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HOUSE BILL REPORT
ESSB 6290

As Reported By House Committee On:
Law & Justice

Title: An act relating to parental notification for abortions provided to minors.

Brief Description: Providing for parental notification and consent for abortions.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators Benton, Zarelli, Stevens, McDonald, Oke, Schow and Roach).

Brief History:
Committee Activity:
Law & Justice: 2/25/98, 2/26/98 [DP].

HOUSE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass. Signed by 8 members: Representatives Sheahan, Chairman; McDonald, Vice Chairman; Sterk, Vice Chairman; Carrell; Lambert; Mulliken; Robertson and Sherstad.

Minority Report: Do not pass. Signed by 5 members: Representatives Costa, Ranking Minority Member; Constantine, Assistant Ranking Minority Member; Cody; Kenney and Lantz.

Staff: Bill Perry (786-7123).

Background: The subject of abortion has received considerable legislative and judicial attention over the past few decades. The U.S. Supreme Court's position on the general question of abortion has been evolving through a number of decisions issued during that time, and the exact state of the law is somewhat uncertain.

However, with respect to the narrower issue of requiring parental notification of a minor child's impending possible abortion, the situation is somewhat different. Both the United States and Washington State Supreme Courts have indicated the permissibility of statutes requiring parental notice.

FEDERAL COURT DECISIONS ON ABORTION IN GENERAL

The U.S. Supreme Court held in Roe v. Wade, that a woman could choose, in consultation with her doctor, whether or not to have an abortion during the first trimester of her pregnancy. State interference with such a decision was not allowed. The Court held, however, that during the second trimester of a pregnancy, state regulation was permissible at least to the extent of protecting the health of the pregnant woman. The Court further held that during the third trimester, or after "viability," state prohibition of an abortion was permissible, except to the extent that an abortion was necessary to preserve the health or life of the woman.

In 1992, in Planned Parenthood of Southeastern Pennsylvania v. Casey, the Court significantly altered its holding in Roe. The Court did not overturn the basic premise of Roe that a woman has a constitutionally protected right to choose whether or not to have an abortion, although four of the Court's justices would have done so. The Court also retained "viability" as the critical point beyond which a state can prohibit abortions. However, the Court greatly expanded the authority of states to regulate abortions prior to viability. Under Casey, the test to be employed in judging the constitutionality of a state law is whether or not the law is an "undue burden" on a woman's right.

This test prohibits state legislation that has the primary purpose of placing a substantial obstacle in the way of a woman seeking an abortion of a nonviable fetus. Permissible purposes include protection of a woman's health and expressing a preference for childbirth over abortion. The undue burden test prohibits interference with a woman's right to make the ultimate decision about abortion. The test does not prohibit laws that have incidental effects on the expense or difficulty of obtaining an abortion.

The particular Pennsylvania statute examined and upheld in Casey in fact involved a parental *consent* provision. Among other things, the statute contained a requirement that an unemancipated minor have the consent of a parent before obtaining an abortion. The Pennsylvania law provides a judicial bypass that allows a court to authorize such an abortion absent parental consent if the court finds the minor to be mature enough to give informed consent, or if the court finds that an abortion would be in her best interests. Because a consent requirement necessarily involves notification, Casey may be taken as authority for a statute requiring only parental notice.

STATE COURT DECISION ON PARENTAL NOTIFICATION

In 1975, two years after Roe v. Wade, the Washington State Supreme Court decided State v. Koome. That decision also deals specifically with the question of parental *consent* to a minor child's abortion. The court declared the *consent* requirement unconstitutional. That decision, of course, was issued before the U.S. Supreme Court decided Casey. In addition, it is unclear to what extent the state court might now independently interpret the Washington Constitution with respect to a *consent* requirement. However, State v. Koome explicitly addresses the more limited question of a parental ***notice*** requirement. The court stated, "if parental supervision is considered

valuable in itself, perhaps the State could make a certificate of parental consultation prerequisite to a minor's abortion."

STATE STATUTES

In 1991, the voters of the state, by a vote of 756,653 to 752,354, approved Initiative 120 which codified the basic holding of Roe v. Wade. The initiative provides that "every woman has the fundamental right to choose or refuse to have an abortion," except as specifically limited by the terms of the initiative. The initiative further declares that, except as specifically permitted by the initiative, "the state shall not deny or interfere with a woman's fundamental right to choose or refuse to have an abortion prior to viability of the fetus." The initiative defines an abortion as "any medical treatment intended to induce the termination of a pregnancy except for the purpose of producing a live birth." Performing an abortion on a viable fetus for reasons other than protecting a pregnant woman's life or health is a class C felony.

