting period, by submitting a signed, written waiver to the physician.
- *Reported Abuse:* The physician can notify an adult family member (defined as a person at least 21 years of age who is the grandparent, stepparent, foster parent, aunt, uncle, sibling, half-sibling, or first cousin of the minor) instead of notifying the minor's parent based on the minor's written statement that: 1) she fears physical, sexual, or severe emotional abuse from a parent who would otherwise be notified, and, 2) that her fear is based on a pattern of such abuse of her by a parent. The manner of notice to an adult family member must be consistent with that required for parental notice. Additionally, the measure requires the physician to make a written report of known or suspected child abuse to the appropriate law enforcement or public child protection agency. The physician would also be required to include with the notice a letter informing the adult family member about the report of abuse.

- *Court Waiver:* A minor is permitted to request that a juvenile court waive the notification requirements, which the court is permitted to do if it finds that the minor is sufficiently mature and well-informed to decide whether to have an abortion or that notification would not be in the minor's best interest.

Physician and State Reporting Requirement: Proposition 4 would require physicians to report specified information, including the date and place of the abortion, and the patient's month and year of birth and the circumstances under which the abortion was performed to the Department of Health Services (DHS)¹ within one month of performing an abortion on a minor. Names of the minor and her parent are not reportable and the identity of the physician is required to be kept confidential. The proposition requires DHS to compile an annual report that includes the numbers of abortions by month and by county where performed, the minors' ages, the duration of the pregnancies, the types of abortion procedures, and the number and types of waivers granted. This report would be required to be made available to the public. The courts are required to report annually to the state Judicial Council the number of petitions filed and granted or denied.

Penalties: Proposition 4 provides that any person who performs an abortion on a minor and fails to comply with the measure's provisions is liable for damages in a civil action brought by the minor, her legal representative, or by a parent or guardian wrongfully denied notification. The measure would require the civil action to commence within four years of the minor's 18th birthday or later, under certain specified circumstances. The measure also makes any person, other than the minor, her physician, or the physician's agent who knowingly provides false information that the notice of an abortion has been provided guilty of a misdemeanor punishable by a fine of up to \$2,000.

Legislative Analyst's Office Fiscal Analysis

State Health Care Programs: According to the Legislative Analyst's Office (LAO), Proposition 4 could result in a reduction in the number of abortions obtained by minors within California. This reduction might be offset to an unknown extent by an increase in the number of out-of-state abortions obtained by California minors. The LAO also indicates that some minors might also avoid pregnancy as a result of this measure, further reducing the number of abortions for this group. The LAO maintains that if Proposition 4 reduces the overall number of minors obtaining abortions in California, it is also likely that fewer abortions would be performed under the Medical program and other state health care programs that provide medical services for minors. This would, according to the LAO, result in unknown state savings for these programs. However, the LAO further states that, if Proposition 4 results in a decrease in minors' abortions and an increase in the birthrate of children in low-income families eligible for publicly funded health care, the state would incur additional costs. These could include costs for medical services provided during pregnancy, deliveries, and infant care. According to the LAO, the net fiscal

¹ Effective July 1, 2007, DHS was divided into two departments: The Department of Health Care Services and the Department of Public Health. The measure does not specify which of these departments would perform these activities and incur the related costs.

effect of these cost and savings factors would probably not exceed costs of a few million dollars annually.

State Administrative Costs: The LAO estimates that the state would incur first-year costs of up to \$350,000 to develop required forms, establish a physician reporting system, and prepare the initial annual report. According to the LAO, the ongoing state costs for DHS to implement this measure could be as much as \$150,000 annually.

Juvenile and Appellate Court Costs: According to the LAO, Proposition 4 would result in increased state costs for the courts, primarily as a result of the provisions allowing minors to request a court waiver of the notification requirements. The LAO maintains that the magnitude of these costs is unknown but could reach several million dollars annually, depending primarily on the number of minors that sought waivers.

Social Services Costs: According to the LAO, if Proposition 4 discourages some minors from obtaining abortions and increases the birthrate among low-income minors, expenditures for cash assistance and services to needy families would increase under the California Work Opportunity and Responsibility to Kids (CalWORKs) program. The magnitude of these costs, if any, according to the LAO, would probably not exceed a few million dollars annually. The CalWORKs program is supported with both state and federal funds, but because all CalWORKs federal funds are currently capped, these additional costs would be borne by the state.

