

**Joint Hearing on Proposition 85:
Waiting Period and Parental Notification Before Termination of Minor's Pregnancy.
Initiative Constitutional Amendment.**

**Senate Health Committee
Assembly Health Committee**

**September 12, 2006
10:00 a.m. to 1:00 p.m.
Milton Marks Conference Center
San Francisco**

On November 7, 2006 voters will consider Proposition 85, which amends the California Constitution to bar abortion, which is defined as “the use of any means to terminate the pregnancy of an unemancipated minor known to be pregnant” and excludes the use of a contraceptive drug or device, until at least 48 hours after a physician notifies a minor's parent or legal guardian, except in a medical emergency or with a parental waiver. Proposition 85 permits a judicial waiver of this notice based on clear and convincing evidence of a minor's maturity or best interests. This measure also requires physicians to report abortions performed on minors to the state and requires the state to compile statistics on those reports, as specified. Proposition 85 requires minors to consent to an abortion unless she is mentally incapable or in medical emergency. Finally, the measure permits a minor to seek assistance from the juvenile court if anyone attempts to coerce her into having an abortion.

Background

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. Out of the 22 states that require parental consent, two require both parents to consent. 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. The following chart summarizes state parental involvement laws. Please note that the chart does not include this information for all states.

PARENTAL INVOLVEMENT IN MINORS' ABORTIONS						
	Require Parental Involvement		Alternatives		Exceptions	
	Consent	Notification	Judicial bypass	Other adult relatives	Medical Emergency	In Cases of Abuse, Assault, Incest or Neglect
Alabama	X		X		X	X
Alaska	Enjoined^					
Arizona	X		X		X	X
Arkansas	X		X		X	X
California	Enjoined					
Colorado		X	X		X	
Delaware		X (age < 16)	X	X	X	
Florida		X	X		X	
Georgia		X	X		X	
Idaho	Temporarily enjoined					
Illinois		Enjoined				
Indiana	X		X		X	
Iowa		X	X	X	X	X
Kansas		X	X		X	X
Kentucky	X		X		X	
Louisiana	X		X			
Maryland		X	X			
Massachusetts	X		X			
Michigan	X		X		X	
Minnesota		X (2 parent)	X		X	X
Mississippi	X (2 parent)		X		X	
Missouri	X		X			
Montana		Enjoined				
Nebraska		X	X		X	X
Nevada		Enjoined				
New Hampshire		Enjoined				
New Jersey		Enjoined				
New Mexico	Enjoined					
North Carolina	X		X	X	X	
North Dakota	X (2 parent)		X		X	
Ohio	X		X			
Oklahoma		X	X		X	
Pennsylvania	X		X		X	
Rhode Island	X		X			
South Carolina	X (age < 17)		X	X	X	X
South Dakota		X	X		X	
Tennessee	X		X		X	X
Texas	X		X		X	
Utah	X	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	22	13	34	6	28	12

Chart provided by the Alan Guttmacher Institute, Parental involvement in minors' abortions, State Policies in Brief, September 1, 2006 and available at: http://www.guttmacher.org/statecenter/spibs/spib_PIMA.pdf.

Please note that courts in nine states have permanently or temporarily blocked enforcement of parental involvement laws. In most instances, state courts determined that the law violated the

state's constitution. It is also important to note that in one state, South Dakota, abortions have been outlawed, except where a mother's life is endangered.

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).]

State Case Law: The California Supreme Court held in American Academy of Pediatrics v. Lungren, 16 Cal. 4th 307 (1997), that a parental consent statute enacted in California in 1987 violated the special right of privacy specifically guaranteed under the California Constitution. AB 2274 (Frazee) Chapter 1237, Statutes of 1987, required that physicians obtain parental consent prior to performing an abortion on a minor and contained a judicial bypass provision. 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 the statute would be a serious invasion of the minor's privacy interest. The Court went on to find that the parental consent requirements 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.

Previous Ballot Initiative: Proposition 85 is substantially similar to Proposition 73, which was presented to voters at the November 8, 2005 Special Statewide Election. Key distinctions between last year's measure and Proposition 85 include the elimination of language that defined abortion as causing the "death of the unborn child, a child conceived but not yet born," specification that the waiver of parental notification from the parent or guardian is valid for 30 days, or until a specified date, or until the minor's eighteenth birthday, and the collection and reporting of information on minors in regard to the number of the minor's previous abortions and deliveries if known. The vote for the measure was 47.2 percent and the vote against the initiative was 52.8 percent.

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. Over the past ten years, this issue has been introduced in the California Legislature a number of times, including with the passage of AB 2274 (Frazee). There were several measures introduced after the 1997 California Supreme Court ruling. 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 measures 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.

Proposition 85 Overview

Notification Requirement: Proposition 85 requires a physician or his or her agent 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 85 provides for waivers of the notification as follows:

- *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. The parent or guardian shall specify on the form that the waiver is valid for 30 days, or until a specified date, or until the minor's eighteenth birthday.
- *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 85 would require physicians to report specified information, including the date and place of the abortion, the patient's month and year of birth, and the number of the minor's previous abortions and deliveries if known, among other data elements, to the Department of Health Services (DHS) 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, the number of prior abortions or deliveries where known, the number of abortions after the different types of notification permitted, and the number and types of waivers granted. This report would be

required to be made available to county public health officials, members of the Legislature, the Governor, and the public.

