WAITING PERIOD AND PARENTAL NOTIFICATION BEFORE TERMINATION OF MINOR'S PREGNANCY. INITIATIVE CONSTITUTIONAL AMENDMENT.

Follow this and additional works at: http://repository.uchastings.edu/ca_ballot_inits

Recommended Citation
http://repository.uchastings.edu/ca_ballot_inits/1219

This Initiative is brought to you for free and open access by the California Ballot Propositions and Initiatives at UC Hastings Scholarship Repository. It has been accepted for inclusion in Initiatives by an authorized administrator of UC Hastings Scholarship Repository. For more information, please contact marcusc@uchastings.edu.
August 26, 2004

TO: ALL REGISTRARS OF VOTERS/COUNTY CLERKS AND PROPOSITIONS (04281)

FROM: Brianna Lierman
Elections Analyst

SUBJECT: INITIATIVE #1063

Pursuant to Elections Code section 336, we transmit herewith a copy of the Title and Summary prepared by the Attorney General on a proposed initiative measure entitled:

WAITING PERIOD AND PARENTAL NOTIFICATION BEFORE TERMINATION OF MINOR'S PREGNANCY.
INITIATIVE CONSTITUTIONAL AMENDMENT.

The proponents of the above-named measure are:

Paul E. Laubacher
Barbara R. Laubacher
2555 Rio de Oro Way
Sacramento, CA 95826

(916) 381-5222
#1063

WAITING PERIOD AND PARENTAL NOTIFICATION BEFORE TERMINATION OF MINOR'S PREGNANCY. INITIATIVE CONSTITUTIONAL AMENDMENT.

CIRCULATING AND FILING SCHEDULE

1. Minimum number of signatures required: .................................................. 598,105
   California Constitution, Article II, Section 8(b)

2. Official Summary Date: ............................................................... Thursday, 08/26/04

3. Petitions Sections:
   a. First day Proponent can circulate Sections for signatures (EC §336) ............................................. Thursday, 08/26/04
   b. Last day Proponent can circulate and file with the county. All sections are to be filed at the same time within each county (EC §336, 9030(a)).............Monday, 01/24/05
   c. Last day for county to determine total number of signatures affixed to petitions and to transmit total to the Secretary of State (EC §9030(b))................................ Thursday, 02/03/05
      (If the Proponent files the petition with the county on a date prior to 01/24/05, the county has eight working days from the filing of the petition to determine the total number of signatures affixed to the petition and to transmit the total to the Secretary of State) (EC §9030(b)).
   d. Secretary of State determines whether the total number of signatures filed with all county clerks/registrars of voters meets the minimum number of required signatures, and notifies the counties.....................................................Saturday, 02/12/05*
   e. Last day for county to determine total number of qualified voters who signed the petition, and to transmit certificate with a blank copy of the petition to the Secretary of State (EC §9030(d)(e)).................................................................Monday, 03/28/05

*Date varies based on the date of county receipt.
INITIATIVE #1063
Circulating and Filing Schedule continued:

(If the Secretary of State notifies the county to determine the number of qualified voters who signed the petition on a date other than 02/12/05, the last day is no later than the thirtieth working day after the county’s receipt of notification). (EC §9030(d)(e)).

f. If the signature count is more than 657,916 or less than 568,200 then the Secretary of State certifies the petition as qualified or failed, and notifies the counties. If the signature count is between 568,200 and 657,916 inclusive, then the Secretary of State notifies the counties using the random sampling technique to determine the validity of all signatures (EC §9030(f)(g); 9031(a)). Thursday, 04/07/05

g. Last day for county to determine actual number of all qualified voters who signed the petition, and to transmit certificate with a blank copy of the petition to the Secretary of State. (EC §9031(b)(c)). Thursday, 05/19/05

(If the Secretary of State notifies the county to determine the number of qualified voters who have signed the petition on a date other than 04/07/05, the last day is no later than the thirtieth working day after the county’s receipt of notification) (EC §9031(b)(c)).

h. Secretary of State certifies whether the petition has been signed by the number of qualified voters required to declare the petition sufficient (EC §9031(d); 9033) Monday, 05/23/05**

**Date varies based on the date of county receipt.
IMPORTANT POINTS

- California law prohibits the use of signatures, names and addresses gathered on initiative petitions for any purpose other than to qualify the initiative measure for the ballot. This means that the petitions cannot be used to create or add to mailing lists or similar lists for any purpose, including fundraising or requests for support. Any such misuses constitutes a crime under California law. Elections Code section 18650; Bilofsky v. Deukmejian (1981) 124 Cal. App. 3d 825, 177 Cal. Rptr. 621; 63 Ops. Cal. Atty. Gen. 37 (1980).

