

HOUSE BILL ANALYSIS

ESB 5255

Title: An act relating to parental notification for abortions.

Brief Description: Establishing notification of parent or legal guardian prior to abortion by a minor.

Sponsors: Senators Swecker, Hargrove, Zarelli, Stevens, Hochstatter, Morton, Schow, Roach, Anderson, Benton and Oke.

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*, 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: Generally, an unemancipated minor may not obtain an abortion without prior notice to her parents or guardian. An exception is made for medical emergencies, and a waiver of the notice requirement may be granted by a court under certain conditions. A new chapter of law is created. The provisions of Initiative 120 are not amended.

Legislative Findings and Declaration of Intent.

The Legislature finds:

- o Minors often cannot fully assess the consequences of their choices;
- o Consequences of abortion are particularly serious and lasting for minors;
- o Reproductive maturity and judgment are not logically related;
- o Parents know things essential for the best medical decisions about their child;
- o Parents can ensure postabortion medical attention for their child; and
- o Parental consultation is desirable and in the best interest of a child.

The Legislature intends to further the compelling interests of:

- o Protecting minors from their own immaturity;
- o Fostering and preserving the family; and
- o Protecting the rights of parents to raise their children.

Minor Consent and Parental Notice Requirement.

Except in a medical emergency, no abortion may be performed on an unemancipated minor unless she has given written consent and has notified a parent or guardian.

A medical emergency provides an exception to the consent and notice requirements when, in the judgment of a physician, the emergency complicates the pregnancy to the extent that an immediate abortion is required.

Judicial Waiver.

Under certain circumstances, a pregnant unemancipated minor may petition a court for a waiver of the notice requirement. Those circumstances are:

- o Unavailability of a parent within a reasonable time or manner;
- o Inability to locate a parent after reasonable effort;
- o Parental refusal of notice; or
- o The minor chooses not to notify a parent.

The grounds upon which the court may grant a waiver are:

- o The minor is mature enough and well-informed enough to make the abortion decision; or
- o The abortion would be in the minor's best interest.

The court is to ensure confidentiality in all proceedings. The minor is entitled to court-appointed counsel and is to be given assistance in pursuing the petition. No fee may be charged to a minor for a petition or an appeal from the denial of a petition.

The court must grant or deny the petition within four court days of its filing. The state supreme court is to provide by rule for an expedited, confidential appeal by a minor or her guardian ad litem. Any appeal must be decided within seven court days of its filing.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Office of Program Research