

Proposition 85 Student Resource Information

What is Proposition 85, the Parents' Right to Know and Child Protection initiative?

Proposition 85 is a constitutional amendment initiative on the November 7, 2006 California General Election ballot. It was placed on the ballot by proponents who gathered over one million signatures from registered California voters. Proposition 85 requires a doctor to notify a parent or guardian of an unemancipated minor 48 hours before performing an abortion on her. It also requires a doctor to obtain the personal consent of a minor before performing the abortion and allows for court intervention if a minor is being coerced to have an abortion.

Where did Proposition 85 come from? Whose idea was it?

This is not a new idea. Parental involvement laws (that is, laws requiring either parental notification or parental consent before an abortion can be performed on a minor) have been passed in 44 states (including a California parental consent law passed in 1987) and are in effect in over 30 states, and, in several states, have been in effect for many years. The United States Supreme Court has repeatedly upheld these laws.

Why is Proposition 85 an amendment to the California Constitution?

The California State Constitution contains a "right of privacy." Although in 1972, when the privacy amendment was added to the state constitution, it had nothing to do with abortion, this "right to privacy" has since been *interpreted* by our **state** courts to create a California state right to abortion, including a right of minors to obtain an abortion without parental consent. California's parental consent law, Health and Safety Code Section 12345, (passed by the California Legislature and signed by the Governor in 1987) was upheld by the California Supreme Court in 1996, but that decision was reversed in 1997, thus blocking the implementation of California's parental consent law. Proposition 85 is a constitutional amendment so that its implementation cannot be blocked by California state courts.

What is an "unemancipated minor"?

For purposes of Proposition 85, an "unemancipated minor" is a girl under the age of 18 who has never been married, is not on active duty in the military, and has not been declared emancipated (that is, free of parental control) by a court.

Proposition 85 is called the Parents' Right to Know and Child Protection Initiative. How does it protect children?

Proposition 85 protects children, particularly minor girls, in many ways: physically, mentally, and emotionally.

First, a parent who is notified of a daughter's planned abortion can counsel her to make sure she understands and has considered all her options, rather than leaving the girl to make the decision alone, or worse, as often happens, under pressure from others who don't have her best interests in mind. The parent can assist her in getting medical care. A frightened young girl anxious to end her pregnancy is not likely to be well informed and careful, or even to know what to be careful about. Many abortion clinics employ doctors who have been disciplined by the state medical board for incompetence, negligence, and criminal misconduct, including sexual misconduct.

The parent can ensure the doctor gets a complete medical history of the minor and is informed of any allergies or adverse reactions to medications. The parent can also be alert for and respond quickly to post-abortion complications, such as infection and hemorrhage, that left untreated can quickly become serious and even life-threatening. A minor trying to keep her abortion secret from her parents is likely to ignore or try to hide symptoms of such complications until it is too late.

Parental notification also alerts parents to a sexual relationship their daughter is in, often with an older adult male, which may be abusive, coercive, or just plain detrimental to her physical and emotional well-being. Abortion providers rarely report sexual abuse or statutory rape to authorities. Adult boyfriends often encourage and coerce young girls to have secret abortions to cover up evidence of statutory rape. A study of over 46,000 births to school-age girls in California found that over two-thirds were impregnated by adult men whose mean age was 22.6 years. Notification provides parents an opportunity to intervene to protect their daughter. Without parental involvement, girls—victims of rape—may continue to be victimized and may have one abortion after another.

Parental involvement laws have been shown to reduce minor girls' pregnancy and abortion rates—an outcome that all Californians would agree is beneficial to young girls.

Finally, Proposition 85 has explicit language to protect minor girls from being coerced to have abortions against their will—by anyone.

What if a minor girl has a medical emergency that necessitates an immediate abortion?

Proposition 85 has an exception for medical emergencies. The doctor need not notify a parent if the delay in doing so would seriously endanger her life or health. As a practical matter, this situation almost never arises.

What about parents who don't want to know about their daughter's pregnancy or abortion? What if they think their minor daughter is old enough to make her own decisions?

The proponents of Proposition 85 believe parents have not only a right but a responsibility to be involved in serious medical decisions involving their children. However, Proposition 85 does allow parents to opt out of being notified by means of a signed document called a parental waiver. Each waiver is valid for one abortion. This waiver can be signed and provided to a daughter at any time, including before she is pregnant. The waiver provides parents with flexibility in terms of voluntarily giving up their right to be notified. For example, if a parent thinks his or her daughter is old enough at age 16, but not at age 14, to have an abortion without their knowledge, they can wait until she is 16 before giving her a waiver. If they think she should be able to have one or two abortions, but would be concerned about a third or fourth, they can provide her with only the number of waivers they believe appropriate.

The proponents of Proposition 85 have done their best to accommodate the wishes of parents who believe, as the opposition slogan goes, "If she can't come to me, I just want her to be safe." Why can't the opposition respect the wishes of the great majority of parents who **do** want to know and extend their care and love to their daughter before she undergoes a serious medical procedure?