- Please refer to Elections Code sections 100, 101, 101.5, 104, 9001, 9008, 9009, 9021, and 9022 for appropriate format and type consideration in printing, typing and otherwise preparing your initiative petition for circulation and signatures. Please send a copy of the petition after you have it printed. This copy is not for our review or approval, but to supplement our file.

- Your attention is directed to the campaign disclosure requirements of the Political Reform Act of 1974, Government Code section 81000 et seq.

- When writing or calling state or county elections officials, provide the official title of the initiative which was prepared by the Attorney General. Use of this title will assist elections officials in referencing the proper file.

- When a petition is presented to the county elections official for filing by someone other than the proponent, the required authorization shall include the name or names of the persons filing the petition.

- When filing the petition with the county elections official, please provide a blank petition for elections official use.

Enclosures
Kevin Shelley  
Secretary of State  
1500 - 11th Street, 5th Floor  
Sacramento, California 95814  

RE: Initiative Title and Summary  
SUBJECT: WAITING PERIOD AND PARENTAL NOTIFICATION BEFORE TERMINATION OF MINOR'S PREGNANCY. INITIATIVE CONSTITUTIONAL AMENDMENT.  
FILE NO: SA2004RF0024  

Dear Mr. Shelley:  

Pursuant to the provisions of sections 9004 and 336 of the Elections Code, you are hereby notified that on this day we mailed our title and summary to the proponents of the above-identified proposed initiative.  

Enclosed is a copy of our transmittal letter to the proponents, a copy of our title and summary, a declaration of service thereof, and a copy of the proposed measure.  

According to information available in our records, the names and address of the proponents are as stated on the declaration of service.  

Sincerely,  

TRICIA KNIGHT  
Initiative Coordinator  

For BILL LOCKYER  
Attorney General  

TK/cw  
Enclosures
The Attorney General of California has prepared the following title and summary of the chief purpose and points of the proposed measure:

WAITING PERIOD AND PARENTAL NOTIFICATION BEFORE TERMINATION OF MINOR’S PREGNANCY. INITIATIVE CONSTITUTIONAL AMENDMENT. Amends California Constitution to prohibit abortion on unemancipated minor until 48 hours after physician notifies minor's parent/legal guardian, except in medical emergency or with parental waiver of notice. Permits judicial waiver of notice based on minor’s best interests or clear and convincing evidence of minor’s maturity. Authorizes monetary damages for violation. Physician must report abortions performed on minors; State shall compile statistics. Minor must consent to abortion except in medical emergency or unless mentally incapable. Permits judicial relief if minor’s consent to abortion is coerced. Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local governments: The net costs of this measure to Medi-Cal and other programs are unknown, but are probably not significant in the context of the total expenditures for these programs.
Ms. Tricia Knight  
Initiative Coordinator  
Office of the Attorney General  
State of California  
PO Box 994255  
Sacramento, CA 94244-25550  

July 12, 2004  

To: Ms. Knight  

Re: Request for Title and Summary for Proposed Initiative  

Dear Ms. Knight:  

Pursuant to Article II, Section 10(d) of the California Constitution, we are submitting the attached proposed statewide Constitutional Amendment ballot measure relating to: "Parental Notification prior to the performance of an abortion upon a pregnant unemancipated minor", to your office and request that you prepare a title and summary of the measure as provided by law. We have also included with this letter the required signed statements under California Elections Code section 9608, and payment in the amount of $200.  

Thank you for your time and attention to this important matter. Should you have any questions or require additional information, please contact Mr. Paul E. Laubacher at 2555 Rio de Oro Way, Sacramento, CA 95826, Phone (916) 381-5222.  

We are both registered to vote at the address above.  

Very Truly Yours,  

Paul E. Laubacher  

Barbara R. Laubacher, R.N. 

Paul E. Laubacher, R.N.  

Barbara R. Laubacher, R.N.
INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO VOTERS

The Attorney General of California has prepared the following title and summary of the chief purposes and points of the proposed measure:

(Insert 100 word title and summary)

To the Honorable Secretary of State of California:

We the undersigned, registered, qualified voters of California, residents of the afore-described County (or City and County), on the signature page of this petition section, hereby propose an amendment to the Constitution of the State of California relating to parental notification prior to the performance of an abortion on a pregnant unemancipated minor and petition the Secretary of State to submit the same to the voters of California for their adoption or rejection at the next succeeding general election or at any special statewide election held prior to the general election or otherwise provided by law. The proposed amendment reads as follows:

SECTION 1. Title

This amendment shall be known and may be cited as the Parents' Right to Know and Child Protection Initiative.

