

2 SSB 6290 - S AMD - 612
3 By Senator Benton

4 PULLED 2/16/98

5 Strike everything after the enacting clause and insert the
6 following:

7 NEW SECTION. Sec. 1. Sections 1 through 18 of this act shall be
8 known as and may be cited as the parental notification and consent of
9 abortion act.

10 NEW SECTION. Sec. 2. (1) The legislature finds that:

11 (a) Unemancipated minor children and incompetent persons often lack
12 the maturity or ability to make fully informed choices that take into
13 account both immediate and long-range consequences;

14 (b) The medical, emotional, and psychological consequences of
15 abortion are sometimes serious and can be lasting, particularly when
16 the patient is an immature or incompetent person;

17 (c) The capacity to become pregnant and the capacity to exercise
18 mature judgment concerning abortion are not necessarily related;

19 (d) Parents or guardians ordinarily possess information essential
20 to a physician's medical judgment concerning an unemancipated minor
21 child or an incompetent person;

22 (e) Parents or guardians who are aware that an unemancipated minor
23 child or incompetent person may have or has had an abortion may ensure
24 that she receives adequate support, counseling, and medical attention
25 before and after her abortion;

26 (f) Parental or guardian consultation and notification is usually
27 desirable and in the best interest of the unemancipated minor child or
28 incompetent person.

29 (2) The purpose of the legislature in enacting this parental
30 notification law is to further the important and compelling state
31 interests of:

32 (a) Protecting the rights of parents to rear children who are
33 members of their household;

34 (b) Fostering family unity and preserving the family as a viable
35 social unit; and

1 (c) Reducing teenage pregnancy and unnecessary abortion.

2 NEW SECTION. **Sec. 3.** Unless the context clearly requires
3 otherwise, the definitions in this section apply throughout sections 1
4 through 18 of this act.

5 (1) "Abortion" means the use or prescription of any instrument,
6 medicine, drug, or other substance or device to terminate the pregnancy
7 of a woman known by the physician to be pregnant. The use or
8 prescription is not an abortion if done with the intent to (a) save the
9 life or preserve the health of an unborn child, (b) remove a dead
10 unborn child, or (c) deliver an unborn child prematurely in order to
11 preserve the health of both the pregnant woman and her unborn child.

12 (2) "Actual notification" means the giving of notice directly by
13 conversing with the parent or guardian, either in person or by
14 telephone.

15 (3) "Constructive notification" means notice by certified mail to
16 the last known address of the parent or guardian, with delivery deemed
17 to have occurred forty-eight hours after the certified notice is
18 mailed.

19 (4) "Coercion" means restraining, or dominating the choice of, an
20 unemancipated minor or incompetent person by use of force, by threat of
21 force, by deprivation of necessary food and shelter, or by use of
22 fraud, misrepresentation, or deceit.

23 (5) "Emancipated minor" means a person under eighteen years of age
24 who is or has been lawfully married or who has been emancipated.

25 (6) "Incompetent person" means a person who has been found to be
26 legally incompetent under RCW 11.88.010(1)(e).

27 (7) "Medical emergency" means a condition exists that, on the basis
28 of the physician's good-faith clinical judgment, necessitates immediate
29 termination of pregnancy to avert her death, or failure to immediately
30 terminate the pregnancy will create serious risk of substantial and
31 irreversible impairment of a major bodily function of the pregnant
32 woman.

33 (8) "Neglect" means the failure of a parent or guardian to supply
34 an unemancipated minor or incompetent person with necessary food,
35 clothing, shelter, or medical care when that parent or guardian is
36 reasonably able to do so, or the failure of a parent or guardian to
37 protect an unemancipated minor or incompetent person from a condition
38 or action that imminently and seriously endangers the health of the

1 unemancipated minor or incompetent person when that parent or guardian
2 is reasonably able to protect the unemancipated minor or incompetent
3 person from that condition or action.

4 (9) "Physical abuse" means any physical injury that is
5 intentionally inflicted by a parent or guardian on an unemancipated
6 minor child or incompetent person and that is medically significant as
7 determined by a physician.

8 (10) "Physician" means any person licensed to practice medicine
9 under chapter 18.57 or 18.71 RCW.