What if a girl is too scared to tell her parents?

It would be the unusual girl who wouldn't be nervous, even frightened, about telling her parents of an out-of-wedlock pregnancy. She'd also be apprehensive about telling them about flunking out in school, wrecking a friend's or the family's car, or being arrested by authorities for possession of drugs.

But the fact that a girl is very reluctant to tell her parents something doesn't justify a public policy that keeps parents in the dark about a serious and dangerous situation their young daughter is in. The most common reasons cited by teens for not telling a parent about their pregnancy are fear of disappointing their parents and causing them distress—not fear of physical abuse.

But abuse does happen. What if she reasonably believes that she will be beaten up if her parents find out? What if she is the victim of incest?

Proposition 85 provides a procedure to obtain a judicial waiver of the notification requirement. The judicial waiver process is fast, free, and confidential. A minor only needs to fill out a few forms to get a private hearing before a juvenile court judge, in the judge's private chambers or private courtroom. She will have a guardian appointed for the hearing, and a court-paid attorney as well, if she wants one. If the judge finds that she is either sufficiently mature and well-informed to make the decision herself, or that notifying a parent is not in her best interest (because, for example, of threatened abuse), then the judge will grant a waiver allowing a doctor to perform an abortion without notifying a parent.

When considering the "hard cases" of physical or sexual abuse by a parent, one has to ask whether this girl would really be better off if she received a secret abortion and then returned home to that same situation. Rather than allowing that to happen, Proposition 85 requires the judge who grants a waiver to notify child protective services about evidence of abuse, so that the problem can be dealt with, not covered up. A minor who has been impregnated by her father needs help. A secret abortion will not solve her problems.

Is it reasonable to expect a minor to know how to go to court and get a judicial waiver?

A minor is not going to wake up one morning, realize she is pregnant, and then start worrying about how to get to court. If she is seeking an abortion, she will go to an abortion provider or clinic, and the abortion provider will explain that a parent must be notified unless she receives a judicial waiver, and will explain the waiver process to her. In other states with parental involvement laws, abortion providers and supporters have shown themselves more than willing to assist minors in getting waivers. Records in states with parental involvement laws show that an average of five to ten percent of minors receive judicial waivers. Obviously, minors can and do make use of the judicial waiver process and have for many years in states which have had parental involvement laws.

What is not reasonable is to hypothesize that, instead of using the judicial waiver process, minors will resort to far more difficult and drastic means, such as going to Mexico for an abortion. Why, not to mention how, would a minor travel to Mexico where she may or may not speak the language locate someone willing to break Mexican law to perform an abortion, and come up with the money to pay for it, all without her parents' knowing? Would this be easier and less intimidating than getting a waiver?

Will passage of Proposition 85 delay critical medical care, or cause young girls to turn to self-induced or back-alley abortions?

The effects of implementing parental involvement laws are now very well known. In more than 30 states which have parental involvement laws in effect in some cases for many years, there is no evidence of *any* injury or death from an illegal abortion, parental abuse, or delayed medical care. In fact, there is no credible evidence that any minor has ever even resorted to an illegal abortion because of a parental involvement law. Given that these laws have been in effect in other states for years, even decades, affecting millions of teens, the absence of any evidence of harm to teens is powerful evidence that these dire predictions are completely off the mark. Parental notification helps teens; it doesn't harm them.

Unfortunately, opponents of parental notification eagerly exploit the public's fear of mythical "back-alley" abortions, counting on that fear to override common sense, sound medical practice and good public policy. The opposition says that most minors already tell their parents before an abortion, and that those who don't, fear abuse from their parents. Is that true?

The "studies" the opposition cites for these statements is actually one study, conducted fifteen years ago in Minnesota, based on minors responding to a survey, uncorroborated by any official data. (Henshaw and Kost, Parental involvement in minors' abortion decisions. *Family Planning Perspectives* 1992; 24; 196-207, 213). That study found that only 45% of minors told a parent; only 55% of those 14 years old or younger reported doing so. The opposition fudges the numbers to include minors who report that a parent knew about their abortion, i.e., found about it some other way, to claim that most minors tell a parent. The author of this study himself testified that the claim that this study showed that most minors tell a parent was "entirely incorrect."

Moreover, given that this study was done fifteen years ago, it is hardly reliable data about how many minors today tell their parents, much less about how many parents find out in some other way. For instance, the advent of cell phones and personal computers with Internet access make it far easier for young girls to keep things hidden from their parents today than in 1991, and to become victims of sexual predators.

The claim about minors fearing abuse from a parent if they tell is also not supported by the study. The most common reasons cited were not wanting to disappoint parents, not wanting parents to be angry with them, and not wanting parents to know they were having sex. Only 6% of minors cited fear of abuse. While these cases are regrettable, they are also exactly why Proposition 85 contains a judicial bypass provision to deal with the *exceptional* cases of family dysfunction.