SECTION 2. Declaration of Findings and Purposes

The People of California have a special and compelling interest in and responsibility for protecting the health and well-being of children, ensuring that parents are properly informed of potential health-related risks to their children, and promoting parent-child communication and parental responsibility.

SECTION 3. Parental Notification

Section 32 of Article 1 of the California Constitution is added to read:

SEC. 32 (a) For purposes of this Section, the following terms shall be defined to mean:
(1) "Abortion" means the use of any means to terminate the pregnancy of an unemancipated minor female known to be pregnant with knowledge that the termination with those means will, with reasonable likelihood, cause the death of the unborn child, a child conceived but not yet born. For purposes of this Section, "abortion" shall not include the use of any contraceptive drug or device.

(2) "Unborn child" means any individual human organism from fertilization until birth.

(3) "Medical emergency" means a condition which, on the basis of the physician's good-faith clinical judgment, so complicates the medical condition of a pregnant unemancipated minor as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function.

(4) "Notice" means a written notification, signed and dated by a physician or his or her agent and addressed to a parent or guardian, informing the parent or guardian that the unemancipated minor is pregnant and that she has requested an abortion.

(5) "Parent or guardian" means either parent if both parents have legal custody, or the parent or person having legal custody, or the legal guardian of a minor.

(6) "Unemancipated minor" means a female under the age of 18 years who has not entered into a valid marriage and is not on active duty with the armed services of the United States and has not received a declaration of emancipation under state law. For the purposes of this Section, pregnancy does not emancipate a female under the age of 18 years.

(7) "Physician" means any person authorized under the statutes and regulations of the State of California to perform an abortion upon an unemancipated minor.

(b) Notwithstanding Article 1, Section 1, or any other provision of this Constitution or law to the contrary and except in a medical emergency as provided for in subdivision (f), a physician shall not perform an abortion upon a pregnant unemancipated minor until after the physician or the physician's agent has first provided written notice to a parent or guardian either personally as provided for in
subdivision (c) and a reflection period of at least forty-eight (48) hours has elapsed after personal delivery of notice; or until the physician can presume that notice has been delivered by mail as provided in subdivision (d) and a reflection period of at least forty-eight (48) hours has elapsed after presumed delivery of notice by mail; or until the physician or the physician's agent has received from a parent or guardian a written waiver of notice as provided for in subdivision (e); or until the physician has received a copy of a waiver of notification from the court as provided in subdivision (h) or (i). A copy of any notice or waiver shall be retained with the unemancipated minor's medical records. The physician or the physician's agent shall inform the unemancipated minor that her parent or guardian may receive notice as provided for in this Section.

(c) The written notice shall be delivered to the parent or guardian personally by the physician or the physician's agent. A form for the notice shall be prescribed by the Department of Health Services. The notice form shall be bilingual, in English and Spanish, and also available in English and each of the other languages in which California Official Voter Information Guides are published.

(d) In lieu of the personal delivery required in subdivision (c) of this Section, written notice may be made by certified mail addressed to the parent or guardian at the parent's or guardian's last known address with return receipt requested and restricted delivery to the addressee, which means a postal employee may only deliver the mail to the authorized addressee. To help ensure timely notice, a copy of the written notice shall also be sent at the same time by first class mail to the parent or guardian. Notice can only be presumed to have been delivered under the provisions of this subdivision at noon of the second day after the written notice sent by certified mail was postmarked, not counting any days on which regular mail delivery does not take place.

(e) Notice of an unemancipated minor's intent to obtain an abortion and the reflection period of at least forty-eight (48) hours may be waived by a parent or guardian. The waiver must be in writing, on a form prescribed by the Department of Health Services, signed by a parent or guardian, dated, and notarized. The written waiver need not be notarized if the parent or guardian personally delivers it to the physician or the physician's agent. The form shall include the following statement: "WARNING. It is a crime to knowingly provide false information to a physician or a physician's agent for the purpose of inducing a physician or a physician's agent to believe that a waiver of notice has been provided by a parent or guardian." The waiver form shall be bilingual, in English and Spanish,
and also available in English and each of the other languages in which California Official Voter Information Guides are published.

(f) Notice shall not be required under this Section if the attending physician certifies in the unemancipated minor's medical records the medical indications supporting the physician's good-faith clinical judgment that the abortion is necessary due to a medical emergency as defined in subdivision (a)(3) of this Section.

