

HOUSE BILL ANALYSIS

HB 1036

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

Brief Description: Requiring parental notification prior to performing abortions on unemancipated minors.

Sponsors: Representatives Boldt, Mulliken, Koster, Johnson, Thompson, Sheahan, Sherstad, Carrell, Bush, Smith, Dunn, D. Schmidt and Backlund.

HOUSE COMMITTEE ON LAW & JUSTICE

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 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, 410 U.S. 113 (1973), 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, 112 S. Ct. 2791 (1992), 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, 84 Wn.2d 901 (1975). 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.

Under the state's criminal code *it is a crime to "coerce" a person. Coercion is the use of threats to prevent a person from doing something the person has a lawful right to do, or the use of threats to force a person to do something he or she is not legally bound to do. The crime of coercion is a gross misdemeanor. Threats under this statute may take the form of communicating the intent to: (1) cause bodily injury; (2) cause physical damage to property; or (3) subject a person to confinement or restraint.*

Under the state's juvenile code, a "dependent child" may be removed from his or her home and placed in foster care or other alternative settings. A dependent child is defined as one who has no parents, or who has been abandoned or abused by his or her parents, or who has developmental disability needs that cannot be met in his or her home.

Summary of Bill: The "Parental Notification of Abortion Act" is adopted. The act is similar to part of the Pennsylvania statute upheld by the U.S. Supreme Court in 1992. Generally, all of the provisions described below regarding a minor and notice to her parents also apply to an incompetent person and notice to that person's guardian.

The stated purposes of the act are: (1) protecting minors against their own immaturity; (2) fostering family unity; (3) protecting the constitutional rights of parents to rear their children; and (4) reducing teenage pregnancy and unnecessary abortions.

No person may perform an abortion upon an unemancipated minor or upon an incompetent unless that person has given at least 48 hours' notice in person or by phone to a parent or guardian of the minor or incompetent person. Mailed notice is allowed if in-person or phone notice is not possible after reasonable effort.

Alternative notice is authorized in some instances. If a minor states in writing that she is the victim of abuse or neglect, the notice must be given to a sibling over the age of 21 or to a stepparent or grandparent. A good faith reliance on such a statement protects a physician from civil liability for failure to give notice to a parent. The physician must ensure the confidentiality of the statement. A statement does not

authorize the physician to perform an abortion unless the abortion is permitted by other provisions of the act.

No notice is necessary in certain emergency situations or where the requirement is waived either by the person entitled to the notice or by a court. Emergency situations include those that necessitate an immediate abortion to avert death or serious risk of substantial and irreversible impairment of a major bodily function. A court may waive the notice requirement upon a showing by clear and convincing evidence that the minor is mature enough to decide about an abortion, or that there has been a pattern of abuse or neglect by a parent, or that a waiver is in the best interest of the child. These court proceedings are to be confidential and must ensure the anonymity of the minor. The minor will have a guardian ad litem provided and has the right to a court-appointed attorney as well. The court must issue a written ruling within four "court days." There is no appeal from the granting of a waiver, but the Washington State Supreme Court is to provide by rule for an expedited appeal of any denial of a waiver. There is no filing fee for a petition to waive the notice requirement or for an appeal from a denied petition.

If a parent denies a minor food, clothing, or shelter because the minor refuses an abortion, the minor is considered a dependent under the juvenile code.

Doctors are required to report monthly on parental notices given and exceptions made to the notice requirement. The Department of Health is to compile an annual report on the number of notices issued and exceptions made under this act.

Failure to provide notice as required by the act is prima facie evidence in a civil suit of intentional failure to provide notice and of intentional interference with family relations. Nothing in state law precludes the award of exemplary damages in a civil action relevant to the act.

Intentionally performing an abortion without giving the notice required by the act, and with reckless disregard for whether the patient is a minor or is incompetent, is a gross misdemeanor.

Signing a waiver of a notice requirement when not authorized to do so is a misdemeanor.

Coercing a minor to have an abortion is a misdemeanor. Coercion is defined as restraining or dominating a minor's choice by use of force, threat of force, or deprivation of necessary food and shelter, or by use of fraud, misrepresentation, or deceit.

Initiative 120 is amended by removing definitions of terms such as "abortion," "pregnancy," "physician," and "viability." These terms and others are given

definitions, but only for the purposes of the Parental Notification of Abortion Act. With the exception of the term "abortion," terms previously given a meaning in Initiative 120 are given the same meaning in the Parental Notification of Abortion Act. For purposes of the Parental Notification of Abortion Act, "abortion" is defined to exclude procedures done to (1) save the life or health of an unborn child, (2) remove a dead unborn child, or (3) preserve the health of both the pregnant woman and her unborn child.

Initiative 120 is also amended to provide that the Parental Notification of Abortion Act is an exception to a woman's right to chose or refuse to have an abortion.

Fiscal Note: Not requested.

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

Office of Program Research