



## Senator Feinstein Announces Opposition to Child Custody Protection Act

July 25, 2006

*Washington, DC – U.S. Senator Dianne Feinstein (D-Calif.) today announced her opposition to the Child Custody Protection Act. The following is Senator Feinstein's floor statement submitted into the Congressional Record:*

“Mr. President, I rise today to oppose the Child Custody Protection Act, which imposes criminal penalties on those who help transport a minor across state lines to obtain an abortion if she does not first meet the parental involvement requirements of her home state.

My primary concern with this legislation is that it unnecessarily puts minors' health and wellbeing in danger. In addition, the language is so broadly written that it has the effect of harshly punishing those adult family members and loved ones who try to help a young woman in a time of need.

In addition to criminalizing the actions intended to assist a young woman with a difficult decision, this bill would create a new civil action where parents can file a lawsuit against the individual assisting the minor – this means relatives, teachers, other trusted adults as well as potentially the doctor, nurse or clinic staff all could face civil court action.

As a mother and a grandmother, I would argue that, in a perfect world, young women and their parents should communicate openly about all major decisions, including whether to terminate a pregnancy.

And, in fact, many young women do involve a parent in these decisions.

However, the reality is that not all young women live in a household where they can turn to their parents. Some young women face physical, sexual or emotional abuse from their parents; some families do not have open, supporting relationships.

For these young women, they may be more comfortable confiding in an older sister, aunt, or a grandparent. Yet this bill would turn these trusted relatives into criminals if they helped her seek an abortion.

An unplanned pregnancy is upsetting at any age, and this legislation would deprive young women of support when they most need it.

First and foremost, this bill flies in the face of accepted legal precedent. While it reflects a great deal of concern for potential harms and the violation of parents' rights, it ignores the legal rights of young women to choose safe medical care that protects their health.

The legislation lacks an essential, constitutionally-required exception in cases where the restriction it places on the ability of a young woman to get an abortion endangers her health.

I am very concerned that once again language is being proposed that would omit this essential protection for women and girls.

The bill provides some limited exceptions to its criminal and civil liability by allowing a sister, aunt, grandmother, or friend to help a girl cross a state border to get an abortion if her life was in danger. But it does not protect actions taken if her health was in danger.

First of all, the Supreme Court has repeatedly affirmed that there must be protection for both the life *and health* of the mother.

The Supreme Court has ruled time and again from *Doe v. Bolton* (1973) to *Planned Parenthood v. Casey* (1992) to *Stenberg v. Carhart* (2000) that any law restricting access to abortion must contain an exception to protect a woman's health.

Most recently, three federal courts in California, New York, and Nebraska declared the Partial Birth Abortion Ban, which was passed by Congress and signed into law in 2003, unconstitutional and permanently enjoined its enforcement.

All three courts concluded that the law was unconstitutional because it lacked an exception to protect a woman's health.

This measure before the Senate today ignores these precedents and demonstrates a complete disregard for the health of young women.

Secondly, in addition to being unconstitutional, this is bad public policy.

If a girl turns to her sister to ask for help because she's having complications with a hidden pregnancy – how are either of them going to know whether the complication is life threatening or not?

Do we really want to create a situation where a girl's sister, aunt, grandmother or friend has to step into the shoes of a doctor and determine whether complications with a pregnancy are life threatening – or face criminal and civil charges for helping her?

This could occur even if the girl wants to continue her pregnancy but because of health complications cannot.

Does Congress really want to say it is the best public policy to have young women and girls who are in traumatic situations not get medical assistance because it could result in an abortion for a non-life-threatening complication?

Let's be clear -- that is the impact of this legislation.

I believe it is unconstitutional and bad public policy.

A pregnant minor who feels she cannot confide in a parent is already left with few options.

She can seek a judicial bypass.

