



County of Santa Cruz⁰¹⁴⁷

HEALTH SERVICES AGENCY

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HEALTH SERVICES AGENCY
ADMINISTRATION

February 13, 2002

AGENDA: March 12, 2002

BOARD OF SUPERVISORS
Santa Cruz County
701 Ocean Street
Santa Cruz, CA 95060

RE: Adopt Resolution Supporting SB 1301 Reproductive Privacy Act

Dear Members of the Board:

California Senator Sheila Kuehl has introduced Senate Bill 1301 known as the Reproductive Privacy Act. This is a comprehensive piece of legislation that would replace California's outdated Therapeutic Abortion Act of 1967. The bill accomplishes four primary objectives for California including the following:

- Provides greater access to non-surgical abortion services by allowing mid-level practitioners, pursuant to their current scope of practice, to provide RU-486 [mifepristone] under physician supervision.
- Clarifies the role of health care professionals by updating the Business and Professions Code to reflect current abortion practices, which permit health care providers acting within their existing scopes of practice to perform and assist in the provision of surgical and non-surgical abortions.
- Deletes language in current State law that has been found unconstitutional in either state or federal courts.
- Reaffirms privacy rights established by the US Supreme Court in Roe v. Wade, which granted women a legal right to choose an abortion.

SB 1301, introduced in January 2002, has already gained widespread support including the California Medical and Nursing Associations, the American College of Obstetrics and Gynecology, the League of Women Voters of California and the California Commission on the Status of Women. The outdated California Therapeutic Abortion Act of 1967, signed by then Governor Reagan, has a number of outdated and unconstitutional elements. Included is a requirement that any woman seeking abortion services must obtain prior approval by a hospital medical staff committee that has determined that continuation of pregnancy would harm her physical or mental health. These requirements were deemed unconstitutional by the Supreme Court decision and have

been obsolete for over 30 years. It is time to delete them from California State law. SB 1301 accomplishes that objective. The bill establishes that "every individual possesses a fundamental right of privacy with respect to reproductive decisions, including the fundamental right to choose or refuse birth control and the fundamental right to choose to bear a child or obtain an abortion."

Reproductive health is a basic tenant of public health. Access to family planning and safe abortion services have made dramatic improvements in the health of women in the United States in the past 30 years. Maternal deaths from unsafe abortions have become extremely rare. The California Reproductive Privacy Act helps ensure that this accomplishment will continue in California. The Bill's author and 16 co-authors, including Assemblyman Fred Keeley, seek local support for SB 1301.

It is, therefore, RECOMMENDED that your Board:

1. Adopt the attached Resolution supporting SB 1301 and direct the Chairman of the Board to convey that support to the Honorable Gray Davis, Governor of California.

Sincerely,

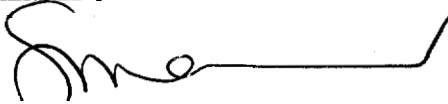


Rama Khalsa, Ph.D.
Health Services Administrator

Attachments: SB 1301, Bill text and Fact Sheet

cc: County Administrative Office
County Counsel
HSA Administration
County Public Health Commission
County Women's Commission
County Children's Commission

RECOMMENDED :



SUSAN A. MAURIELLO
County Administrative Officer

**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 SUPPORTING SB 1301 (KUEHL) RELATING TO REPRODUCTIVE
PRIVACY ACT**

WHEREAS, the United States Supreme Court's landmark Roe v. Wade decision of 1973 and the subsequent California Supreme Court case People v. Barksdale have rendered the California Therapeutic Abortion Act of 1967 unconstitutional and obsolete; and

WHEREAS, the California Therapeutic Abortion Act has not been repealed by the California Legislature; and

WHEREAS, a reproductive privacy law that mirrors respect for the Constitution and desire for reproductive freedom is needed in California; and

WHEREAS, the role of health care providers relative to reproductive services should be clarified and made consistent with their current legal scope of practice in California; and