Impact of Parental Involvement Laws

A search of literature on this subject was conducted by the California Research Bureau for this background paper. Previous research indicates that parental involvement has an influence on the way in which some minors seek certain types of health care services. A study published in the *Journal of the American Medical Association (JAMA)* in August 2002 concluded that mandated parental notification is likely to reduce the use of health care use among adolescents with concerns related to sexual behaviors. Nearly one half of single, sexually active girls under 18 years who were surveyed in family planning clinics in Wisconsin reported that they would stop using the clinics under conditions of mandatory parental notification for prescription contraceptives.¹ The authors concluded that this would have an impact not only on receiving those contraceptives, but also receiving other services and would have a substantial impact on the rates of teen pregnancy and sexually transmitted infections (STIs). An editorial in the same issue of *JAMA* stated that there is no reason that efforts to strengthen communication between adolescents and their parents cannot take place even though confidential health care is available to adolescents.

An analysis of birth rates, abortion data, and sexual activity and contraceptive use published in 2003 found that parental involvement laws reduced abortion rates for minors, but did not increase births to minors.² The authors stated that additional evidence indicated that this may have resulted from an increased use of contraception rather than a reduction in sexual activity. A study of the impact of Minnesota's parental notification law found, after the enactment of the law, a marked drop in the abortion-to-birth ratio in 15 to 17 year olds compared to 18 to 19 and 20 to 44 year olds. The study also found an increase in the proportion of late (more than 12

weeks gestation) abortions to early abortions for teens aged 15 to 17.³ A study of the effects of Mississippi's parental consent requirement showed that the ratio of minors to adults who sought abortions declined by 13%, which was offset by a 32% increase in the ratio of minors to adults who obtained abortions out of state. Like the Minnesota study, the authors also found that the requirement increased the ratio of minors to adults who obtained their procedure after 12 weeks of gestation by 19%.⁴ Finally, a study of the parental consent statute in Missouri found a decrease in the selection of abortion as a pregnancy outcome, particularly among white teens. In addition, there was an increase in the percent of abortions among teens taking place in other states and an irregular but steady trend toward later abortions.⁵

The American Medical Association (AMA), based on a report of its Council on Scientific Affairs, stated that when minors request confidential services, physicians should encourage them to involve their parents, but where the law does not require otherwise, should permit a competent minor to consent to medical care and not notify parents without the patient's consent. The AMA stated that for certain services (including pregnancy-related care, STI diagnosis and treatment, drug and alcohol abuse services, and mental health services), "...physicians must recognize that requiring parental involvement may be counterproductive to the health of the patient."⁶

Arguments in Support of Proposition 4

According to www.healthvote.org, sponsored by the California HealthCare Foundation (CHCF), "Friends of Sarah's Law, the Parental or Alternative Family Member Notification Law," the Yes On 4: Parental Notification Initiative sponsoring committee at this point claims no other formal organizational support for Proposition 4. Propositions 85 and 73 were endorsed by the California Catholic Conference, representing 11,000 Roman Catholic parishes in the state. Republican Governor Arnold Schwarzenegger endorsed both Propositions 85 and 73. Author, actor, and film producer Ben Stein has appeared in support of Proposition 4. According to the California Secretary of State, major early contributors to the "Friends of Sarah" campaign were *San Diego Reader* publisher James Holman (\$1.4 million); Sonoma winery owner and former California Assemblymember Don Sebastiani (\$530,000); the Lenawee Trust, of Irvine (\$100,000); the Caster Family Trust, of San Diego (\$100,000); and Thomas Sudberry, Jr., a San Diego real estate developer (\$35,000).

According to the proponents of Proposition 4, a young person is safer when a parent or family member is informed of her medical situation. The proponents maintain that someone who knows the girl and cares about her future can help her understand all her options, obtain competent care, and work through the problems that led her into the situation to begin with. Proponents argue that on a daily basis, older men exploit young girls and use secret abortions to cover up their crimes. The proponents maintain that more than thirty states currently have parental/family involvement laws like Proposition 4 in effect and states which have laws like Proposition 4 have experienced real reductions in pregnancies and sexually transmitted diseases among young girls.

