

Prop 73: summary points

SUMMARY

If passed by California voters this November, Proposition 73, the *Waiting Period and Parental Notification Before Termination of a Minor's Pregnancy Initiative Constitutional Amendment* would amend the California constitution by adding an additional section to Article 1. It would require that a physician provider (or his or her representative) *notify*, with some exceptions, one parent or legal guardian of a pregnant unemancipated minor at least 48 hours before performing an abortion on that minor.¹

Nationwide, there has recently been a surge in both consideration and passage of parental involvement legislation. If Proposition 73 passes, California would be added to a list of more than 30 states that require either parental notification or parental consent for minors seeking abortions.

Both proponents and opponents seem to agree that pregnant minors should be encouraged to discuss pregnancy with their parents; the question is whether or not the law should mandate parents be told if their minor daughter is seeking an abortion, even over the minor daughter's objection to that communication. The USC California Policy Institute (CPI) respects the diversity of opinions on abortion and offers no opinion as to the appropriateness of abortion as a medical procedure or on the appropriateness of Proposition 73.

BACKGROUND

In California, as well as across the rest of the United States, teen pregnancy rates, teen birthrates, and teen abortion rates have fallen significantly since the early 1990s.² California's teen pregnancy, birth, and abortion rates have declined even more steeply than those in the rest of the country. It is important to note that while teenagers, individuals under age 20, account for about 20 percent of all abortions obtained in California, unemancipated minors account for fewer than 10 percent of all abortions performed in the state.³

California minors have been able to receive abortion services, beyond those needed to save the life of the mother, without parental involvement since 1969. In 1979, the United States Supreme Court ruled in *Bellotti v. Baird* that states cannot allow either a minor's parents or a court an absolute veto over her abortion decision.⁴ In 1987, the governor signed a law denying minors access to abortion services without parental permission or the consent of a court. However, due to legal challenges, this parental consent law, AB

¹ The proposition defines an unemancipated minor as unmarried female under the age of 18 who 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 California state law.

² "U.S. Teenage Pregnancy Statistics: Overall Trends, Trends by Race and Ethnicity, and State-by-State Information", AGI, Updated 19 Feb. 2004.

³ Rebekah Saul, "The Child Custody Protection Act: A 'Minor' Issue at the Top of the Antiabortion Agenda", *The Guttmacher Report on Public Policy*, Aug. 1998.

⁴ *Planned Parenthood of Central Missouri v. Danforth*, 428 U. S. 52 (1976); *Bellotti v. Baird*, 443 U. S. 622 (1979).

2274 (Frazee), was never implemented.⁵ In 1997, by a 4-to-3 vote, the California Supreme Court ultimately found the law unconstitutional (*American Academy of Pediatrics v. Lungren*), on grounds that it violated a minor's right to privacy under the state constitution. This law has since remained permanently enjoined.

WHAT PROPOSITION 73 WOULD MANDATE

Proposition 73 mandates that written notification can either be delivered by the provider to the parent/guardian personally or mailed via both certified and first class mail. It is presumed that mailed notification will have occurred as of noon on the second day after the written notice is postmarked, not counting days that do not have regular mail delivery. The 48-hour waiting period begins after notification is deemed to have occurred, but this waiting period may be waived by a parent/guardian.

There are two exceptions for parental notification: medical emergencies and court-ordered waivers. Courts could waive parental notification after an expedited hearing where the minor provides clear and convincing evidence of her maturity or best interests.

It would require minors to give consent before undergoing an abortion, unless they are mentally incapable or there is a medical emergency. It would permit a parent to pursue civil lawsuits against doctors who fail to provide notification. It also allows a minor being coerced to consent to an abortion to apply to the court for relief.

In addition, Proposition 73 mandates various reporting requirements. It would require physicians to report every abortion that they perform on a minor to the state, and the state would then compile these statistics together into a public report. It would also require judges to report how many judicial waivers they grant and deny.

RESEARCH EVIDENCE ON KEY ISSUES RELATED TO PROPOSITION 73

Forty-four states have passed parental involvement laws, though courts have enjoined these laws in nine states on constitutional grounds. There is considerable research available on several issues involved with parental involvement laws such as Proposition 73. Research is available on the effects of parental involvement laws on abortion rates, the effectiveness and expediency of judicial bypass options, parental relationships, and the competency level of minors.

Abortion Rates

While there is some evidence that parental involvement laws reduce abortion rates within a state, the academic literature is mixed on their overall impact. And while the research could lead observers to conclude that there are in-state reductions in the number of abortions, there is also evidence that any statistically significant reduction may be offset by minors traveling out of state for abortion services, presumably to obtain abortion services without having to comply with the parental involvement law in their state of residence. The literature seems to offer more certainty on the relationship between the

⁵ The plaintiffs in this 1987 lawsuit were the American Academy of Pediatrics, the California Medical Association, the American College of Obstetricians and Gynecologists, and Planned Parenthood.

implementation of parental involvement laws and delays in when minors receive abortion services.

Judicial Bypass

While the Supreme Court has ruled that a confidential bypass procedure is constitutionally required for a mandatory parental involvement law, there have been concerns in several states that the judicial bypass option may not always provide an effective alternative to parental involvement. The effective functioning of Proposition 73's proposed judicial bypass will be critical to the health and welfare of those minors who are otherwise required to notify a parent or guardian of their abortion but who feel that they cannot do so.

Parental Relationships

Most minors already include at least one parent, typically their mother, in their abortion decision. Minors who do not consult with a parent tend to be older, employed, and white and demonstrate other forms of maturity. Some research findings seem to indicate that mandatory parental involvement can, and sometimes does, lead to abusive treatment of the minor by the parents.

Competency of Minors

Research shows that teenagers can have a competency level equivalent to that of adults concerning medical decisions, and more specifically, concerning abortion decisions. Excepting abortion, states typically allow minors to decide reproductive health issues without the involvement of a parent or guardian.

POSSIBLE SOCIAL, FISCAL, AND LEGAL IMPACT OF PROPOSITION 73

Research from other states with parental involvement laws shows that Proposition 73 is unlikely to cause a major shift in the number of abortions in California. Any measurable reduction, however, could be offset to an unknown extent by an increase in the number of abortions obtained by California minors who travel to a state without parental consent or notification laws to obtain an abortion, such as Oregon or Nevada.

If the proposal causes a net reduction in the number of abortions performed in California and increases the birthrate, then there could be a small reduction in payments for abortion services. This, however, would probably be more than offset by cost increases for health and social services to pregnant teenage moms and their children.

If there are minors who seek an abortion but do not receive one, then those minors, according to research, have a greater chance of suffering depression, dropping out of school, and committing crimes.

Regardless of how Proposition 73 might change the abortion rates and birthrates for minors, it is estimated that state administration and court costs will increase by several million given the reporting requirements of the initiative and the cost of implementing the judicial bypass option.

In terms of legal impact, Proposition 73 amends California's constitution. As such, it could be challenged in federal courts. However, given the construction of Proposition 73, it is not obvious that a federal court challenge could be successful. The US Supreme Court has upheld the constitutionality of parental involvement laws that include a confidential bypass provision. Also, Proposition 73 defines abortion as causing the "death of an unborn child, a child conceived but not yet born."⁶ There is an unknown legal impact of adding this specific language to the state constitution.

For a more complete discussion of the specific issues, please refer to the full report titled, "Proposition 73 Analysis" found at www.usc-cpi.org. For more information, please contact Peter T. Harbage, Health Policy Program Director, at 916-442-6911 X18 or via e-mail at harbage@usc.edu.

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⁶ Text of Proposition 73, Section 3, part a (1).