WHEREAS, the health of women in California is linked to access to reproductive health care services without barriers; and

WHEREAS, Senate Bill 1301 has been introduced in the California legislature and has gained wide support among health care organizations and California legislators; and

WHEREAS, Senate Bill 1301 would enact a Reproductive Privacy Act that would establish legislation to remove antiquated State law, clarify the current scope of practice for medical care providers and reaffirm individual rights for reproductive freedom and privacy in the state of California.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED, that the Board of Supervisors of the County of Santa Cruz, hereby supports Senate Bill 1301 and urges the Honorable Gray Davis, Governor of California, to sign into law Senate Bill 1301.

PASSED AND ADOPTED, by the Board of Supervisors of the County of Santa Cruz, State of California, this _____ day of _____, 2002 by the following vote.

AYES: SUPERVISORS
NOES: SUPERVISORS
ABSTAIN: SUPERVISORS

Chairperson of the Board

ATTEST:

CLERK OF THE BOARD

APPROVED AS TO FORM:



Assistant County Counsel

Distribution:

County Administrative Office
County Counsel
HSA Administration
County Public Health Commission
County Women's Commission
County Children's Commission

SENATE BILL**No. 1301****Introduced by Senator Kuehl**

January 18, 2002

An act to amend Section 2253 of the Business and Professions Code, to add Article 2.5 (commencing with Section 123460) to Chapter 2 of Part 2 of Division 106 of, and to repeal Sections 123400, 123405, 123407, 123410, 123415, and 123430 of, the Health and Safety Code, relating to reproductive privacy.

LEGISLATIVE COUNSEL'S DIGEST

SB 1301, as introduced, Kuehl. **Reproductive Privacy Act.**

(1) Existing statutory law, the Therapeutic Abortion Act, contains various provisions regarding abortion, including a requirement that an abortion may only be performed by the holder of a physician's and surgeon's certificate, under specified conditions. The act also includes requirements that prior approval be obtained for each abortion by a committee of medical staff, with specified membership, who must determine either that continuation of the pregnancy would impair the physical or mental health of the mother, or that the pregnancy resulted from rape or incest. Existing law defines "mental health" for these purposes.

Certain provisions of the act, including, but not limited to, the above requirements relating to medical committee approval for abortions, and the statutory definition of mental health, have been held unconstitutional by the courts.

This bill would delete the above provisions of the Therapeutic Abortion Act, among others, including the name of the act. The bill would enact the Reproductive Privacy Act, which would provide that every individual possesses a fundamental right of privacy with respect to reproductive decisions, including (A) the fundamental right to

choose or refuse birth control, and (B) the fundamental right to choose to bear a child or obtain an abortion.

This bill would provide that the state shall not deny or interfere with a woman's fundamental right to choose to bear a child or obtain an abortion prior to viability of the fetus, as defined, or when necessary to preserve her life or health. The bill would specify the circumstances under which the performance of an abortion is deemed unauthorized.

(2) Under existing law, the procuring or aiding, abetting, attempting, agreeing, or offering to procure an unauthorized abortion constitutes unprofessional conduct of a licensee under the Medical Practice Act, absent compliance with the Therapeutic Abortion Act.

This bill would instead deem it unprofessional conduct to fail to comply with the Reproductive Privacy Act in connection with the above activities.

(3) Under existing law, a person is criminally liable, and subject to possible imprisonment, if he or she performs or assists in performing a surgical abortion if he or she does not have a valid, unrevoked, and unsuspended license to practice as a physician and surgeon, or other certificate that authorizes him or her to perform or assist in performing a surgical abortion.

