



HEALTH SERVICES AGENCY
ADMINISTRATION

County of Santa Cruz

HEALTH SERVICES AGENCY

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April 24, 2001

AGENDA: May 1, 2001

BOARD OF SUPERVISORS

County of Santa Cruz
701 Ocean Street
Santa Cruz, Ca 95060

RE: Opposition to ACA 5 (Mountjoy)

Dear Board Members:

The Santa Cruz County Health Services Agency is concerned about the proposed Assembly Constitutional Amendment No. 5 (Mountjoy) which would require young women under the age of 18 to have parental consent before being able to end a pregnancy.

Most teenagers having abortions already involve their parents, even when they are not required by law to do so. Certainly, one would hope that all teens could seek their parents' advice, support and counsel. However, the effects of mandating this communication can be devastating. For those in abusive families, mandated parental involvement can increase both the risk to a teen's health and her physical safety.

In matters concerning sexual conduct, some minors are frequently reluctant to inform their parents of medical conditions relating to such conduct. Consequently, there is a considerable risk that minors will postpone or avoid seeking medical care if they are required to obtain parental consent. Ultimately, due to the time constraints involved in decisions regarding termination of pregnancy, the delay that accompanies minors' reluctance to involve their parents undermines their right to reproductive choice.

In *American Academy of Pediatrics v. Daniel E. Lungren* the court stated that, "The fundamental values and principals that a parent has transmitted to his or her daughter will play a significant role in shaping a minor's decision. However,

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because the decision has such a substantial effect on a pregnant minor's control over her personal bodily integrity, has such long-term consequences in determining her life choices, and (unlike many other choices) is a decision that cannot be postponed until adulthood we conclude that a minor who is pregnant has a protected privacy interest under the California Constitution in making the decision whether to continue or end her pregnancy."


In addition, it is important to note that teen pregnancies in California are finally beginning to level off. The State has been involved in a major campaign to educate teens, their parents and the general public on the consequences of unwanted pregnancies. Many adolescents, if denied access to confidential pregnancy services in California, may attempt travel to another state for care, seek out illegal abortionists, or delay seeking care until the pregnancy is advanced.

Teen pregnancy and births are a major public health concern. Teens have a higher rate of pregnancy and birth complications in addition to the adverse social implications of giving birth while young. Teen parents face formidable life challenges. Many do not complete high school and face a lifetime of poverty and hardship. Requiring parental consent for abortion may seem like a way to bring parents and children together, but the risks associated with abusive family situations and other unpredictable outcomes outweigh potential benefits. Mandated parental notification is not good public health policy for improving maternal and child health. This is why forced parental notification is opposed by the American Academy of Pediatrics, the California State Health Officers, the American College of Obstetrics and Gynecology, the California Medical Association, the local Reproductive Rights Network of Santa Cruz County, Planned Parenthood and many other mainstream health organizations.

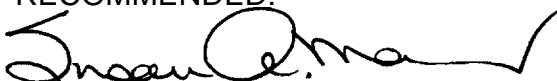
It is therefore RECOMMENDED that your Board:

Adopt the attached resolution opposing Assembly Constitutional Amendment No. 5 (Mountjoy). .

Sincerely,


Rama Khalsa, Ph.D., Administrator
Health Services Agency

RECOMMENDED:



Susan Mauriello

County Administrative Officer

Attachments: Resolution; Copy of ACA5

cc: CAO
County Counsel

HSA Administration
Public Health Commission

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BEFORE THE BOARD OF SUPERVISORS
OF THE COUNTY OF SANTA CRUZ, STATE OF CALIFORNIA

Resolution No. _____

On the motion of Supervisor
duly seconded by Supervisor
the following resolution is adopted:

**RESOLUTION OPPOSING THE PASSAGE OF ASSEMBLY
CONSTITUTIONAL AMENDMENT NO. 5**

WHEREAS, Assembly Constitutional Amendment No. 5 would mandate parental notification for minors seeking to terminate their pregnancy; and

WHEREAS, Assembly Constitutional Amendment No. 5 would overturn existing California State law holding that pregnant minors have a protected privacy interest under the Constitution; and

WHEREAS, forced parental involvement in reproductive health is unsound public policy which can lead to adverse health outcomes for mothers and children and is opposed by the American Academy of Pediatrics, the American College of Obstetrics and Gynecology, the California Medical Association, the California State Health Officers, Planned Parenthood, the Reproductive Rights Network of Santa Cruz County, and many other health organizations; and

WHEREAS, teen parents face lifelong challenges and difficulties, and

WHEREAS, access to reproductive health care without barriers is a cornerstone of sound maternal and child health care,

NOW, THEREFORE, BE IT RESOLVED AND ORDERED that the Santa Cruz County Board of Supervisors opposes Assembly Constitutional Amendment No. 5.