The initiative does not specifically address the issue of parental notification of a minor child's abortion. The initiative makes no distinction on the basis of age regarding the right of a woman to choose or refuse to have an abortion.

Summary of Bill: With exceptions, a parent or guardian of a pregnant minor or incompetent person and a parent or guardian of a minor or incompetent father of the unborn child, must be notified before the pregnant minor or incompetent person may have an abortion. (The term "minor" as used throughout the remainder of this summary includes an "incompetent person," and the term "parent" includes a "guardian.")

Legislative findings are made relating to the immaturity of minors, the long-term consequences of abortion, the ability of parents to provide knowledge and support, and the desirability of parental notification. Legislative purposes are declared relating to furthering the compelling state interests in protecting the rights of parents to rear their children, fostering family unity, and reducing teenage pregnancy and abortion.

A physician may not perform an abortion on a pregnant minor unless 48 hours actual notice of the intended abortion has been given to a custodial parent of the minor. If there is reason to believe that the male who participated in creating the pregnancy is also a minor, then the same notice provisions apply regarding the parents of the minor male. Actual notice means conversing with the parent in person or on the telephone. Where actual notice is not possible after reasonable effort, 48 hours notice may be given by certified mail. However, before notice of any kind may be given, the minor must sign a form prepared by the Department of Health indicating that the minor has been informed of all options under the act.

No notice need be given if a minor is emancipated, if a medical emergency exists, or if a court waives the requirement. A parent who is entitled to notice may also waive the

right to be notified. Notification of an adult relative other than a parent is an alternative if the mother of the unborn child has been neglected or abused by the parent.

A "medical emergency" exists if in the physician's good faith judgment immediate termination of the pregnancy is necessary to avert death or serious risk of substantial and irreversible impairment of a major bodily function of the pregnant woman.

Upon a minor's petition, a court may waive the notification requirement on specified grounds. First, the court may find by clear, cogent, and convincing evidence that the petitioner is sufficiently mature to decide, or to deal with the decision, whether to have an abortion. Second, the court may find by a preponderance of the evidence that the petitioner has been the victim of a pattern of physical or sexual abuse by a parent, or that notification is not in the best interest of the petitioner. There is no filing fee for a minor's petition, a guardian ad litem will be appointed for the minor, and the minor has the right to a court-appointed attorney. Proceedings are to be closed, and court documents are to be sealed. The court has four days in which to reach its decision.

A physician who performs an abortion with reckless disregard as to whether the patient is a minor, and without providing the required parental notice, is guilty of a gross misdemeanor.

An unauthorized person who signs a waiver of the right to notification is guilty of a misdemeanor.

In a civil cause of action against a physician, the failure of the physician to provide the required notification is prima facie evidence of interference with family relations. However, a physician is not civilly liable if he or she has made alternative notice to an adult relative of the patient in good faith reliance on the written declaration of the patient that she was the victim of abuse and neglect by a parent.

Physicians are required to report monthly to the Department of Health on the number of notifications provided and the number of exceptions made to the notification requirement. The department is to compile an annual report based on this information.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 19, 1998.

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

Testimony For: The issue is really one of parents' rights, and this bill supports those rights. Parents have to be consulted on all other kinds of medical procedures. This kind of legislation in other states has resulted in significant reductions in teen pregnancies and teen abortions. Minors lack the maturity to make these kinds of decisions and need the

support of their parents who are in the best position to help their children with difficult situations. The voters in the state and in the nation strongly support this kind of legislation.

Testimony Against: Most teens do consult with their parents, and those who do not generally have very legitimate reasons for not doing so. The Legislature cannot force good family relationships. A frightened teen who may have been the victim of abuse is in no position to deal with the judicial bypass process that is required to avoid parental notification. Laws in other states have not reduced teen pregnancies or abortions, but they have resulted in teens going to neighboring states for abortions.

Testified: Senator Benton, prime sponsor; Roger Altizer, Jr. (pro); Melinda Lincicome, Washington Family Council (pro); Camille DeBlasi, Human Life of Washington (pro); Anne Schiefer, citizen (con); Rebekah Schiefer, citizen (con); Dr. Gina Sucato, Washington State Medical Association (con); and Dorothy Young Sale, League of Women Voters of Washington (con).