This bill would instead provide that a person is criminally liable, and subject to possible imprisonment, if he or she performs or assists in performing a surgical abortion if he or she does not have a valid, unrevoked, and unsuspended license to practice as a physician and surgeon, or if he or she assists in performing a surgical abortion without a valid, unrevoked, and unsuspended license or certificate obtained in accordance with some other provision of law that authorizes him or her to perform the functions necessary to assist in performing a surgical abortion. This bill would also create a state-mandated local program by extending criminal liability to a person who performs or assists in performing a nonsurgical abortion without the appropriate licensing or certification.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2253 of the Business and Professions
2 Code is amended to read:

3 2253. (a) ~~The Failure to comply with the Reproductive~~
4 ~~Privacy Act (Article 2.5 (commencing with Section 123460) of~~
5 ~~Chapter 2 of Part 2 of Division 106 of the Health and Safety Code)~~
6 ~~in performing, assisting, procuring or aiding, abetting, attempting,~~
7 ~~agreeing, or offering to procure an illegal abortion constitutes~~
8 ~~unprofessional conduct, unless the act is done in compliance with~~
9 ~~the Therapeutic Abortion Act (Article 2 (commencing with~~
10 ~~Section 123400) of Chapter 2 of Part 2 of Division 106 of the~~
11 ~~Health and Safety Code).~~

12 (b) (1) A person is subject to Sections 2052 and 2053 if he or
13 she performs or assists in performing a surgical abortion, and at the
14 time of so doing, does not have a valid, unrevoked, and
15 unsuspended license to practice as a physician and surgeon as
16 provided in this chapter, or ~~does not have a~~ if he or she assists in
17 performing a surgical abortion and does not have a valid,
18 unrevoked, and unsuspended license or certificate obtained in
19 accordance with some other provision of law that authorizes him
20 or her to perform ~~or the functions necessary to~~ assist in performing
21 a surgical abortion.

22 (2) A person is subject to Sections 2052 and 2053 if he or she
23 performs or assists in performing a nonsurgical abortion, and at
24 the time of so doing, does not have a valid, unrevoked, and
25 unsuspended license to practice as a physician and surgeon as
26 provided in this chapter, or does not have a valid, unrevoked, and
27 unsuspended license or certificate obtained in accordance with
28 some other provision of law that authorizes him or her to perform
29 or assist in performing the functions necessary for a nonsurgical
30 abortion.

31 SEC. 2. Section 123400 of the Health and Safety Code is
32 repealed.

33 ~~123400. This article shall be known and may be cited as the~~
34 ~~Therapeutic Abortion Act.~~

35 SEC. 3. Section 123405 of the Health and Safety Code is
36 repealed.

37 ~~123405. A holder of the physician's and surgeon's certificate,~~
38 ~~as defined in the Business and Professions Code, is authorized to~~

1 ~~perform an abortion or aid or assist or attempt an abortion, only if~~
 2 ~~each of the following requirements is met:~~

3 ~~(a) The abortion takes place in a hospital that is accredited by~~
 4 ~~the Joint Commission on Accreditation of Hospitals.~~

5 ~~(b) The abortion is approved in advance by a committee of the~~
 6 ~~medical staff of the hospital, which committee is established and~~
 7 ~~maintained in accordance with standards promulgated by the Joint~~
 8 ~~Commission on Accreditation of Hospitals. In any case in which~~
 9 ~~the committee of the medical staff consists of no more than three~~
 10 ~~licensed physicians and surgeons, the unanimous consent of all~~
 11 ~~committee members shall be required in order to approve the~~
 12 ~~abortion.~~

13 ~~(c) The Committee of the Medical Staff finds that one or more~~
 14 ~~of the following conditions exist:~~

15 ~~(1) There is substantial risk that continuance of the pregnancy~~
 16 ~~would gravely impair the physical or mental health of the mother.~~

17 ~~(2) The pregnancy resulted from rape or incest.~~

18 SEC. 4. Section 123407 of the Health and Safety Code is
 19 repealed.

20 ~~123407. The Committee of the Medical Staff shall not~~
 21 ~~approve the performance of an abortion on the ground that the~~
 22 ~~pregnancy resulted from rape or incest except in accordance with~~
 23 ~~the following procedure:~~