10 (11) "Sexual abuse" means a crime or offense involving sexual
11 contact or sexual intercourse as defined in RCW 9A.44.010 and committed
12 against an unemancipated minor or incompetent person by a family member
13 or guardian.

14 NEW SECTION. **Sec. 4.** Unless the context clearly requires
15 otherwise, the definition in this section applies throughout sections
16 1 through 18 of this act.

17 "Consent" means the conversing directly with the custodial parent
18 or guardian, either in person or by telephone, and the custodial parent
19 or guardian giving his or her agreement to performing the abortion on
20 the minor or incompetent person.

21 NEW SECTION. **Sec. 5.** (1) A physician shall not perform an
22 abortion upon an unemancipated minor or upon an incompetent person
23 unless the physician has given forty-eight hours actual notification to
24 a custodial parent or to the guardian of the pregnant unemancipated
25 minor or pregnant incompetent person of the physician's intention to
26 perform the abortion. The notification may be given by a referring
27 physician. If the notification is given by a referring physician, the
28 physician shall not perform the abortion without receiving the
29 referring physician's written statement certifying that the referring
30 physician has provided notification. If actual notification is not
31 possible after a reasonable effort, the physician or the physician's
32 agent shall give forty-eight hours constructive notification.

33 (2) Notification shall not be given under subsection (1) of this
34 section unless the unemancipated minor or incompetent person has signed
35 a form prescribed by the department of health indicating that the
36 unemancipated minor or incompetent person has been fully informed of
37 the options available under sections 1 through 18 of this act. The

1 department of health shall make the form available to all physicians in
2 the state. The department of health shall ensure that the form
3 includes information:

4 (a) That notification of a parent or guardian is generally required
5 before an unemancipated minor or incompetent person may obtain an
6 abortion;

7 (b) That notification of a parent or guardian is not required if
8 the mother of the unborn child is emancipated as defined in section 3
9 of this act;

10 (c) That an alternative to providing notification may be available
11 under section 7 of this act if the mother of the unborn child has been
12 the victim of neglect or sexual or physical abuse by a parent or
13 guardian as defined in section 3 of this act;

14 (d) That notification of a parent or guardian of the mother of the
15 unborn child may not be required under section 9 of this act if a
16 medical emergency exists and there is insufficient time to obtain the
17 required notification;

18 (e) That the mother of the unborn child will be provided court-
19 appointed counsel at her request, and that notification may be waived
20 by a court under section 14 of this act, if the court finds by clear
21 and convincing evidence that: (i) She is sufficiently mature to decide
22 whether to have an abortion; (ii) there is evidence of a pattern of
23 sexual or physical abuse by her parent or guardian; or (iii)
24 notification to a parent or guardian would not be in the best interest
25 of the mother of the unborn child;

26 (f) That in any circumstance the mother of the unborn child may
27 choose to discuss her situation with her parent or guardian; and

28 (g) That coercion, as defined in section 3 of this act, of the
29 mother of an unborn child to have an abortion is a violation of the
30 law.

31 NEW SECTION. **Sec. 6.** (1) A physician shall not perform an
32 abortion upon an unemancipated minor or upon an incompetent person
33 unless the physician has received the actual consent of a custodial
34 parent or the guardian of the pregnant unemancipated minor or pregnant
35 incompetent person of the physician's intention to perform the
36 abortion. The consent may be transmitted by a referring physician. If
37 the consent is given by a referring physician, the physician shall not
38 perform the abortion without receiving the referring physician's

1 written statement certifying that the custodial parent or guardian has
2 given consent.

3 (2) Consent shall not be requested under subsection (1) of this
4 section unless the unemancipated minor or incompetent person has signed
5 a form prescribed by the department of health indicating that the
6 unemancipated minor or incompetent person has been fully informed of
7 the options available under sections 1 through 18 of this act. The
8 department of health shall make the form available to all physicians in
9 the state. The department of health shall ensure that the form
10 includes information that:

11 (a) The consent of a parent or guardian is generally required
12 before an unemancipated minor or incompetent person may obtain an
13 abortion;

14 (b) The consent of a parent or guardian is not required if the
15 mother of the unborn child is emancipated as defined in section 3 of
16 this act;

