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# Proposition 187: Staff Report on the Implications for California Colleges and Universities

Assembly Committee on Higher Education

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# Proposition 187

**Staff Report  
on the  
Implications for  
California Colleges  
and Universities**

**Assemblymember  
Marguerite Archie-Hudson  
Chair**



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# Proposition 187

Staff Report on the Implications for California Colleges and Universities

September 1994

On November 8, 1994, the California electorate will consider Proposition 187, an initiative measure to (1) bar state and local agencies from providing education, health care, welfare, or other social services to any person whose citizenship or legal status is not verified and (2) require government employees (including teachers, doctors, social workers, and peace officers) to report any person determined to be or under reasonable suspicion of being in the United States illegally. A summary of the initiative is displayed in Figure 2 of this report.

This staff report provides an analysis of the postsecondary provisions of Proposition 187, and identifies several potential policy, fiscal, and administrative problems likely to be associated with the implementation of the proposed statute. If Proposition 187 is enacted by the electorate, any correction or amendment of the new statute could be made only by a two-thirds vote of the Legislature or a subsequent ballot proposition.

## Background

Each of California's 129 public colleges and universities is open to any student who meets the institution's specific admission standards and pays the appropriate tuition or fees. Most students are United States citizens or permanent residents who have established official residence in California, and nearly all of the others are residents of other states. At individual campuses where physical capacity precludes the admission of all qualified

## Contents

Background .....	1
Legal History and Context .....	4
Implementing Proposition 187 .....	6
The Cost of Proposition 187 .....	8

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students, admission officers generally give priority to California residents. Pursuant to the state's Master Plan for Higher Education, however, every California resident who meets an institution's basic admission requirements is, in fact, admitted to one of the campuses of the institution.

Public institutions of higher education also enroll a small number of students who are not legal residents of the United States. The largest subcategories of these students are foreign students in this country on a visa (usually an "F", or student, visa), and persons granted asylum or refugee status by the federal government — together, these two subcategories account for most of the students who are not legal residents of the U.S. These students are often referred to as "nonresident aliens" on institutional forms and reports, and, by definition, their presence in the U.S. is legally documented.

The number of students whose presence in this country is "undocumented" cannot be reliably estimated because the educational institutions do not collect such information and, if they did, the veracity of the data would be difficult to determine. A majority of undocumented persons, for example, entered the United States legally but remained after the expiration of their visa or other immigration documentation; some students enrolled at a public institution of higher education may have become undocumented after residence was determined by the campus. In addition, self-reporting of any illegal status or activity generally results in underestimation.

While recognizing these substantial data constraints on the estimation of undocumented student enrollment, we asked the system offices of the University of California, California State University, and California Community Colleges to provide rough estimates of this population. These estimates are displayed in Figure 1. Limited confirmation of these rough figures was obtained by querying individual campuses.

For this report, committee staff reviewed the statutes and institutional policies relating to student residency, complete text of Proposition 187, committee files for similar legislation considered by the Legislature during the 1991-92 and 1993-94 Regular and Special Sessions, briefs and opinions in the major judicial cases relating to undocumented students, budgets and fee schedules for the three public institutions, and materials prepared by the Legislative Counsel and the Legislative Analyst. Rough estimates of the enrollment of undocumented students were obtained through private communications with representatives of the three public institutions, and triangulated with campus-level reports by a nonrandom sample of registrars.

*Figure 1*  
**Estimated Student Enrollment,  
by Status**

	UC	CSU	CC
US Citizen/ Perm. Resident	96%	96%	94%
Visa	4%	3%	2%
Refugee/Asylee	*	*	1%
Undocumented	*	*	1%
Other	*	*	2%

\* Less than one percent.

Of the almost 2 million students enrolled in public colleges and universities, fewer than 15,000, or less than one percent, appear to be undocumented. Nearly all of these students attend community colleges (where they are charged nonresident tuition in the same manner as out-of-state and foreign students); the proportion of undocumented student enrollment at UC and CSU is less than one-tenth of one percent.