24 ~~(a) Upon receipt of an application for an abortion on the~~
 25 ~~grounds that the pregnancy resulted from rape or incest, the~~
 26 ~~committee shall immediately notify the district attorney of the~~
 27 ~~county in which the alleged rape or incest occurred of the~~
 28 ~~application, and transmit to the district attorney the affidavit of the~~
 29 ~~applicant attesting to the facts establishing the alleged rape or~~
 30 ~~incest. If the district attorney informs the committee that there is~~
 31 ~~probable cause to believe that the pregnancy resulted from a~~
 32 ~~violation of Section 261 or Section 285 of the Penal Code, the~~
 33 ~~committee may approve the abortion. If, within five days after the~~
 34 ~~committee has notified the district attorney of the application, the~~
 35 ~~committee does not receive a reply from the district attorney, it~~
 36 ~~may approve the abortion. If the district attorney informs the~~
 37 ~~committee that there is no probable cause to believe the alleged~~
 38 ~~violation did occur, the committee shall not approve the abortion;~~
 39 ~~except as provided in subdivision (b) of this section.~~

1 (b) ~~If the district attorney informs the committee that there is~~
 2 ~~no probable cause to believe the alleged violation did occur, the~~
 3 ~~person who applied for the abortion may petition the superior court~~
 4 ~~of the county in that the alleged rape or incest occurred, to~~
 5 ~~determine whether the pregnancy resulted from a violation of~~
 6 ~~Section 261 or Section 285 of the Penal Code. Hearing on the~~
 7 ~~petition shall be set for a date no later than one week after the date~~
 8 ~~of filing of the petition.~~

9 ~~The district attorney shall file an affidavit with the court stating~~
 10 ~~the reasons for his or her conclusion that the alleged violation did~~
 11 ~~not occur, and this affidavit shall be received in evidence. The~~
 12 ~~district attorney may appear at the hearing to offer further evidence~~
 13 ~~or to examine witnesses.~~

14 ~~If the court finds that it has been proved, by a preponderance of~~
 15 ~~the evidence, that the pregnancy did result from a violation of~~
 16 ~~Section 261 or Section 285 of the Penal Code, it shall issue an order~~
 17 ~~so declaring, and the committee may approve the abortion. Any~~
 18 ~~hearing granted under this section may, at the court's discretion,~~
 19 ~~be held in camera. The testimony, findings, conclusions or~~
 20 ~~determinations of the court in a proceeding under this section shall~~
 21 ~~be inadmissible as evidence in any other action or proceeding,~~
 22 ~~although nothing herein shall be construed to prevent the~~
 23 ~~appearance of any witness who testified at a proceeding under this~~
 24 ~~section, or to prevent the introduction of any evidence that may~~
 25 ~~have been introduced at a proceeding under this section, in any~~
 26 ~~other action or proceeding.~~

27 ~~(c) Notwithstanding any other provision of this section, an~~
 28 ~~abortion shall be approved on the ground of a violation of~~
 29 ~~subdivision (1) of Section 261 of the Penal Code only when the~~
 30 ~~woman at the time of the alleged violation, was below the age of~~
 31 ~~15 years.~~

32 ~~(d) Notwithstanding any other provision of this section, the~~
 33 ~~testimony of any witness in a proceeding under this section shall~~
 34 ~~be admissible as evidence in any prosecution of that witness for~~
 35 ~~perjury.~~

36 **SEC. 5. Section 123410 of the Health and Safety Code is**
 37 **repealed.**

38 ~~123410. The committee of the medical staff referred to in~~
 39 ~~Section 123405 must, in all instances, consist of not less than two~~
 40 ~~licensed physicians and surgeons, and if the proposed termination~~

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1 ~~of pregnancy will occur after the 13th week of pregnancy, the~~
 2 ~~committee must consist of at least three such licensed physicians~~
 3 ~~and surgeons. In no event shall the termination be approved after~~
 4 ~~the 20th week of pregnancy.~~