17 (c) An alternative to consent may be available under section 7 of
18 this act if the mother of the unborn child has been the victim of
19 neglect or sexual or physical abuse by a parent or guardian as defined
20 in section 3 of this act;

21 (d) The consent of a parent or guardian of the mother of the unborn
22 child may not be required under section 10 of this act if a medical
23 emergency exists and there is insufficient time to obtain the required
24 consent;

25 (e) The mother of the unborn child will be provided court-appointed
26 counsel at her request, and that the consent may be waived by a court
27 under section 15 of this act, if the court finds by clear and
28 convincing evidence that: (i) She is sufficiently mature to decide
29 whether to have an abortion; (ii) there is evidence of a pattern of
30 sexual or physical abuse by her parent or guardian; or (iii) consent to
31 a parent or guardian would not be in the best interest of the mother of
32 the unborn child;

33 (f) In any circumstance the mother of the unborn child may choose
34 to discuss her situation with her parent or guardian; and

35 (g) Coercion, as defined in section 3 of this act, of the mother of
36 an unborn child to have an abortion is a violation of the law.

37 NEW SECTION. **Sec. 7.** If the pregnant unemancipated minor or
38 pregnant incompetent person makes a written, signed declaration that

1 she is a victim of sexual abuse, neglect, or physical abuse by either
2 of her parents or her guardian, the physician intending to perform the
3 abortion shall provide the notification required by sections 1 through
4 18 of this act to a brother or sister of the unemancipated minor or
5 incompetent person so long as that sibling is over twenty-one years of
6 age, or to a stepparent or grandparent specified by the unemancipated
7 minor or incompetent person; and that physician shall place in the
8 unemancipated minor's or incompetent person's medical record
9 certification of having received the written declaration of abuse or
10 neglect. The physician shall ensure that the written declaration
11 remains confidential.

12 A physician relying in good faith upon a written declaration under
13 this section shall not be civilly liable under sections 1 through 18 of
14 this act for failure to provide notification to a parent or guardian.

15 Receipt of a written declaration under this section does not
16 authorize the physician to perform an abortion. The physician shall
17 not perform an abortion unless authorized to do so under sections 1
18 through 18 of this act.

19 NEW SECTION. **Sec. 8.** If the pregnant unemancipated minor or
20 pregnant incompetent person makes a written, signed declaration that
21 she is a victim of sexual abuse, neglect, or physical abuse by either
22 of her parents or her guardian, the physician intending to perform the
23 abortion shall request the consent required by sections 1 through 18 of
24 this act to a brother or sister of the unemancipated minor or
25 incompetent person so long as that sibling is over twenty-one years of
26 age, or to a stepparent or grandparent specified by the unemancipated
27 minor or incompetent person; and that physician shall place in the
28 unemancipated minor's or incompetent person's medical record
29 certification of having received the written declaration of abuse or
30 neglect. The physician shall ensure that the written declaration
31 remains confidential.

32 A physician relying in good faith upon a written declaration under
33 this section shall not be civilly liable under sections 1 through 18 of
34 this act for failure to request consent of a parent or guardian.

35 Receipt of a written declaration under this section does not
36 authorize the physician to perform an abortion. The physician shall
37 not perform an abortion unless authorized to do so under sections 1
38 through 18 of this act.

1 NEW SECTION. **Sec. 9.** Notification is not required under section
2 5 or 7 of this act if:

3 (1) The attending physician certifies in the unemancipated minor's
4 or incompetent person's medical record that a medical emergency exists,
5 and there is insufficient time to provide the required notification;

6 (2) Notification is waived in writing by the person who is, under
7 sections 1 through 18 of this act, entitled to notification; or

8 (3) Notification is waived under section 14 of this act.

9 NEW SECTION. **Sec. 10.** Consent is not required under section 6 or
10 8 of this act if:

11 (1) The attending physician certifies in the unemancipated minor's
12 or incompetent person's medical record that a medical emergency exists,
13 and there is insufficient time to acquire the required consent;

14 (2) Consent is waived in writing by the person who is, under
15 sections 1 through 18 of this act, entitled to consent; or

16 (3) Consent is waived under section 15 of this act.

