

HOUSE BILL REPORT

HB 1034

As Reported By House Committee On:
Law & Justice

Title: An act relating to the restoration of parents' rights.

Brief Description: Restoring parents' rights.

Sponsors: Representatives Mulliken and Backlund.

Brief History:

Committee Activity:

Law & Justice: 1/17/97, 3/5/97 [DPS].

HOUSE COMMITTEE ON LAW & JUSTICE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Sheahan, Chairman; McDonald, Vice Chairman; Sterk, Vice Chairman; Carrell; Lambert; Sherstad and Skinner.

Minority Report: Do not pass. Signed by 6 members: Representatives Costa, Ranking Minority Member; Constantine, Assistant Ranking Minority Member; Cody; Kenney; Lantz and Radcliff.

Staff: Edie Adams (786-7180).

Background:

HEALTH CARE/INVASIVE MEDICAL PROCEDURES

Generally, only a parent or guardian of a child may give effective consent to treatment of a minor child under common law. Statutory law specifies that a parent is authorized to give informed consent for a minor under the age of 18. Various exceptions to this rule exist in case law and in statute. In some cases, the minor must also consent to treatment. In others, the minor may obtain treatment without parental consent. In addition, the state may compel treatment without the consent of the minor or the parent in some circumstances (immunizations, school screening for sight and deafness or scoliosis, newborn testing, communicable diseases, parental neglect).

CHEMICAL DEPENDENCY TREATMENT

A minor 13 years of age or older may consent to the furnishing of outpatient chemical dependency treatment without obtaining parental consent. The treatment provider must notify the parent of the minor's request for treatment if the minor signs a written release authorizing notice to the parent or if the provider determines that the minor lacks the capacity to make a rational choice concerning treatment. A minor may not be admitted into inpatient treatment without parental permission unless the minor is a child in need of services. A parent is not liable for the costs of treatment unless the parent consented to the treatment.

A minor may apply for voluntary treatment directly to an approved treatment program in some circumstances. A minor who is 14 years of age or older and who is voluntarily admitted into an inpatient treatment program must be discharged upon the minor's request. A parent of a minor less than 14 years of age must make the request for discharge from a voluntary inpatient treatment program.

A parent may admit a minor child under the age of 18 years old for inpatient treatment without the consent of the child.

Federal law generally prohibits the notification of a parent concerning a child's outpatient chemical dependency treatment unless the child gives consent to the notification or the child is determined to lack the capacity to consent to treatment.

MENTAL HEALTH TREATMENT

A minor 13 years of age or older may consent to outpatient mental health treatment without the prior written consent of the child's parent or legal guardian. Parental authorization is required for a minor under age 13.

A minor of any age may be voluntarily admitted for inpatient mental health treatment upon application of the minor's parent without the minor's consent if in the judgement of a mental health professional there is reason to believe the minor is in need of inpatient treatment.

A minor 13 years of age or older may admit himself or herself for inpatient treatment without parental consent if the mental health professional agrees to the admittance and provided that notice of the minor's admission is given to the minor's parent within 24 hours. The minor must be released to the parent at the parent's request unless the facility files a petition with the court to allow the minor to remain in inpatient treatment. The parent is entitled to be represented at the hearing. The facility must prove that the minor is in need of inpatient treatment and that release would constitute a threat to the minor's health or safety.

A minor 13 years of age or older who is voluntarily admitted may give written notice of intent to leave a treatment facility at any time. The minor must be released within

24 hours unless the facility or a parent files a petition for detention. Any minor under the age of 13 must be discharged upon the written request of the minor's parent.

SEXUALLY TRANSMITTED DISEASE/HIV TESTS AND TREATMENT

No person may disclose, or be compelled to disclose, the identity of any person tested or treated for the human immunodeficiency virus (HIV) or the results of an HIV test. In addition no person may disclose a positive test result or treatment for a sexually transmitted disease. There is an exception to this general rule that allows disclosure of the information to the person tested or that person's legal representative, or to a person the legal representative designates to receive the information. A legal representative and a designee of a legal representative are not entitled to that information if the person tested is a competent minor over the age of 14.

A minor 14 years of age or older may consent to the furnishing of hospital, medical, or surgical care related to the diagnosis and treatment of a sexually transmitted disease without the consent of the minor's parent or guardian. A parent who does not consent to the treatment is not responsible for the cost of the treatment.

RUNAWAYS

A person who provides shelter to a minor without legal authorization and who knows at the time that the minor is away from home without permission must promptly report (within eight hours) the location of the child to the parent, law enforcement, or the Department of Social and Health Services (DSHS). The report may be made by telephone. Upon receiving a report, the DSHS must make a good faith attempt to notify the parent that a report has been received and offer services designed to reunify the family.