PASSED AND ADOPTED by the Board of Supervisors of the County of Santa Cruz, State of California, this 1 st day of May, 2001, by the following vote:

AYES: Supervisors
NOES: Supervisors
ABSENT: Supervisors

Chairman of said Board

ATTEST: _____
Clerk of Said Board

APPROVED AS TO FORM:



Assistant County Counsel

Distribution: CAO
County Counsel

HSA Administration
PH Commission

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Assembly Constitutional Amendment

No. 5

Introduced by Assembly Members Wyman and Bill Campbell
(Coauthors: Assembly Members Aanestad, Ashburn, Bates,
Briggs, John Campbell, Cogdill, Cox, Daucher, Dickerson,
Hollingsworth, Kelley, La Suer, Leach; Leonard, Leslie,
Maddox, Mountjoy, Robert Pacheco, Rod Pacheco, Pescetti,
Runner, Strickland, Wyland, and Zettel)
(Coauthors: Senators Battin, Haynes, Johannessen, McClintock,
Monteith, Morrow, and Oller)

February 23, 2001

Assembly Constitutional Amendment No. 5-A resolution to propose to the people of the State of California an amendment to the Constitution of the State, by adding Section 32 to Article I thereof, relating to abortion.

LEGISLATIVE COUNSEL'S DIGEST

ACA 5, as introduced, Wyman. Abortion: parental notification.

Existing California statutes that prohibit, except as specified, an abortion **from** being performed on an unemancipated minor without the written consent of the minor and that of one of her parents or her **legal** guardian, were held to be violative of the California Constitution.

This measure would provide that, except in a medical emergency, an abortion may not be performed upon a pregnant unemancipated minor until the physician has first notified one of her parents or legal guardian pursuant to specified requirements, or a court has permitted waiver of these requirements if any of certain circumstances are found to exist.

The measure would impose civil penalties for the provision of an abortion in violation of the requirements of the measure.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

1 WHEREAS, The people of California have a special and
2 compelling interest in, and responsibility for, protecting the health
3 and well-being of children, ensuring that parents are informed in
4 a timely manner of potential health-related risks to their children,
5 and promoting the parent-child relationship; and

6 WHEREAS, The people find that there exists a compelling and
7 important state interest in protecting minors, in fostering the
8 family structure and preserving it as the primary social unit, and
9 in protecting the rights of parents and children. A minor faced with
10 medical, psychological, and emotional decisions, like abortion,
11 with serious and lasting consequences, is better able to make fully
12 informed choices with open communication with her parents; and

13 WHEREAS, Currently, a pregnant minor as young as 13 or 14
14 years of age may now obtain an abortion without any notification
15 to her parents whatsoever. Further, parents who are aware that their
16 minor daughter is considering an abortion, or has had an abortion
17 are better able to secure for her the best medical attention. Parental
18 consultation regarding abortion is desirable and in the best interest
19 of the minor; and

20 WHEREAS, Thirty-three other states, including Alabama,
21 Alaska, Arizona, Arkansas, Colorado, Florida, Georgia, Illinois,
22 Indiana, Iowa, Kentucky, Louisiana, Massachusetts, Michigan,
23 Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada,
24 New Jersey, New Mexico, North Carolina, North Dakota, Ohio,
25 Pennsylvania, Rhode Island, South Carolina, South Dakota,
26 Tennessee, Texas, Virginia, and Wyoming have enacted parental
27 notification laws; and

28 WHEREAS, The United States Supreme Court has upheld the
29 constitutionality of parental notification laws virtually identical to
30 the provisions proposed by this measure. This measure is narrowly
31 drawn and does not impinge upon any constitutionally protected
32 area any more than is necessary to accomplish the state's legitimate
33 goals; now, therefore, be it

34 ***Resolved by the Assembly, the Senate thereof concurring,*** That
35 the Legislature of the State of California at its 2001-02 Regular
36 Session commencing on the fourth day of December 2000,
37 two-thirds of the membership of each house concurring, hereby

1 proposes to the people of the State of California that the
2 Constitution of the State be amended by adding Section 32 to
3 Article I thereof, to read:

4 SEC. 32. (a) This section shall be known, and may be cited
5 as, the Family Communication and Parental Responsibility Act,

6 (b) For purposes of this section:

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

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

17 (3) "Parent" means the parent with primary custody, care, and
18 control of the unemancipated minor, or a parent with joint custody,
19 care, and control, or, if there is no parent with either primary
20 custody, care, and control or joint custody, care, and control, then
21 the legal guardian of the unemancipated minor.

22 (4) "Unemancipated minor" means a female under the age of
23 18 years who is unmarried and is not currently serving active duty
24 in one of the military services of the United States of America, or
25 a female for whom a guardian has been appointed because of a
26 finding of incompetency, or a female who has not been declared
27 emancipated pursuant to state law. For the purposes of this section,
28 pregnancy does not emancipate a female under ~~the~~ age of 18 years.

