Proposition 4: Waiting Period and Parental Notification Before Termination of Minor's Pregnancy

Background

In 1953, a state law was enacted that allowed minors to receive, without parental consent or notification, the same types of medical care for a pregnancy that are available to an adult. Based on this law and later legal developments related to abortion, minors were able to obtain abortions without parental consent or notification.

In 1987, the Legislature amended this law to require minors to obtain the consent of either a parent or a court before obtaining an abortion. However, due to legal challenges, the law was never implemented, and the California Supreme Court ultimately struck it down in 1997. Consequently, minors in the state currently receive abortion services to the same extent as adults. This includes minors in various state health care programs, such as the Medi-Cal health care program for low-income individuals.

Proposal Notification Requirements

This measure amends the State Constitution to require, with certain exceptions, a physician (or his or her representative) to notify the parent or legal guardian of a pregnant minor at least 48 hours before performing an abortion involving that minor. (This measure does not require a physician or a minor to obtain the consent of a parent or guardian.) This measure applies only to cases involving an “unemancipated” minor. The measure identifies an unemancipated minor as being a female under the age of 18 who has not entered into a valid marriage, is not on active duty in the armed services of the United States, and has not been declared free from her parents’ or guardians’ custody and control under state law.

A physician would provide the required notification in either of the following two ways:

Personal Written Notification. Written notice could be provided to the parent or guardian personally—for example, when a parent accompanied the minor to an office examination.

Mail Notification. A parent or guardian could be sent a written notice by certified mail so long as a return receipt was requested by the physician and delivery of the notice was restricted to the parent or guardian who must be notified.

Exceptions to Notification Requirements

The measure provides the following exceptions to the parental notification requirements:

Medical Emergencies. The notification requirements would not apply if the physician certifies in the minor’s medical record that the abortion is necessary to prevent the mother’s death or that a delay would “create serious risk of substantial and irreversible impairment of a major bodily function.”

Waivers Approved by Parent or Guardian. A minor’s parent or guardian could waive the notification requirements and the waiting period by completing and signing a written waiver form for the physician.

Notice to Adult Family Member and Report of Abuse. The physician could notify an adult family member 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 no-
tified, and (2) that her fear is based on a pattern of such abuse of her by a parent. The measure defines an 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 the minor.

Waivers Approved by Courts. The pregnant minor could ask a juvenile court to waive the notification requirements. A court could do so 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.

Penalties

Any person who performs an abortion on a minor and who fails to comply with the provisions of the measure would be 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 such a legal action to commence within four years of the minor’s 18th birthday or later, under specified circumstances. Any person, other than the minor or her physician, who knowingly provides false information that notice of an abortion has been provided to a parent or guardian would be guilty of a misdemeanor punishable by a fine.

Relief From Coercion

The measure allows a minor to seek help from the juvenile court if anyone attempts to coerce her to have an abortion. A court would be required to consider such cases quickly and could take whatever action it found necessary to prevent coercion.
Proposition 4: Pro Argument

It's time to close the loophole in California law that allows minor girls to be taken for secret chemical or surgical abortions by anyone--even an adult male who impregnated her--WITHOUT THE DOCTOR NOTIFYING ANY FAMILY MEMBER. These predators can even take girls out of school to hide their crimes.

Sarah was only 15 when she had a secret abortion. Within days a high fever set in. No one knew why, or how seriously ill she was. By the time she was hospitalized and doctors determined she had a deadly infection from a torn cervix, it was too late. Sarah died. Had someone in her family known about the abortion, Sarah's life could have been saved.

Proposition 4--Sarah's Law--would require doctors to notify a parent or, in case of parental abuse, another adult family member, such as a grandparent, aunt, or sister, before performing an abortion on a girl under 18. Parental consent is not required, but an adult who cares about her can help her understand all options, ensure competent care, and provide her medical history.

Over the past twenty-five years, more than thirty states have enacted laws similar to Proposition 4.

THESE LAWS REDUCE TEEN PREGNANCIES AND SEXUALLY TRANSMITED DISEASES, WITHOUT DANGER OR HARM TO MINORS.

Medical professionals and lawmakers know children are safer when a family member knows of their medical situation and is informed about risks to their health and safety. New California law requires a parent to provide written consent in person before a minor can use a tanning salon . . . Yet a young girl can get an abortion WITHOUT A FAMILY MEMBER BEING NOTIFIED--and this could endanger her safety, even her life.

WHEN ABORTIONS ARE KEPT SECRET, ADULT SEXUAL PREDATORS GO FREE. Sarah's Law will protect young victims of sexual crimes.

Planned Parenthood performed an abortion on a 14-year-old and then, at the request of the male predator who brought her in, gave her a shot of Depo-Provera so he could have sex with her again right away.