(g) Notice shall not be required under this Section if waived pursuant to this subdivision and subdivisions (h) or (i) or (j). If the pregnant unemancipated minor chooses not to permit notice to be given to a parent or guardian, she may file a petition with the juvenile court. If, pursuant to this subdivision, an unemancipated minor seeks to file a petition, the court shall assist the unemancipated minor or person designated by the unemancipated minor in preparing the petition and notifications required pursuant to this Section. The petition shall set forth with specificity the unemancipated minor's reasons for the request. The court shall ensure that the minor's identity be kept confidential and that all court proceedings be sealed. No filing fee shall be required for filing a petition. An unemancipated pregnant minor shall appear personally in the proceedings in juvenile court and may appear on her own behalf or with counsel of her own choosing. The court shall, however, advise her that she has a right to court-appointed counsel upon request. The court shall appoint a guardian ad litem for her. The hearing shall be held by 5 p.m. on the second court day after filing the petition unless extended at the written request of the unemancipated minor, her guardian ad litem, or her counsel. If the guardian ad litem requests an extension, that extension may not be granted for more than one court day without the consent of the unemancipated minor or her counsel. The unemancipated minor shall be notified of the date, time and place of the hearing on the petition. Judgment shall be entered within one court day of submission of the matter. The judge shall order a record of the evidence to be maintained, including the judge's written factual findings and legal conclusions supporting the decision.

(h) (1) If the judge finds, by clear and convincing evidence, that the unemancipated minor is sufficiently mature and well-informed to decide whether to have an abortion, the judge shall authorize a waiver of notice of a parent or guardian.

(2) If the judge finds, by clear and convincing evidence, that notice of a parent or guardian is not in the best interests of the unemancipated minor, the judge
shall authorize a waiver of notice. If the finding that notice of a parent or guardian is not in the best interests of the minor is based on evidence of physical, sexual, or emotional abuse by a parent or guardian, the court shall ensure that such evidence is brought to the attention of the appropriate county child protective agency.

(3) If the judge does not make a finding specified in subdivision (h)(1) or (h)(2), the judge shall deny the petition.

(i) If the judge fails to rule within the time period specified in subdivision (g) and no extension was requested and granted, the petition shall be deemed granted and the notice requirement shall be waived.

(j) The unemancipated minor may appeal the judgment of the juvenile court at any time after the entry of judgment. The Judicial Council shall prescribe, by rule, the practice and procedure on appeal and the time and manner in which any record on appeal shall be prepared and filed and may prescribe forms for such proceedings. These procedures shall require that the hearing shall be held within three court days of filing the notice of appeal. The unemancipated minor shall be notified of the date, time and place of the hearing. Judgment shall be entered within one court day of submission of the matter. The appellate court shall ensure that the unemancipated minor's identity be kept confidential and that all court proceedings be sealed. No filing fee shall be required for filing an appeal. Judgment on appeal shall be entered within one court day of submission of the matter.

(k) The Judicial Council shall prescribe, by rule, the practice and procedure for petitions for waiver of parental notification, hearings and entry of judgment as it deems necessary and may prescribe forms for such proceedings. Each court shall provide annually to the Judicial Council, in a manner to be prescribed by the Judicial Council to ensure confidentiality of the unemancipated minors filing petitions, a report, by judge, of the number of petitions filed, the number of petitions granted under subdivisions (h)(1) or (h)(2), deemed granted under subdivision (i) denied under subdivision (h)(3) and granted and denied under subdivision (j), said reports to be publicly available unless the Judicial Council determines that the data contained in individual reports should be aggregated by court or by county before being made available to the public in order to preserve the confidentiality of the unemancipated minors filing petitions.

(l) The Department of Health Services shall prescribe forms for the reporting of abortions performed on unemancipated minors by physicians. The report forms
shall not identify the minor or her parent(s) or guardian by name or request other information by which the minor or her parent(s) or guardian might be identified. The forms shall include the date of the procedure and the unemancipated minor’s month and year of birth, the duration of the pregnancy, the type of abortion procedure, the physician who performed the abortion, and the facility where the abortion was performed. The forms shall also indicate whether the abortion was performed at least forty-eight (48) hours after either personal delivery of a notice pursuant to subdivision (c) or presumed delivery of a notice by mail pursuant to subdivision (d) to a parent or guardian; or was an abortion performed after a parent's or guardian's waiver of notice pursuant to subdivision (e); or was an emergency abortion performed without a notice pursuant to subdivision (f); or was an abortion performed after a judicial waiver of notice pursuant to subdivisions (h)(1) or (h)(2) or (i) or (j).