17 NEW SECTION. **Sec. 11.** A parent, guardian, or other person who
18 engages in coercion, as defined in section 3 of this act, of an
19 unemancipated minor or incompetent person to persuade her to have an
20 abortion performed is guilty of a misdemeanor. Being subjected to
21 coercion to obtain or for refusal to obtain an abortion by the parents
22 or guardian of the unemancipated minor or incompetent person shall
23 constitute grounds for the unemancipated minor or incompetent person to
24 be found dependent under chapter 13.34 RCW.

25 NEW SECTION. **Sec. 12.** Physicians required to provide notification
26 under sections 1 through 18 of this act shall file with the department
27 of health, on forms prescribed by the department, monthly reports
28 indicating the number of notifications provided to a parent, guardian,
29 brother, sister, stepparent, or grandparent during the preceding month
30 under sections 1 through 18 of this act, and the number of times in
31 which exceptions were made to the notification requirement under
32 sections 1 through 18 of this act, as well as the type of exception.
33 Physicians shall not use names of the unemancipated minors or
34 incompetent persons on the forms. The department shall on an annual
35 basis compile and make available to the public the data required to be
36 reported under this section.

1 NEW SECTION. **Sec. 13.** Physicians required to obtain consent under
2 sections 1 through 18 of this act shall file with the department of
3 health, on forms prescribed by the department, monthly reports
4 indicating the number of requests for consent to a parent, guardian,
5 brother, sister, stepparent, or grandparent during the preceding month
6 under sections 1 through 18 of this act, and the number of times in
7 which exceptions were made to the consent requirement under sections 1
8 through 18 of this act, as well as the type of exception. Physicians
9 shall not use names of the unemancipated minors or incompetent persons
10 on the forms. The department shall on an annual basis compile and make
11 available to the public the data required to be reported under this
12 section.

13 NEW SECTION. **Sec. 14.** (1) The provisions of this section shall
14 apply to unemancipated minors and incompetent persons whether or not
15 they are residents of this state.

16 (2) The unemancipated minor or incompetent person may petition a
17 superior court for a waiver of the notification requirement and may
18 participate in proceedings on her own behalf. The petition for waiver
19 of notification shall include a statement that the petitioner is
20 pregnant and is an unemancipated minor or incompetent person. The
21 court reviewing the petition shall appoint a guardian ad litem for her.
22 A guardian ad litem appointed under this section shall act to maintain
23 the confidentiality of the proceedings.

24 The court shall advise the unemancipated minor or incompetent
25 person that she has a right to court-appointed counsel and shall
26 provide the counsel upon request.

27 (3) Court proceedings under this section shall be closed and
28 confidential and shall ensure the anonymity of the unemancipated minor
29 or incompetent person. All court documents under this section shall be
30 sealed. The unemancipated minor or incompetent person has the right to
31 file her petition in the court using a pseudonym or using solely her
32 initials. These proceedings shall be given precedence over other
33 pending matters to the extent necessary to ensure that the court
34 reaches a decision promptly. The court shall rule, and issue written
35 findings of fact and conclusions of law, within four court days from
36 the filing of the petition, except that the four-day rule may be
37 extended at the request of the unemancipated minor or incompetent
38 person.

1 (4) If the court finds, by clear, cogent, and convincing evidence,
2 that the petitioner is sufficiently mature or able to decide whether to
3 have an abortion, the court shall issue an order authorizing the
4 petitioner to consent to the performance or inducement of an abortion
5 without providing notification to a parent or guardian. If the court
6 does not make the finding specified in this subsection or subsection
7 (5) of this section, it shall dismiss the petition.

8 (5) If the court finds, by a preponderance of the evidence, that
9 there is a pattern of physical or sexual abuse by a parent or guardian
10 of the petitioner, or that notification to a parent or guardian is not
11 in the best interest of the petitioner, the court shall issue an order
12 authorizing the petitioner to consent to the performance or inducement
13 of an abortion without notification to a parent or guardian. If the
14 court does not make the finding specified in this subsection or
15 subsection (4) of this section, it shall dismiss the petition.

16 (6) A court that conducts proceedings under this section shall
17 issue written and specific factual findings and legal conclusions
18 supporting its decision and shall maintain a confidential record of
19 evidence and the judge's findings and conclusions.