29 (c) Notwithstanding Section 1 of this article or any other
30 provision of this constitution, an abortion may not be performed
31 upon a pregnant unemancipated minor until written notice has
32 been delivered pursuant to subdivision (d), or at least 48 hours
33 after written notice has been delivered pursuant to subdivision (e),
34 or until the physician has received a copy of a waiver of
35 notification from the court as provided in subdivision (h). The
36 physician shall inform the unemancipated minor that her parent
37 may receive notice as provided for in this section.

38 (d) The notice required by this section shall be delivered to the
39 parent personally by the physician or his or her agent.

1 (e) In lieu of the personal delivery required in subdivision (d),
2 notice may be made by certified mail addressed to the parent at the
3 parent's last known address with return receipt requested and
4 restricted delivery to the addressee, which means a postal
5 employee may only deliver the mail to ~~the~~ addressee. At the same
6 time that notice is mailed by certified mail, it shall also be sent by
7 first class mail to the parent at the parent's last known address. The
8 **48-hour** period for notice sent under this subdivision shall begin
9 at noon on the next day on which regular mail delivery takes place
10 following the day on which the mailings are posted.

11 (f) Notice of a pending abortion shall not be required under this
12 section if the attending physician certifies in the unemancipated
13 minor's medical records that the abortion is necessary due to a
14 medical emergency.

15 (g) If the pregnant minor elects not to permit notification of one
16 or both of her parents or legal guardian, she may file a petition with
17 the juvenile court. If, pursuant to this subdivision, a minor seeks
18 to file a petition, the court shall assist the minor or person
19 designated by the minor in preparing the petition and notices
20 required pursuant to this section. The petition shall set forth with
21 specificity the minor's reasons for the request. The court shall
22 ensure that the minor's identity is confidential. The minor may file
23 the petition using only her initials or a pseudonym. An
24 unemancipated pregnant minor may participate in the proceedings
25 in juvenile court on her own behalf, and the court may appoint a
26 guardian ad ~~litem~~ for her. The court shall, however, advise her that
27 she has a right to court-appointed counsel upon request. The
28 hearing shall be set within three days of the filing of the petition.
29 A notice shall be given to the minor of the date, time, and place of
30 the hearing on the petition. Judgment shall be entered within one
31 court day of submission of the matter. The judge shall order a
32 record of the evidence to be maintained including the judge's
33 written factual findings and legal conclusions supporting the
34 decision. The Judicial Council shall prescribe, by rule, the practice
35 and procedure for these petitions, hearings, and entry of judgment
36 as it deems necessary, and may prescribe forms for these
37 proceedings.

38 (h) (1) If the judge finds, by clear and convincing evidence,
39 that the unemancipated minor is sufficiently mature and capable

1 of giving informed consent to decide whether to have an abortion,
2 the judge shall authorize a waiver of notification.

3 (2) If the judge finds, by clear and convincing evidence, that
4 there is evidence of physical or sexual abuse of the minor by the
5 parent or legal guardian, the judge shall authorize a waiver of
6 notification. Notice of a determination made under this paragraph
7 shall be made to the appropriate county child protective services
8 agency.

9 (3) If the judge finds, by clear and convincing evidence, that the
10 minor is not **sufficiently** mature, but that notification of the parent
11 is not in the best interests of the minor, the judge shall authorize
12 a waiver of notification.

13 (i) If the judge does not make a finding specified in subdivision
14 (h), the judge shall dismiss the petition or motion and order the
15 physician to provide notice pursuant to subdivision (c).

16 (j) The minor may appeal the judgment of the juvenile court by
17 filing a written notice of appeal at any time after the entry of
18 judgment. The Judicial Council shall prescribe, by rule, the
19 practice and procedure on appeal and the time and manner in
20 which any record on appeal shall be prepared and filed and may
21 prescribe forms for proceedings. These procedures shall require
22 that the notice of the date, time, and place of hearing, which shall
23 be set within five court days of filing the notice of appeal, shall be
24 mailed to **the** parties by the clerk of the court. The appellate court
25 shall ensure that the minor's identity is confidential. The minor
26 may file the petition using only her initials or a pseudonym.
27 Judgment on appeal shall be entered within one court day of
28 submission of the matter.

29 (k) No filing fees may be imposed upon any minor at either the
30 trial or the appellate level.

31 (l) Any person who performs an abortion in violation of this
32 section shall be subject to a civil penalty of not less than one
33 thousand dollars (\$1,000) and not more than five thousand dollars
34 (\$5,000). He or she may also be liable for damages and attorney's
35 fees in a civil action brought by a parent wrongfully denied
36 notification. A person shall not be liable under this section if the
37 person establishes by written evidence that the person relied upon
38 evidence **sufficient** to convince a careful and prudent person that
39 the representations of the unemancipated minor regarding
40 information necessary to comply with this section are bona fide

1 and true, or if the person has attempted with reasonable diligence
2 to deliver notice, but has been unable to do so.
3 (m) If any provision of this section or the application thereof to
4 any person or circumstance is held invalid, the invalidity shall not
5 affect other provisions or applications of the sections that can be
6 given effect without the invalid provision or application, and to
7 this end the provisions of this section are severable.

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