ABORTION PROVIDERS AREN'T REPORTING THESE CRIMES TO LAW ENFORCEMENT. Family members will! Planned Parenthood failed to report the sexual abuse of a 13-year-old brought for an abortion by the 23-year-old who raped her. After the secret abortion, the same man impregnated her again, and she had a second abortion.

Sadly, the list of victims of secret abortions continues to grow. Without Sarah's Law, most parents won't know their minor daughter is seeking an abortion.

SECRECY ENABLES ABUSE TO CONTINUE, even abuse inside the home. Sarah's Law will protect vulnerable girls by ensuring abuse is reported and putting their health and safety first.

DON'T LET YOUNG GIRLS LIKE SARAH FACE THE PHYSICAL AND EMOTIONAL RISKS OF SECRET ABORTIONS ON THEIR OWN--or worse yet, COERCED BY A SEXUAL PREDATOR!

Join doctors, nurses, teachers, parents, and law enforcement officials who urge you to protect our daughters and stop child predators by VOTING YES on PROPOSITION 4!
Proposition 4: Con Argument

California’s Deceptive Proposition 4: It says it's about parental notification, but it's really about attacking legalized abortion.

By Francesca Ratner, September 15, 2008

It's back! Proposition 4 on the November California ballot -- "Waiting Period and Parental Notification Before Termination of Minor's Pregnancy" -- is a repeat of Proposition 73 in 2005 and Proposition 85 in 2006, both of which were defeated. Passage would make it part of the state Constitution.

What usually happens on this issue is a majority of the "pro-life" camp votes "yes" and a majority of the "pro-choice" group votes "no." And then there are all those uninformed people in the middle, who are not even sure they can leave some entries on their ballots un-punched. As a responsible member of that third category, I studied the 2006 proposition and this year's initiative closely.

The propositions' defenders argue that parents have a right to be notified before an abortion is performed on a minor daughter. Opponents make the case that some teens face parental abuse, and even risk being kicked out of their homes, if they become pregnant. Critics add that it is difficult for teens to navigate the courts to obtain a parental notification waiver, as the 2008 initiative allows.

To appease the opposition, this year's initiative allows an adult family member other than a parent to be notified in the case of parental abuse. Opponents maintain that this still presents obstacles.

In rich detail, the proposition defines the red tape for physicians and minors before, during and after an abortion -- even as to what kinds of envelopes to use.

Toward the end of Proposition 4's text, hiding in Section 3 under point (r), are clauses that deal with the "minor's consent to abortion" and "court relief" from "coercion." The proposition shifts here from "parental notification" to "consent" and suggests challenging that consent in court.

What do those issues have to do with parental notification? Befuddled, as if I were a physician facing legal forms, I remembered the response I got in 2006 from an official spokesman of the Proposition 85 campaign. In regard to a similar "coercion" clause in Proposition 85, he explained, "Most parents in today's society want their kids to get abortions. Some parents force it on their children."

He then brought up an example in which a girl had been kidnapped by her parents in Maine to be forcibly taken to an abortion clinic. I found on the "Yes on 85" website that he was alluding to the case of Katelyn Kampf. A quick investigation revealed that Kampf was an adult, not a minor, when she was kidnapped. Her parents were arrested, and she got to keep her baby -- without the aid of a constitutional amendment such as the one under Proposition 4.

Somehow, the logic of the argument for consent and about coercion was still escaping me. Isn't a "minor's consent" ob-
vious if she's at the abortion clinic without her parents' knowledge?

Still puzzled, I turned to professional help -- USC law professor Michael H. Shapiro. He pointed out: "There is no remedy specified in the proposition for coercion. What course of action should be taken if a young woman is forced into her decision?"

Although Shapiro believes that women should not be forced into or out of a decision to have an abortion, he noted that "any time legislators propose a law that has to do with abortion, they are generally trying to dress up an anti-abortion law." He added that in addition to the requirement of a parental waiver, most of the clauses in the proposition "create more obstacles for women, and are part of a plan to maximize the monkey-wrench effect on abortion."

After wandering the maze of legal terms, clauses and subsections, I emerged with a clear notion that a heap of physicians' forms, consent, coercion and court appeals do not belong under the title of "parental notification."

And if you're still not persuaded to read the full legal text of Proposition 4, here is my version of how an honest summary of Proposition 4 should read:

Proposition to Curtail Abortion for Teenage Girls:

* Do not allow minors to obtain abortions behind their parents' backs.

* Create an undue burden on physicians, with miles of red tape and severe repercussions for a misstep in filing notifications, reports, etc.

* Make sure pregnant teens go through humiliation and exposure.

* Create a pretext for taking the matter of abortion to court.

* Add vague clauses regarding "court relief" and "coercion," which could warrant further litigation.

Abortion is an unfortunate occurrence for women, and even more so for underage girls. And performing one on a minor behind her parents' backs is often wrong. Nonetheless, selling Proposition 4 as just "parental notification" is dishonest. Those who use such ploys should not be allowed to rewrite the Constitution.