20 (7) A procedure for expedited confidential appeal shall be
21 available, as the supreme court provides by rule, to an unemancipated
22 minor or incompetent person whose waiver of notification is denied. An
23 order waiving the notification requirement shall not be subject to
24 appeal.

25 (8) Filing fees shall not be required of an unemancipated minor or
26 incompetent person who petitions a court for a waiver of parental
27 notification under sections 1 through 18 of this act at either the
28 trial or the appellate level.

29 NEW SECTION. **Sec. 15.** (1) The provisions of this section shall
30 apply to unemancipated minors and incompetent persons whether or not
31 they are residents of this state.

32 (2) The unemancipated minor or incompetent person may petition a
33 superior court for a waiver of the consent requirement and may
34 participate in proceedings on her own behalf. The petition for waiver
35 of consent shall include a statement that the petitioner is pregnant
36 and is an unemancipated minor or incompetent person. The court
37 reviewing the petition shall appoint a guardian ad litem for her. A

1 guardian ad litem appointed under this section shall act to maintain
2 the confidentiality of the proceedings.

3 The court shall advise the unemancipated minor or incompetent
4 person that she has a right to court-appointed counsel and shall
5 provide the counsel upon request.

6 (3) Court proceedings under this section shall be closed and
7 confidential and shall ensure the anonymity of the unemancipated minor
8 or incompetent person. All court documents under this section shall be
9 sealed. The unemancipated minor or incompetent person has the right to
10 file her petition in the court using a pseudonym or using solely her
11 initials. These proceedings shall be given precedence over other
12 pending matters to the extent necessary to ensure that the court
13 reaches a decision promptly. The court shall rule, and issue written
14 findings of fact and conclusions of law, within four court days from
15 the filing of the petition, except that the four-day rule may be
16 extended at the request of the unemancipated minor or incompetent
17 person.

18 (4) If the court finds, by clear, cogent, and convincing evidence,
19 that the petitioner is sufficiently mature or able to decide whether to
20 have an abortion, the court shall issue an order authorizing the
21 petitioner to consent to the performance or inducement of an abortion
22 without the consent of a parent or guardian. If the court does not
23 make the finding specified in this subsection or subsection (5) of this
24 section, it shall dismiss the petition.

25 (5) If the court finds, by a preponderance of the evidence, that
26 there is a pattern of physical or sexual abuse by a parent or guardian
27 of the petitioner, or that the consent of a parent or guardian is not
28 in the best interest of the petitioner, the court shall issue an order
29 authorizing the petitioner to consent to the performance or inducement
30 of an abortion without the consent of a parent or guardian. If the
31 court does not make the finding specified in this subsection or
32 subsection (4) of this section, it shall dismiss the petition.

33 (6) A court that conducts proceedings under this section shall
34 issue written and specific factual findings and legal conclusions
35 supporting its decision and shall maintain a confidential record of
36 evidence and the judge's findings and conclusions.

37 (7) A procedure for expedited confidential appeal shall be
38 available, as the supreme court provides by rule, to an unemancipated

1 minor or incompetent person whose waiver of consent is denied. An
2 order waiving the consent requirement shall not be subject to appeal.

3 (8) Filing fees shall not be required of an unemancipated minor or
4 incompetent person who petitions a court for a waiver of parental
5 consent under sections 1 through 18 of this act at either the trial or
6 the appellate level.

7 NEW SECTION. **Sec. 16.** The supreme court is respectfully requested
8 to establish rules to ensure that proceedings under sections 1 through
9 18 of this act are handled in an expeditious and confidential manner
10 and to satisfy requirements of federal courts binding on this
11 jurisdiction.

12 NEW SECTION. **Sec. 17.** (1) Any physician who intentionally
13 performs an abortion with knowledge that, or with reckless disregard as
14 to whether, the person upon whom the abortion is to be performed is an
15 unemancipated minor or an incompetent person, without providing the
16 required notification shall be guilty of a gross misdemeanor.