Government can't impose good family communication, says the NO on 85 campaign.

The only person that Proposition 85 requires to communicate is the doctor, who must give 48 hour notice to a parent that he is about to perform an abortion on his/her minor daughter. The claim that Proposition 85 imposes or "mandates" family communication is simply false!

On all other surgeries on minors the doctor must have the **written permission** of a parent (except in an emergency). Has one ever heard accusations that requiring a parent's written permission for surgery "imposes good family communication"? No! Because it brings common sense safeguards to minors before—and after—surgery and is a trusted and sound public health policy.

On the other hand, California state government, through legislation and court decisions does impose its will on California families. The state has taken away the right of a parent to be notified before any medical or surgical procedure, including an abortion, is performed on their minor daughter. Planned Parenthood and other abortion providers then collect public dollars from Medi-Cal for performing secret abortions on thousands of young girls every year.

Is Proposition 85 an attempt to overturn *Roe v. Wade*?

Proposition 85 will do exactly what is written in the Proposition, nothing more, nothing less. It will require a doctor to notify a parent 48 hours before performing an abortion on their minor daughter. It adds legal and medical safeguards to protect her health and safety that don't currently exist. Section (u) of Proposition 85 specifically prohibits it from being construed to go any farther in restricting abortion than its precisely stated requirements related to parental notification.

Why do you say parental notification is “common sense”?

Parental notification *and* consent is required on all other surgeries on minors except abortion because medical practitioners know this provides a margin of safety for minor patients. For Planned Parenthood to claim that *not* notifying a parent enhances “teen safety” doesn’t make sense. Voting YES on Proposition 85 is simply common sense and a *real* step forward in teen safety.

But don’t “doctors, nurses, and teachers strongly oppose Proposition 85,” as the opponents say?

Yes, some do, but a great many doctors, nurses, and teachers, often parents themselves, strongly **support** Proposition 85 also. In fact, the Yes on 85 campaign took their Planned Parenthood opponents to court because they wanted the Secretary of State to publish in the official Ballot Pamphlet their argument that *all* doctors and nurses oppose Proposition 85. And the court ruled in favor of the proponents of Proposition 85, finding that the Planned Parenthood statement was false and had to be deleted from their argument against Proposition 85.

Planned Parenthood claims that the California Medical Association (CMA) and the California Nurses Association (CNA) oppose Proposition 85. But the physicians who make up CMA’s membership and the nurses who make up CNA’s membership were never polled or asked if they opposed or supported Proposition 85.

This is a good example of a few in CNA’s leadership using the financial resources of the membership to take a position on a proposition which may be the complete opposite of the opinion shared by the membership. No polls or surveys were ever done among the membership of the other professional organizations who have come out against Proposition 85, either. You can bet that if an objective poll of most doctors, nurses, and teachers was conducted, it would find that they would want to be notified before an invasive surgical procedure like abortion was performed on their minor daughter.

Who is the major opponent of Proposition 85, and why do they oppose it?

Planned Parenthood, the largest operator of abortion clinics in the country, who receives large amounts of public and private funds each year for performing thousands of secret abortions on young girls without parental knowledge or consent, is supplying the majority of funds opposing Proposition 85.

The millions of dollars which Planned Parenthood organizations across the country have contributed to oppose the parental notification provisions of Proposition 85 are shown in the reports of campaign contributions to oppose Proposition 85 which are available on the California Secretary of State’s web site: <http://cal-access.ss.ca.gov/Campaign/Committees/Detail.aspx?id=1276142&session=2005> and are also shown on ElectionTrack at: <http://www.electiontrack.com/lookup.php?committee=1276142>.

Not only does Planned Parenthood receive large amounts of money from performing abortions on minors from Medi-Cal, funded by taxpayers’ dollars, as well as insurance and cash payments., but it is ideologically committed to supplanting parents in their role as the primary caretakers and advisers of their children, as evidenced by their dominant role in lobbying and litigating against parental involvement laws for many years and in many states, including California.

Planned Parenthood organized the legal attacks to block California’s Parental Consent law in 1997 after this law was passed by the California Legislature and signed by the Governor in 1987, and upheld by the California Supreme Court in 1996.

If successful in defeating Proposition 85, Planned Parenthood will continue to block California’s parents from being informed about a surgery to be performed on their minor daughter. In addition, it will prevent a

parent from being informed that their daughter is the victim of statutory rape or a victim of physical or sexual abuse. Now Planned Parenthood wishes to defeat Proposition 85 so they can continue to perform secret, Medi-Cal funded abortions to thousands of young girls without the knowledge of a parent.

This allows older sexual predators, now able to use the internet and websites like MySpace to prey on young girls while secret abortions by Planned Parenthood and other abortion clinics which have "don't ask, don't tell" policies can be used to cover up the evidence of their sexual exploitation and statutory rapes of young girls.