5 SEC. 6. Section 123415 of the Health and Safety Code is
 6 repealed.

7 ~~123415. The term “mental health” as used in Section 123405~~
 8 ~~means mental illness to the extent that the woman is dangerous to~~
 9 ~~herself or to the person or property of others or is in need of~~
 10 ~~supervision or restraint.~~

11 SEC. 7. Section 123430 of the Health and Safety Code is
 12 repealed.

13 ~~123430. The department shall by regulation establish and~~
 14 ~~maintain a system for the reporting of therapeutic abortions so as~~
 15 ~~to determine the demographic effects of abortion and assess the~~
 16 ~~experience in relation to legal and medical standards pertaining to~~
 17 ~~abortion practices. The reporting system shall not require, permit,~~
 18 ~~or include the identification by name or other means of any person~~
 19 ~~undergoing an abortion. The department shall make a report to the~~
 20 ~~Legislature not later than the 30th calendar day each~~
 21 ~~even-numbered year on its findings related to therapeutic~~
 22 ~~abortions and their effects.~~

23 ~~The department shall seek, in addition to any other funds made~~
 24 ~~available to it, federal funds in order to carry out the purposes of~~
 25 ~~this article.~~

26 SEC. 8. Article 2.5 (commencing with Section 123460) is
 27 added to Chapter 2 of Part 2 of Division 106 of the Health and
 28 Safety Code, to read:

29
 30 Article 2.5. Reproductive Privacy Act

31
 32 123460. This article shall be known and may be cited as the
 33 Reproductive Privacy Act.

34 123462. The Legislature finds and declares that every
 35 individual possesses a fundamental right of privacy with respect
 36 to personal reproductive decisions. Accordingly, it is the public
 37 policy of the state of California that:

38 (a) Every individual has the fundamental right to choose or
 39 refuse birth control.

1 (b) Every woman has the fundamental right to choose to bear
2 a child or to choose and to obtain an abortion, except **as** specifically
3 limited by this article.

4 (c) The state shall not deny or interfere with a woman’s
5 fundamental right to choose to bear a child or to choose and obtain
6 an abortion, except as specifically permitted by this article.

7 123464. The following definitions shall apply for purposes of
8 this chapter:

9 (a) “Abortion” means any medical treatment intended to
10 induce the termination of a pregnancy except for the purpose of
11 producing a live birth.

12 (b) “Pregnancy” means the human reproductive process,
13 beginning with the implantation of an embryo.

14 (c) “State” means the State of California, and every county,
15 city, town and municipal corporation, and quasi-municipal
16 corporation in the state.

17 (d) “Viability” means the point in a pregnancy when, in the
18 good faith medical judgment **of** a physician, on the particular facts
19 of the case before that physician, there is a reasonable likelihood
20 of the fetus’s sustained survival outside the uterus without the
21 application of extraordinary medical measures.

22 123466. The state may not deny or interfere with a woman’s
23 right to choose or obtain an abortion prior to viability of the fetus,
24 or when the abortion is necessary to preserve the life or health of
25 the woman.

26 123468. The performance of an abortion is unauthorized if
27 either of the following is true:

28 (a) The person performing or assisting in performing the
29 abortion is not a health care provider authorized to perform or
30 assist in performing an abortion pursuant to Section 2253 of the
31 Business and Professions Code.

32 (b) The abortion is performed on a viable fetus, and both of the
33 following are established:

34 (1) In the good faith medical judgment **of** the physician, the
35 fetus was viable.

36 (2) In the good faith medical judgment of the physician,
37 continuation of the pregnancy posed no **risk** to life or health of the
38 pregnant woman.

39 **SEC. 9.** No reimbursement is required by this act pursuant to
40 Section **6** of Article XIII **B** of the California Constitution because

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1 the only costs that may be incurred by a local agency or school
2 district will be incurred because this act creates a new crime or
3 infraction, eliminates a crime or infraction, or changes the penalty
4 for a crime or infraction, within the meaning of Section 17556 of
5 the Government Code, or changes the definition of a crime within
6 the meaning of Section 6 of Article XIII B of the California
7 Constitution.