(m) The physician who performs an abortion on an unemancipated minor shall within one month file a dated and signed report concerning it with the Department of Health Services on forms prescribed pursuant to subdivision (l). The identity of the physician shall be kept confidential and shall not be subject to disclosure under the California Public Records Act.

(n) The Department of Health Services shall compile an annual statistical report from the information specified in subdivision (l). The annual report shall not include the identity of any physician who filed a report as required by subdivision (m). The compilation shall include statistical information on the numbers of abortions by month and by county where performed, the minors' ages, the duration of the pregnancies, the types of abortion procedures, and the numbers of abortions performed after notice to a parent or guardian pursuant to subdivisions (c) or (d); the numbers of emergency abortions performed without notice to a parent or guardian pursuant to subdivision (f); the numbers performed after a parent's or guardian's waiver of notice pursuant to subdivision (e); and the number of abortions performed after judicial waivers pursuant to (h)(1) or (h)(2) or (i) or (j). The annual statistical report shall be made available to the public.

(o) Any person who performs an abortion on an unemancipated minor and in so doing knowingly or negligently fails to comply with the provisions of this Section shall be liable for damages in a civil action brought by the unemancipated minor, her legal representative, or by a parent or guardian wrongfully denied notification. A person shall not be liable under this Section if the person establishes by written evidence that the person relied upon evidence sufficient to convince a careful and prudent person that the representations of the unemancipated minor or other
persons regarding information necessary to comply with this Section were bona
fide and true. At any time prior to the rendering of a final judgment in an action
brought under this subdivision, the parent or guardian may elect to recover, in lieu
of actual damages, an award of statutory damages in the amount of $10,000. In
addition to any damages awarded under this subdivision, the plaintiff shall be
entitled to an award of reasonable attorney fees. Nothing in this Section shall
abrogate, limit, or restrict the common law rights of parents or guardians, or any
right to relief under any theory of liability that any person or any state or local
agency may have under any statute or common law for any injury or damage,
including any legal, equitable, or administrative remedy under federal or state law,
against any party, with respect to injury to an unemancipated minor from an
abortion.

(p) Other than an unemancipated minor who is the patient of a physician, or
other than the physician or the physician's agent, any person who knowingly
provides false information to a physician or a physician's agent for the purpose of
inducing the physician or the physician's agent to believe that pursuant to this
Section notice has been or will be delivered, or that a waiver of notice has been
obtained, or that an unemancipated minor patient is not an unemancipated minor, is
guilty of a misdemeanor punishable by imprisonment in a county jail for up to 180
days or a fine of up to $1,000, or both.

(q) Notwithstanding any notices delivered pursuant to subdivisions (c) or (d) or
waivers received pursuant to subdivisions (e) or (h)(1) or (h)(2) or (i) or (j), except
where the particular circumstances of a medical emergency as defined in
subdivision (a)(3) or her own mental incapacity precludes obtaining her consent, a
physician shall not perform or induce an abortion upon an unemancipated minor
except with the consent of the unemancipated minor herself.

(r) Notwithstanding any notices delivered pursuant to subdivisions (c) or (d) or
waivers received pursuant to subdivisions (e) or (h)(1) or (h)(2) or (i) or (j), an
unemancipated minor who is being coerced by any person through force, threat of
force, or threatened or actual deprivation of food or shelter to consent to undergo
an abortion may apply to the juvenile court for relief. The court shall give the
matter expedited consideration and grant such relief as may be necessary to
prevent such coercion.

(s) This Section shall not take effect until 90 days after the election in which it is
approved. The Judicial Council shall, within these 90 days, prescribe the rules,
practices, and procedures and prepare and make available any forms it may
prescribe as provided in subdivision (k). The Department of Health Services shall, within these 90 days, prepare and make available the forms prescribed in subdivisions (c), (e), and (l).

(t) If any one or more provision, subdivision, sentence, clause, phrase or word of this Section or the application thereof to any person or circumstance is found to be unconstitutional or invalid, the same is hereby declared to be severable and the balance of this Section shall remain effective notwithstanding such unconstitutionality or invalidity. Each provision, subdivision, sentence, clause, phrase or word of this Section would have been approved by voters irrespective of the fact that any one or more provision, subdivision, sentence, clause, phrase, or word might be declared unconstitutional or invalid.

(u) Except for the rights, duties, privileges, conditions, and limitations specifically provided for in this Section, nothing in this Section shall be construed to grant, secure, or deny any other rights, duties, privileges, conditions, and limitations relating to abortion or the funding thereof.