CLASSES ON HUMAN SEXUALITY, EUTHANASIA, AND SUICIDE

AIDS prevention education must be taught in the public schools at least once each year beginning no later than the fifth grade. The AIDS education program is developed by each school district in consultation with teachers, administrators, parents, health care organizations, and other community members. The school district must conduct a presentation of the AIDS education program curriculum and materials for parents during weekend or evening hours at least one month prior to teaching the course. The district must notify parents of the presentation and that the material will be available for inspection. A student may not participate in the AIDS education program if the student's parent attended a presentation of the program and objects in writing to the student's participation.

Rules adopted by the State Board of Education provide that each school district may decide whether or not to present a program on sex education or human sexuality. If a district decides to offer a sex education or human sexuality program, the district must involve parents and community groups in developing the program contents. A parent or legal guardian who does not want his or her child to participate in the sex education or human sexuality instruction may have the child excused by filing a written request with the school district.

SUSPENSION OR REVOCATION OF A MINOR'S DRIVER'S LICENSE

The Department of Licensing (DOL) may or must suspend, revoke, restrict, or condition a juvenile's driver's license for a variety of offenses. If the DOL proposes to suspend, revoke, restrict, or condition a minor's driving privilege, the DOL may require parental attendance at the hearing. However, the DOL is not required to notify the parent or guardian of a minor when the DOL suspends, revokes, restricts, or conditions the minor's driving privilege.

NOTICE OF A JUVENILE'S ARREST, DETENTION, OR SANCTION

When a juvenile is arrested and detained for an alleged criminal offense, the juvenile is entitled to a detention hearing. If the parents are available, the court must consult with the parents regarding continued detention of the juvenile.

If the prosecutor files a charge against a juvenile, the court clerk must issue a summons to the juvenile and the parents commanding them to appear at the next hearing.

Summary of Substitute Bill:

HEALTH CARE/INVASIVE MEDICAL PROCEDURES

Health care, including invasive medical procedures, may not be provided to an unemancipated minor unless the health care provider obtains prior signed consent of the minor's parent or legal guardian. An exception to the parental consent requirement is created for a medical emergency to avert the death of the minor or a serious risk of substantial and irreversible impairment of a major bodily function.

A parent or legal guardian of an unemancipated minor has the right to be notified and present when the minor is receiving health care, unless there is a court order prohibiting the parent or guardian from contact with the child. In addition, a physician may exclude a parent or guardian if the presence of the parent or guardian threatens the success of a medical procedure, treatment, diagnosis, or examination that involves the physical touching of the minor.

Health care– means any mental or physical health service, including medical care. Medical care– means any medical procedure, treatment, diagnosis, or examination that involves the physical touching of the child or any consultation performed by a licensed health care provider. Physician– means a person licensed to practice medicine or osteopathy.

CHEMICAL DEPENDENCY TREATMENT

An unemancipated minor under 18 may not receive inpatient or outpatient chemical dependency treatment without the consent of a parent or guardian except under the following circumstances:

- (1) If the minor is unable or unwilling to obtain parental consent, but is not alleging abuse, the following conditions must be met before the minor may obtain treatment: (a) the treatment provider must believe treatment is necessary; (b) the minor must sign a declaration stating that he or she is unable or unwilling to obtain parental consent; (c) the provider must notify the minor’s parent or the DSHS of the treatment to be provided; (d) the DSHS must notify the parent and provide reconciliation services; and (e) if the parent continues to refuse to give consent, the provider may provide treatment without parental consent only if the provider files a petition with the court and establishes that failure to provide treatment would constitute a threat to the minor’s health or safety.

- (2) If the minor alleges abuse, the following procedure applies: (a) the provider must notify law enforcement; (b) if the officer believes there might be abuse, the officer must take the child to a crisis residential center; (c) if a crisis residential center is not available, the officer may request the DSHS to take custody of the child and the DSHS may place the child in an out-of-home placement; (d) if the DSHS declines to accept custody, the officer may release the child after attempting to take the child to the home of a family member or responsible adult; and (e) if the treatment provider determines that failure to provide treatment would threaten the child’s health or safety, the child may receive treatment without parental consent if it has been determined by the law enforcement officer that there is a possibility of abuse.

A parent is not liable for evaluation and treatment costs if the parent did not consent to the treatment.

MENTAL HEALTH TREATMENT

An unemancipated minor under the age of 18 may not receive outpatient or inpatient mental health treatment without the consent of the minor’s parent or legal guardian

except in limited circumstances and according to specified procedures. These circumstances and procedures are the same as those for minor access to chemical dependency treatment without parental consent (see above description of these procedures under the chemical dependency treatment– summary).

The ability of a minor 13 years of age or older to voluntarily admit himself or herself to inpatient mental health treatment without parental consent is removed. A minor of any age must be discharged from inpatient treatment immediately upon request by the parent or legal guardian. The ability of a voluntarily admitted minor 13 years of age or older to give notice of intent to leave a treatment facility is removed.