17 (2) Failure to provide the notification required under section 5 or
18 7 of this act is prima facie evidence of failure to provide
19 notification and of interference with family relations in appropriate
20 civil actions. The prima facie evidence shall not apply to an issue
21 other than failure to provide notification to the parents or guardian
22 and interference with family relations in appropriate civil actions.
23 The civil action may be based on a claim that the act was a result of
24 simple negligence, gross negligence, wantonness, willfulness,
25 intention, or other legal standard of care. The law of this state
26 shall not be construed to preclude the award of exemplary damages in an
27 appropriate civil action relevant to violations of sections 1 through
28 18 of this act. Nothing in sections 1 through 18 of this act shall be
29 construed to limit the common law rights of parents.

30 (3) A person not authorized to receive notification under sections
31 1 through 18 of this act who signs a waiver of notification under
32 section 9(2) of this act is guilty of a misdemeanor.

33 (4) A person who coerces a minor to have an abortion is guilty of
34 a misdemeanor.

35 NEW SECTION. **Sec. 18.** (1) Any physician who intentionally
36 performs an abortion with knowledge that, or with reckless disregard as

1 to whether, the person upon whom the abortion is to be performed is an
2 unemancipated minor or an incompetent person, without obtaining the
3 required consent shall be guilty of a gross misdemeanor.

4 (2) Failure to obtain the consent required under section 6 or 8 of
5 this act is prima facie evidence of failure to obtain consent and of
6 interference with family relations in appropriate civil actions. The
7 prima facie evidence shall not apply to an issue other than failure to
8 obtain consent of the parents or guardian and interference with family
9 relations in appropriate civil actions. The civil action may be based
10 on a claim that the act was a result of simple negligence, gross
11 negligence, wantonness, willfulness, intention, or other legal standard
12 of care. The law of this state shall not be construed to preclude the
13 award of exemplary damages in an appropriate civil action relevant to
14 violations of sections 1 through 18 of this act. Nothing in sections
15 1 through 18 of this act shall be construed to limit the common law
16 rights of parents.

17 (3) A person not authorized to give consent under sections 1
18 through 18 of this act who signs a waiver of consent under section
19 10(2) of this act is guilty of a misdemeanor.

20 (4) A person who coerces a minor to have an abortion is guilty of
21 a misdemeanor.

22 **Sec. 19.** RCW 9.02.100 and 1992 c 1 s 1 are each amended to read as
23 follows:

24 The sovereign people hereby declare that every individual possesses
25 a fundamental right of privacy with respect to personal reproductive
26 decisions.

27 Accordingly, it is the public policy of the state of Washington
28 that:

29 (1) Every individual has the fundamental right to choose or refuse
30 birth control;

31 (2) Every woman has the fundamental right to choose or refuse to
32 have an abortion, except as specifically limited by RCW 9.02.100
33 through 9.02.170 (~~and~~), 9.02.900 through 9.02.902, and sections 1
34 through 18 of this act;

35 (3) Except as specifically permitted by RCW 9.02.100 through
36 9.02.170 (~~and~~), 9.02.900 through 9.02.902, and sections 1 through 18
37 of this act, the state shall not deny or interfere with a woman's
38 fundamental right to choose or refuse to have an abortion; and

1 (4) The state shall not discriminate against the exercise of
2 ((these)) this right((s)) in the regulation or provision of benefits,
3 facilities, services, or information.

4 NEW SECTION. **Sec. 20.** The provisions of this act are to be
5 liberally construed to effectuate the policies and purposes of this
6 act. In the event of conflict between this act and any other provision
7 of law, the provisions of this act shall govern.

8 NEW SECTION. **Sec. 21.** If any provision of this act or its
9 application to any person or circumstance is held invalid, the
10 remainder of the act or the application of the provision to other
11 persons or circumstances is not affected.

12 NEW SECTION. **Sec. 22.** Sections 1 through 18 of this act are each
13 added to chapter 9.02 RCW.

14 NEW SECTION. **Sec. 23.** This act is necessary for the immediate
15 preservation of the public peace, health, morals, or safety, or support
16 of the state government and its existing public institutions, and takes
17 effect immediately."

18 **SSB 6290** - S AMD - 612

19 By Senator Benton

20 PULLED 2/16/98

21 On page 1, line 2 of the title, after "minors;" strike the
22 remainder of the title and insert "amending RCW 9.02.100; adding new
23 sections to chapter 9.02 RCW; creating a new section; prescribing
24 penalties; and declaring an emergency."

25 EFFECT: Clarifies that parental notification is necessary with
26 notification by the physician.

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