

Measure C279

INSTRUCTIONS:

Please carefully read the following description of a ballot measure that was written by a disinterested expert. Feel free to take notes or outline passages as you read.

This should take approximately 10 minutes.

BALLOT MEASURE C279

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 proposition amends the California 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 proposition 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. An additional copy of the written notice would have to be sent at the same time to the parent or guardian by first-class mail. Under this method, notification would be presumed to have occurred as of noon on the second day after the written notice was mailed.

Exceptions to Notification Requirements

The measure provides the following exceptions to the 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. The parent or guardian must specify on this form that the waiver would be valid either (1) for 30 days, (2) until a specified date, or (3) until the minor's 18th birthday. The form would need to be notarized unless the parent or guardian delivered it personally to the physician.

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. If the waiver request is denied, the minor could appeal that decision to an appellate court.

A minor seeking a waiver would not have to pay court fees, would be appointed a temporary guardian and provided other assistance in the case by the court, and would be entitled to an attorney appointed by the court. The identity of the minor would be kept confidential. The court would generally have to hear and issue a ruling within three business days of receiving the waiver request. The appellate court would generally have to hear and decide any appeal within four business days.

The proposition also requires that, in any case in which the court finds evidence of physical, sexual, or emotional abuse, the court must refer the evidence to the county child protection agency.

State Reporting Requirements

Physicians are required by this proposition to file a form reporting certain information to the state Department of Health Services (DHS) within one month after performing an abortion on a minor. The DHS form would include the date and facility where the abortion was performed, the minor's month and year of birth, and certain other information about the minor and the circumstances under which the abortion was performed. The forms that physicians would file would not identify the minor or any parent or guardian by name. Based on these forms, DHS would compile certain

statistical information relating to abortions performed on minors in an annual report that would be available to the public.

The courts are required by the measure to report annually to the state Judicial Council the number of petitions filed and granted or denied. The reports would be publicly available. The measure also requires the Judicial Council to prescribe a manner of reporting that ensures the confidentiality of any minor who files a petition.

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. 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.



STOP!

Please go to the online survey, enter the 4-character code for this ballot measure (printed at the top and bottom of this page) and answer the survey questions.