### ***Residency Status, Tuition, and State Subsidies***

Due to conflicting court decisions, the status, tuition, and subsidy associated with undocumented students varies by segment (UC, CSU, or community college).

At UC and community colleges, undocumented students who meet all requirements for residency status are nevertheless ineligible for residency, and must pay both resident fees and nonresident tuition. These charges

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#### **FIGURE 2**

### **Summary of Proposition 187**

#### **Higher Education**

- Prohibits public colleges and universities from enrolling or permitting the attendance of students who are not legally authorized to be in the U.S.
- Requires each institution to verify the legal status of every student at the beginning of every academic term starting January 1, 1995.
- Within 45 days of determining that a person is not, or is suspected not to be, in the United States legally, the institution would be required to report this finding to the Immigration and Naturalization Service, the Attorney General, the Superintendent of Public Instruction, and the student.

#### **Elementary and Secondary Education**

- Prohibits public schools from allowing the attendance of children who are not legally in the U.S.
- Requires each school to verify the legal status of every child, and of the parents or guardians.
- If the school determines or reasonably suspects that a student, parent, or guardian is not legally in the United States, the school must report the apparent undocumented status to the INS, the Attorney General, the Superintendent of Public Instruction, and the parent or guardian. The school would then provide 90 days of additional instruction for the child in order to accomplish an orderly transition to a school in the child's "country of origin."

#### **Other Provisions**

- Excludes undocumented persons from public social services and publicly-funded health care (except emergency care required by federal law), and requires agencies to report persons who are determined or reasonably suspected to be undocumented to the INS, Attorney General, and the appropriate state agency.
  - Requires every law enforcement agency to attempt to verify the legal status of every arrestee who is suspected of being in the United States illegally, and to inform and cooperate fully with the INS.
  - Makes the manufacture, distribution, sale, or use of false immigration or citizenship documents a state felony punishable by five years in state prison or a fine up to \$75,000.
-

fully offset the cost of providing educational services, so no state subsidy is provided to undocumented students at these two institutions. Because nonresident charges generally exceed the cost of the services provided, the subsidy flows in the opposite direction — from the undocumented student to the state. Barring undocumented students would eliminate this “profit margin” and, paradoxically, reduce the level of resources available to support educational services for legal resident students.

Community college students enrolled in certain noncredit courses pay no fees or tuition, regardless of residency status. Courses in this category include some citizenship and English as a second language classes required for amnesty or naturalization, as well as all precollegiate, or remedial, classes. Noncredit classes are funded by the state at a substantially lower per-student rate than regular credit courses.

At the California State University, undocumented students who satisfy statutory and institutional requirements (see Figure 3) may secure California residency status; these students pay resident fees but not nonresident tuition. The net state subsidy for resident students is about \$7,300 per year.

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## Legal History and Context

There has been no litigation on the constitutionality of a complete prohibition on the attendance of undocumented persons at state postsecondary institutions. There have been judicial rulings, however, on an enrollment ban at elementary and secondary schools and on the more limited legal question of undocumented students’ residency status for determining postsecondary tuition rates. The ambiguous implications of these cases for Proposition 187 remain unsettled after a decade of litigation.

### *The Plyler Decision*

In *Plyler v. Doe*, the US Supreme Court invalidated a Texas law authorizing school districts to bar undocumented students from public elementary and secondary schools. The court noted that the statute imposed a “lifetime hardship on a discrete class of children not accountable for their disabling status.”

Within the legal community, the implications of the *Plyler* case for postsecondary education are ambiguous. Some attorneys contend that barring postsecondary enrollment by so-called “Plyler” students — those who entered as minors with their parents — is equally unconstitutional. Legislative Counsel has opined, on the other hand, that *Plyler* would not apply because (1) unlike elementary and secondary instruction, postsecondary education is not a fundamental and protected right under California law, and (2) postsecondary-level students are not “blameless children.” No case to resolve these differing interpretations has reached the federal Courts of Appeal or the US Supreme Court.