SEXUALLY TRANSMITTED DISEASE/HIV TESTS AND TREATMENT

An unemancipated minor under the age of 18 may not receive hospital, medical, or surgical care for the treatment of a sexually transmitted disease without the consent of a parent or legal guardian except in limited circumstances and according to specified procedures. These circumstances and procedures are the same as those for minor access to chemical dependency treatment without the consent of a parent or guardian (see above description of these procedures under the "chemical dependency treatment" summary).

Test results and treatment for HIV or another sexually transmitted disease may be disclosed to the legal representative of a minor under the age of 18, or to a person the legal representative designates to receive the information.

RUNAWAYS

A person who provides shelter to a runaway child and who fails to promptly notify the child's parent or the DSHS of the child's whereabouts is guilty of a misdemeanor offense.

CLASSES ON HUMAN SEXUALITY, EUTHANASIA, AND SUICIDE

A student may not attend or participate in a class or program concerning suicide, euthanasia, or human sexuality, including sex education, sexually transmitted diseases, contraception, or sexual orientation, unless the school has a signed confirmation from the parent indicating that the parent received notice of the class contents and approves of his or her child's participation in the class. The school need only notify the parent once per year of the planned classes.

The AIDS education statute is amended to provide that a student may not participate in the AIDS education program unless the school has on file a signed confirmation from the student's parent or guardian authorizing the student to participate in the program.

SUSPENSION OR REVOCATION OF A MINOR'S DRIVER'S LICENSE

The Department of Licensing must provide written notice to the parent or legal guardian of a juvenile whose driver's license is suspended or revoked.

NOTICE OF A JUVENILE'S ARREST, DETENTION, OR SANCTION

The state and its political subdivisions are required to provide written notice to a parent or legal guardian of a minor or dependent child if the minor or dependent child is arrested, detained, or penalized.

Substitute Bill Compared to Original Bill: The original bill provides that a minor under the age of 18 who seeks chemical dependency or mental health treatment may petition the court for a waiver of the parental consent requirement if the parent is "unable or unavailable" to give consent. The original bill does not specifically prevent a minor from receiving treatment for HIV or a sexually transmitted disease without parental consent.

The original bill contains a number of provisions that are not contained in the substitute bill. The original bill provides that a parent is liable for all damages or penalties awarded against a minor child in any civil or criminal action. The original bill provides that parents are subject to the jurisdiction of the juvenile court for the purposes of entering into a diversion agreement concerning an offense committed by the juvenile. The original bill provides that schools must provide parents access to all school instructional materials and that a student may not receive counseling services or participate in surveys, tests or questionnaires concerning political, religious, or personal beliefs without the consent of the parent. Finally, the original bill provides that a minor may not receive an abortion without parental consent unless the minor petitions the court for a waiver of the parental consent requirement.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill contains an emergency clause and takes effect immediately.

Testimony For: The American family is endangered because of the encroachment by the state on a parent's fundamental right to raise a child. State laws have eroded parents' rights and undermined their ability to protect the physical and emotional well-being of their children. This has led to the breakdown of the family. Parents are a better judge of what is best for children, not the government. School health classes counsel children not to seek advice or involve their parents in health or emotional issues and even counsel children to have abortions. Parents need to know what is

being taught in classes at school to determine whether the child is emotionally and psychologically mature enough to handle the contents of the class. Parents know the most and care the most about the well-being of their children and they should be the ones making the important decisions affecting the lives of their children.

Testimony Against: A law will not make children share their personal problems with parents they don't trust and won't make bad parents behave responsibly. The law will only drive children away from seeking needed health care and counseling. Prohibiting a child's access to medical care without parental consent will create more problems than it solves. It sets up barriers to access to health care and will result in children going without care which will endanger their health and their lives. The rate of infection of young people with HIV or other sexually transmitted diseases has been increasing at an alarming rate and preventing these adolescents from accessing critical health services will have terrible consequences. In states where this type of legislation has been passed, teen pregnancy and abortion rates have not decreased and parent and child relationships have not improved. Most teens do involve their parents. The ones that don't have good reasons for not involving parents, such as violence in the home. This bill will put children at risk if they don't have responsible parents.

Testified: Representative Mulliken, prime sponsor; Jeff Kemp, Washington Family Council (pro); Vyrna Long, Human Life of Washington (pro); Kay Regan, Friends of Family (pro); Peter Berliner, Children's Alliance (con); Robert Lehman, American Academy of Pediatrics and Washington State Medical Association (con); Lee Carpenter, League of Women Voters of Washington (con); Karen Cooper, Washington NARAL (con); Dr. Maxine Hayes, Assistant Secretary, Department of Health (con); and Dr. H. Hunter Handsfield, Seattle-King County Department of Public Health (con).