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SB 1301 (Kuehl)

The Reproductive Privacy Act

CO-SPONSORS and SUPPORTERS:

American Association of University Women, California – *American Civil Liberties Union* – *American College of Obstetricians and Gynecologists IX,* – *California Abortion & Reproductive Rights Action League* – *California Family Health Council* – *California Medical Association* – *California National Organization for Women* – *California Nurses Association* – *Hadassah* – *League of Women Voters of California* – *Planned Parenthood Affiliates of California* – *California Commission on the Status of Women* –

The Bill: The Reproductive Privacy Act is a contemporary law governing abortion in California, which replaces the antiquated and unconstitutional provisions of the Therapeutic Abortion Act of 1967'. The bill accomplishes four primary objectives for Californians:

Provides Women Greater Access to Early Non-Surgical Abortion Methods

- SB 1301 will increase access to this safe and early method of abortion by allowing mid-level practitioners, pursuant to their current scope of practice, to provide mifepristone (RU-486) under physician supervision.

Clarifies the Roles of Health Care Professionals

- SB 1301 updates the Business and Professions Code to reflect current abortion practices which permit healthcare providers, acting within their existing scopes of practice, to both perform and assist in the performance of surgical and non-surgical abortions.

Deletes Unconstitutional Provisions of The Therapeutic Abortion Act

- SB 1301 deletes language in current state law that has been found unconstitutional in either the state or federal courts. The Reproductive Privacy Act reflects California's current status as an innovative leader in ensuring its citizens have the freedom to exercise the constitutional right to make decisions regarding their own reproductive health.

Reaffirms Privacy Rights Established By *Roe v. Wade*

- SB 1301 reaffirms the United States Supreme Court's 1973 *Roe v. Wade* decision, which established a woman's legal right to choose an abortion. The Reproductive Privacy Act confirms California's commitment to the rights set forth in the Supreme Court's historic *Roe* ruling. With the composition of the Supreme Court likely to change soon, Californians, now more than ever, need to protect their constitutionally guaranteed right to reproductive privacy.

¹ Health & Safety Code Sections 2590-25954, now codified at Health & Safety Code Sections 123400-123450

The History

In 1967, Governor Ronald Reagan signed the Therapeutic Abortion Act, which expanded legal abortion in California under restrictive criteria. **Most** of those restrictions were subsequently ruled unconstitutional in the 1972 California Supreme Court case *People v. Barksdale*.²

The United States Supreme Court issued its landmark *Roe v. Wade*³ decision in 1973, bolstering California's recognition of abortion as a privacy right guaranteed by the Constitution of the United States.

Though *Roe* and *Barksdale* have rendered much of the Therapeutic Abortion Act obsolete, the Act itself has never been repealed by the Legislature. The end result is a cryptic, often inconsistent abortion code that is laden with constitutional problems.

Why Now?

The Reproductive Privacy Act will provide women greater access to early abortion methods like mifepristone (RU-486) by eliminating arbitrary barriers that currently impede the ability of qualified health care professionals to treat patients in the area of reproductive health.

It is imperative that California clarifies in the law precisely what reproductive privacy rights the women of this great state enjoy. The Reproductive Privacy Act will ensure that California has a constitutionally sound abortion law that would protect privacy rights, now and in the future.

SB 1301 will ensure the safety of reproductive health care while eliminating the stigma the law has historically placed on the option of abortion services.

Summary

The citizens of California deserve a reproductive privacy law that mirrors their respect for the Constitution and desire for reproductive freedom. -In that spirit, the Reproductive Privacy Act offers California a unique opportunity to once again take on the role of leader in the national forum on the issue of reproductive choice.

² *People v. Barksdale*, 8 Cal. 3d 320 (1972)

³ *Roe v. Wade* 410 U.S. 113 (1973)