The Equal Protection Clause ambiguity centers around whether four principles articulated by the court in *Plyler* apply to postsecondary education:

- ◆ Is there an explicit or implicit right to postsecondary education?
- ◆ What level of individual hardship is imposed by a ban on participation?
- ◆ Does categorical denial of postsecondary educational opportunity create or perpetuate an underclass of future residents?
- ◆ Does a minor who enters this country with his or her parents become legally accountable for that action upon reaching the age of majority?

#### *Leticia A. through AAW:* *Legal Conflict Over Residency Status*

The *Plyler* principles were the basis of *Leticia A. v. UC Regents*, a 1985 case in the Alameda Superior Court that sparked a decade of litigation over the residency status of undocumented students. In *Leticia A.*, the court declared unconstitutional a state statute (Education Code Section 68062) which precluded undocumented students from establishing residency for tuition purposes (see sidebar). The court held that the statute violated the Equal Protection Clause of the state and federal constitutions. The two public universities elected to not appeal the decision. The community colleges and the Student Aid Commission, who were not parties to the case, chose to comply voluntarily.

Four years later, a UCLA staffperson filed suit in the Los Angeles Superior Court (*Bradford v. Regents*) asking that the original statute be declared constitutional. The court ruled in favor of the staffperson and ordered UC to

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#### Figure 3 Establishing Residency

- To establish residency for tuition purposes, a student must demonstrate that he or she has resided in California for more than one year and that he or she intends California as the permanent place of residence.
- A person can be resident in only one state.
- Individual institutions require different forms of proof for establishment of residency, such as voter registration, U.S. military service, income tax records, W-2 forms, utility bills or vehicle registration. Many institutions require multiple forms of proof.

#### Tuition and Fees, 1994-95

	Resident	Nonresident
UC	\$4,400	\$12,100
CSU	\$1,700	\$ 9,000
CCC	\$ 390	\$ 3,230

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cease granting residency status to otherwise-qualified undocumented students. UC appealed unsuccessfully. CSU was not a party to *Bradford*, and continued to grant residency under *Leticia A.*; the Alameda court subsequently reaffirmed its 1985 decision notwithstanding the Los Angeles ruling. The community colleges and the Student Aid Commission, as parties to neither *Leticia A.* nor *Bradford*, reversed their policies and implemented the *Bradford* ruling.

As a result of the conflicting rulings, each of the three public institutions and the Student Aid Commission implemented differing residency requirements. Students (and student services staff) grew increasingly confused. An undocumented high school senior would be classified as a resident at CSU and as a nonresident for the Cal Grant Program, while classification at UC and the community colleges would depend on the specific details and circumstances of the student's legal status. A Cal Grant recipient beginning study at a community college and then transferring to CSU could face three differing classifications on the path to a baccalaureate.

To resolve the conflicting case law, the Legislature in 1991 passed AB 592 (Polanco) as an urgency statute with broad bipartisan support. The bill proposed to list explicitly the immigration categories under which a person would not be eligible for California residency (i.e. transients prohibited from establishing domicile in the U.S.). AB 592 was vetoed by Governor Wilson.

In 1992, the Los Angeles Superior Court ordered CSU to stop classifying undocumented students as residents in *American Association of Women (AAW) v. CSU*. The ruling created a direct conflict between the Alameda and Los Angeles courts, so CSU asked the Alameda court to dissolve its 1985 order. The Alameda court rejected the CSU motion. CSU filed an appeal with the Court of Appeal (First District); a decision is still pending.