Penalties: Proposition 85 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 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 \$1,000.

Legislative Analyst's Office Fiscal Analysis

State Health Care Programs: According to the Legislative Analyst's Office (LAO), Proposition 85 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. Some minors might also avoid pregnancy as a result of this measure, further reducing the number of abortions for this group. If Proposition 85 reduces the overall number of minors obtaining abortions in California, it is also likely that fewer abortions would be performed under the Medi-Cal program and other state health care programs that provide medical services for minors. This would result in unknown state savings for these programs. However, if Proposition 85 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. The net fiscal 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 DHS would incur first-year state costs of up to \$350,000 to develop required forms, establish a physician reporting system, and prepare the initial annual report. The ongoing state costs for DHS to implement this measure could be as much as \$150,000 annually.

Juvenile and Appellate Court Costs: Proposition 85 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 magnitude of these costs is unknown, but could reach several million dollars annually, depending primarily on the number of minors that seek waivers.

Social Services Costs: If Proposition 85 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, would probably not exceed a few million dollars annually. The CalWORKs program is supported with both state and federal funds, however if all CalWORKs federal funds are committed, 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 background on this issue. 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 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) issued a code based on a report of its Council on Scientific Affairs stating 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 85

Proponents, including Parents' Right to Know and Child Protection/Yes on Proposition 85, state that more than one million Californians' signatures qualified Proposition 85. Proponents state that it will restore Californians' right to counsel and care for their young daughters before and after an abortion. Parents and daughters in more than 30 other states have benefited for years from laws like Proposition 85. Many times, after such laws pass, there have been substantial reductions in pregnancies and abortions among minors. Their real world experience shows these

laws reduce minors' pregnancy and abortion rates without danger and harm to minors. When parents are involved and minors cannot anticipate secret access to free abortions they more often avoid the reckless behavior which leads to pregnancies. Older men, including Internet predators, are deterred from impregnating minors when secret abortions are not available to conceal their crimes. If she chooses, a minor may petition juvenile court to permit an abortion without notifying a parent. She can request a lawyer to help her. If the evidence shows she is mature enough to decide for herself or that notifying a parent is not in her best interests, the judge will grant her petition. The proceedings must be confidential, prompt, and free. She may also seek help from juvenile court if she is being coerced by anyone to consent to an abortion. Polls show most people support parental notification laws. They know that a minor girl -- pregnant, scared, and possibly abandoned or pressured by an older boyfriend -- needs the advice and support of a parent. Parents have invested more attention and love in raising their daughter, know her personal and medical history better, and care more about her future than strangers employed by abortion clinics profiting from performing many abortions on minors. A minor still has a right to obtain or refuse an abortion, but a parent can help her understand all options, obtain competent care, and provide medical records and history. An informed parent can also get prompt care for hemorrhage, infections and other possibly fatal complications.

Arguments in Opposition to Proposition 85

Opponents, including the California Medical Association, California Nurses Association, American Academy of Pediatrics, California District, and the California Academy of Family Physicians, contend that Proposition 85 will put teenagers in danger. These groups states that they understand that while parents rightfully want to be involved in their teenagers' lives, some California teenagers come from homes where they can't talk to their parents, where there is violence, or where a family member has sexually abused them. These teens can't go to their parents. They fear being kicked out of their homes, beaten, or worse. Proposition 85 forces these teens from violent or dysfunctional homes to navigate through a stressful court proceeding, which will delay critical medical care or force the teen to turn to self-induced or illegal back-alley abortions. Some will go across the border; some will suffer serious injuries or even consider suicide. Opponents state that the proposition puts the health and safety of teenagers at risk and that no law can mandate good communication. Family communication on sensitive issues must begin at home and early. The California Supreme Court found "overwhelming" evidence that similar laws in other states cause real harm to teenagers and families. Opponents point out that that doctors and nurses encourage parental consultation and that most teenagers do consult a parent when confronting an unplanned pregnancy. For ninety years, Planned Parenthood has been a trusted provider of quality healthcare. Caring staff counsel pregnant teens to talk to parents, and most do. Planned Parenthood and other family planning clinics comply with all California laws on child abuse reporting. To charge now that they protect criminals is ridiculous. The federal Department of Health and Human Services' Office of Inspector General's recent investigation didn't find evidence of a single reporting violation.

Conclusion

The current context in California for minors to make health decisions for themselves and their children can be considered in the evaluation of Proposition 85. Most would agree that open communication and the involvement of parents in their daughters' health care should occur when it is a positive and enriching experience. It will be left for the voters to decide in November

whether the state's law will require that a parent is ensured involvement in a minor's decision to obtain an abortion.

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/June95, 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 AMA Code of Ethics: E-5.055 Confidential Care for Minors. Issue June 1994, updated June 1996.