- But few young women have the tools to navigate our complex legal system. The legal system is very difficult for the average adult to manage let alone a minor in an extremely difficult and vulnerable position.
- In addition, the legal system has demands that further restrict a girl's access; for instance, court hours are usually 9 to 5, requiring a young woman to miss school in order to appear in court.
- and many girls are reluctant to discuss such a personal decision that could involve traumatic experiences with a judge

She may delay her decision. However, an abortion that occurs later in her pregnancy will be more dangerous and complicated than one that occurs in the early stages of her pregnancy.

She may opt to travel out of state, alone, undergoing a medical procedure with no family or friends there to support her.

She may seek a dangerous and illegal abortion.

A pregnant minor who cannot safely tell a parent about her situation faces enough obstacles. We do not need to criminalize well-intentioned assistance provided to her.

I am also concerned that it is not only the young women making a deliberate choice not to tell a parent of an abortion who would suffer under this bill. Access to abortion is declining in this country, for women of all ages. Eighty-seven percent of counties no longer have a doctor who will perform an abortion. For many women, the most convenient provider is across state lines.

An older sister or aunt accompanying a minor to the nearest provider may unwittingly become a criminal. Even if neither woman intended to evade parental consent laws, this act of family support would be criminalized.

A grandmother or sister could have no idea that she is violating a federal law when she helps a family member access legal medical care.

But proponents of this legislation would like you to believe that this debate is not about young women who can no longer find a doctor who will provide full services in their home state.

To them, this is not about the young women who, for whatever reason, need to look beyond a parent for adult support.

While supporters of this bill are correctly horrified by stories of girls kidnapped by older boyfriends and forced into having abortions they did not want, this legislation does not create a limited solution to fix that problem.

In fact, in many cases the actions in these circumstances are already illegal.

Laws prohibit kidnapping.

Laws prohibit statutory rape.

Medical ethics require that physicians obtain informed consent from the patient before performing any medical procedure.

People that violate these laws can already be prosecuted. I welcome a debate on policies that will crack down further on sexual predators who abuse young women.

If there is a problem that current laws are not being enforced then let's address that; if there is a problem that these laws are not strong enough, then less address that, but let's not criminalize behavior of a loving family member, friend, or confidant who is trying to help a young girl in a traumatic time in her life.

This bill is not about protecting vulnerable young women from crime. It is about limiting their access to a constitutionally protected medical procedure.

This legislation does reflect a great deal of concern for potential harms and the violation of rights—of parents.

Under this proposal, a parent has legal recourse if his or her supposed “right” to stop their daughter's abortion is violated. Parents can sue to collect damages.

This bill, in fact, could create a situation in which a mother sues a grandmother for helping her granddaughter exercise her right to choose. Yet it leaves a young woman with no recourse for the violation of their right to seek and receive safe medical care of her choice.

This legislation also runs counter to basic notions of federalism, linking a young woman to the law of her home state no matter where she may be living. No other state laws follow her to college or summer camp.

In this country, state laws do not extend beyond state borders. When residents from my home state of California travel to Nevada for vacations, they are allowed to play the slot machines, even though gambling is illegal at home. There is no reason why laws should reach across state lines to restrict access to a safe and legal medical procedure.

Mr. President, I wish this were a perfect world. I wish we could legislate that every child has a loving and stable parent to guide him or her through the trials of adolescence. I wish we could legislate that every family talk openly and honestly about the risks of sexual activity.

But we cannot. Parental consent laws do not create these idealized families. Instead, they further burden those that are already troubled. A young woman facing an unplanned pregnancy in an unstable situation must be able to turn to another trusted adult—without the fear of subjecting the adult to federal criminal liability.

The very fact that we are having this debate is a clear demonstration of the leadership's misplaced priorities. They claim this is a women's health issue, a family values issue.

We have only a few legislative days remaining this year. There are so many other problems we should be addressing.

We should be debating ways to prevent these difficult situations from arising the first place. We should be discussing policies that promote honest information about reproductive health and ready access to contraceptives. No teen should face an unplanned pregnancy. Those that do must not face it alone.

I urge my colleagues to join me in opposing this bill that endangers young women's health and turns their relatives into criminals.”

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