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## Implementing Proposition 187

If Proposition 187 is enacted, campus administrators and student services personnel will face a series of policy paradoxes, implementation problems, and legal conflicts:

- ◆ Undocumented students who have applied for legal status with the INS or a court — so-called in-process students — would be barred or expelled, even though the INS is fully aware of their presence and location.
- ◆ Impacted student service units — admissions, financial aid, registrar — that are already under severe duress would face a significant administrative burden due to new procedures, staff training, and reverification of each of the 2 million public postsecondary students every quarter or semester. Immigration statuses and procedures are numerous and ambiguous, and the verification task would be substantial.
- ◆ Campus staff would be placed between conflicting state and federal mandates, since the federal Family Educational Rights and Privacy Act expressly prohibits institutions from releasing information about students to outside agencies such as the Attorney General. At least \$1.1 billion in federal funds would be jeopardized if campuses elected to comply with Proposition 187 and violate the Privacy Act.
- ◆ Proposition 187 provides no guidance or framework for campus counselors to determine “reasonable suspicion” that a student may be undocumented. Past practice with residency determination (as described in testimony to the Committee) indicates that legally-resident Asian and Latino students would be targets of presumed suspicion.
- ◆ Foreign students could attend a public college by paying the full cost, but an undocumented resident of California would be barred.
- ◆ There is no “grandfather” provision; a student who entered in good faith under current law and who has completed the freshman, sophomore, and junior years, and the first semester of the senior year, would be expelled with only five months, or less than 15 percent of the degree program, remaining.

**Figure 5**  
**Tuition Analysis of Proposition 187**

	State/Local Cost per Student	Tuition/Fees per Student (Undocumented)	"Profit" per Student	Net Revenue Change
University of California	\$6,000	\$12,100	\$6,100	-\$760,000
California State University	\$4,400	\$1,770	-\$2,630	+\$1,315,000
California Community Colleges	\$3,000	\$3,230	\$230	-\$3,220,000
TOTAL, annual fiscal impact				<b>-\$2,685,000</b>

### The Cost of Proposition 187

The fiscal impact of Proposition 187 is mixed and dependent, in part, on pending judicial action; any analysis is highly sensitive to the accuracy of estimated enrollment figures for persons affected directly by the initiative. Nevertheless, our staff analysis indicates that implementation of Proposition 187 will result in (1) annual net tuition revenue losses of at least \$2.8 million, (2) significant annual verification, reporting, and related administrative costs, and (3) significant one-time administrative costs in the 1994-95 fiscal year for forms redesign, software reprogramming and database conversion, and staff training. The tuition revenue analysis of Proposition 187 is presented in Figure 5; the figure does not include substantial verification, reporting, and related administrative costs.

In addition to direct tuition revenue losses and administrative costs, the Senate Office of Research indicates that the proposed requirement for college staff to report undocumented or suspected undocumented students to the INS, Attorney General, and the Superintendent of Public Instruction would violate the Family Educational Rights and Privacy Act (FERPA), thereby jeopardizing \$1 billion in federal funds. This amount includes \$700 million in federal research funds for UC, \$120 million in federal funds for the community colleges, and \$140 million in federal funds for CSU.

Relying upon alternative cost assumptions and unspecified enrollment estimates, the Legislative Analyst reports that Proposition 187 would result in overall

savings “that could be up to tens of millions of dollars annually” less administrative costs and federal penalties for violating FERPA. Given the enrollment figures reported by the institutions themselves, however, we can find no basis for a savings level of this magnitude; even using the LAO cost assumption yield total savings of only \$13 million plus any savings from barring any undocumented students who are currently avoiding identification.\*

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\* To calculate its fiscal estimates, LAO subtracts the average cost of education for one UC student from the total tuition and fees paid by the student; these figures fully offset one another. The average cost, however, significantly overestimates the savings associated by denying enrollment to a marginal number of students. The average cost represents all fixed and variable costs divided by the number of students. But for marginal reductions in enrollment levels, a college or university will still have the same administrative infrastructure expenses (e.g. the salary of the Chancellor and the number of Vice Chancellors will not be affected) and the same staffing for academic and service departments necessary to meet minimum program needs, and other operating costs will remain relatively constant. No estimate of the enrollment of undocumented students indicates that their disenrollment would be substantial enough to affect the basic fixed costs of operating public colleges and universities.

For this reason, our analysis uses the state’s budgeted marginal cost per student — the amount the state actually allocates for each additional student or would save for each fewer student — to determine net fiscal impact.