Arguments in Opposition to Proposition 4

According to the CHCF web site, www.healthvote.org, committees registered to oppose Proposition 4 are the “Campaign for Teen Safety -- No on 4 -- a Project of Planned Parenthood Affiliates of California” and “No on Proposition 4 -- Campaign for Teen Health and Safety, a Project of American Civil Liberties Union of Northern California.” In the past, district, state, and local chapters of the American Academy of Pediatrics, the American College of Obstetricians and Gynecologists, the California Medical Association, the National Organization for Women, the California Nurses Association, Catholics for a Free Choice, the League of Women Voters, NARAL Pro-Choice, the National Association of Social Workers, and the AFL-CIO Executive Council formally opposed Propositions 85 and 73.

Opponents of Proposition 4 contend that the measure will put teenagers in danger. According to the opponents, the California Supreme Court ruled in 1997 that the experience of other states with parental involvement laws “overwhelmingly” shows that these laws do not enhance family communication, and harm rather than protect teenagers. Opponents point out that doctors and nurses encourage parental consultation and that most teenagers do consult a parent when confronting an unplanned pregnancy. Opponents maintain that the government cannot make teens talk to their parents; family communication on sensitive issues must begin at home and early. In the real world, according to opponents, Proposition 4 will force pregnant teenagers from violent or dysfunctional homes to navigate through a stressful court proceeding, to travel across borders to obtain health care, or to have dangerous, illegal or self-induced abortions.

¹ Reddy DM, Fleming R, Swain C. *Effect of mandatory parental notification on adolescent girls' use of sexual health care services*. JAMA. 202;288:710-714.

² Levine PB. *Parental involvement laws and fertility behavior*. Journal of Health Economics. 22(2003) 861-878.

³ Rogers, JL, Boruch, RF, Stoms, BA, DeMoya, D. *Impact of the Minnesota Parental Notification Law on Abortion and Birth*. Am J Public Health. 1991;81:294-298.

⁴ Henshaw, SK. *The impact of the requirements for parental consent on minors' abortions in Mississippi*. Family Planning Perspectives; May/June 1995, Vol 27 Issue 3: 120.

⁵ Pierson VH. *Missouri's parental consent law and teen pregnancy outcomes*. Women & health. [Women Health] 1995; Vol. 22 (3):47-58.

⁶ American Medical Association Code of Ethics: E-5.055 Confidential Care for Minors. Issued June 1994, updated June 1996.

Appendix A

PARENTAL INVOLVEMENT IN MINORS' ABORTIONS						
STATE	REQUIRED PARENTAL INVOLVEMENT		ALTERNATIVES		EXCEPTIONS	
	Consent	Notification	JUDICIAL BYPASS	OTHER ADULT RELATIVES	MEDICAL EMERGENCY	ABUSE, ASSAULT, INCEST OR NEGLECT
Alabama	X		X		X	
Alaska	Enjoined					
Arizona	X		X		X	X
Arkansas	X		X		X	X
California	Enjoined					
Colorado		X	X		X	X
Delaware		X*	X*	X	X	
Florida		X	X		X	
Georgia		X	X		X	
Idaho	X				X	X
Illinois		Enjoined				
Indiana	X		X		X	
Iowa		X	X	X	X	X
Kansas		X	X		X	X
Kentucky	X		X		X	
Louisiana	X		X		X	
Maryland		X*	X*			
Massachusetts	X		X		X	
Michigan	X		X		X	
Minnesota		Both parents	X		X	X
Mississippi	Both parents		X		X	
Missouri	X		X			
Montana		Enjoined				
Nebraska		X	X		X	X
Nevada		Enjoined			X	
New Hampshire		Enjoined				
New Jersey		Enjoined			X	
New Mexico	Enjoined					
North Carolina	X		X	X	X	
North Dakota	Both parents		X		X	
Ohio	X		X			
Oklahoma		X	X		X	X
Pennsylvania	X		X		X	
Rhode Island	X		X			
South Carolina	X		X	X	X	X
South Dakota		X	X		X	
Tennessee	X		X		X	X
Texas	X		X		X	
Utah		X	X		X	X
Virginia	X		X	X	X	X
West Virginia		X*	X*		X	
Wisconsin	X*		X*	X	X	X
Wyoming	X		X		X	
TOTAL	21	13	33	6	28	11

Chart by Guttmacher Institute (September 1, 2008) - Note: Except where indicated, policies require the involvement of one parent.

* Allows specified health professionals to waive parental involvement if judge is unavailable.