

SENATE BILL REPORT

ESB 5255

As Passed Senate, March 19, 1997

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.

Brief History:

Committee Activity: Law & Justice: 2/11/97, 2/19/97 [DP-WM, DNP].

Ways & Means: 3/7/97 [DP, DNP].

Passed Senate, 3/19/97, 25-24.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass and be referred to Committee on Ways & Means.

Signed by Senators Roach, Chair; Johnson, Vice Chair; Hargrove, Long, McCaslin, Stevens and Zarelli.

Minority Report: Do not pass.

Signed by Senators Fairley, Goings and Kline.

Staff: Harry Steinmetz (786-7421)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass.

Signed by Senators West, Chair; Deccio, Vice Chair; Strannigan, Vice Chair; Hochstatter, Long, McDonald, Roach, Rossi, Schow, Swecker and Zarelli.

Minority Report: Do not pass.

Signed by Senators Bauer, Brown, Fraser, Kohl, Snyder, Spanel, Thibaudeau and Winsley.

Staff: Susan Lucas (786-7711)

Background: Abortion has been the subject of considerable debate, as well as judicial and legislative activity for the past few decades. Since 1973, the United States and Washington Supreme Courts, the United States Congress, and state Legislature, and the people exercising their initiative powers, have acted on the subject.

Federal Court Decisions. The U.S. Supreme held in 1973, in *Roe v Wade*, that a woman could, in consultation with her doctor, choose whether or not to have an abortion during the first trimester of her pregnancy, and that the states could not interfere with that decision. During the second trimester, state regulation was permitted, at least to the extent of protecting the health of the woman. During the third trimester, or after viability,— states could prohibit abortions, except where necessary to protect the health or life of the woman.

In 1992, in *Planned Parenthood of Southeastern Pennsylvania v. Casey*, the Supreme Court modified its *Roe* decision, while reaffirming (by a five to four majority) the constitutional right to an abortion. In that case the court significantly expanded the authority of states to regulate abortions prior to viability. Under *Casey*, the test to be applied in judging the constitutionality of a state law on abortion is whether or not that law constitutes an undue burden— on the exercise of the 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 to abort a nonviable fetus, but does not prohibit laws that have incidental effects on the expense or difficulty of obtaining an abortion.

The particular Pennsylvania law examined in *Casey* involved a parental consent provision, requiring that an unemancipated minor have the consent of a parent before obtaining an abortion. The Pennsylvania law also has a judicial bypass provision allowing a court to authorize such an abortion absent parental consent if it finds the minor to be mature enough to give informed consent, or that an abortion would be in her best interests. Because a consent requirement necessarily involves notification, *Casey* may be read as authorizing a law requiring only parental notice.

State Court Decisions. Following *Roe*, in *State v. Koome*, the state Supreme Court declared a parental consent requirement unconstitutional, but expressly relied on federal constitutional analysis, prior to the U.S. Supreme Court decision in *Casey*, in doing so. The court has not addressed abortion under independent state constitutional provisions or analysis. However, in *Koome*, the state court did address the more limited question of parental notification, saying: 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 Legislation. In 1991 the people approved Initiative 120, which codified the basic holding of *Roe v. Wade*. The initiative declares 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. It further declares that, except as specifically permitted by that law, 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, or to protect her life or health.— It is a class C felony to perform an abortion on a viable fetus. Viability is defined as the point in the pregnancy when, in the judgment of the physician on the particular facts of the case before such physician, there is a reasonable likelihood of the fetus’s sustained survival outside the uterus without the application of extraordinary medical measures.—

Summary of Bill: The declared purposes of the act are: (a) furthering the legitimate and compelling state interest of protecting minor children from their own immaturity; (b) fostering the family structure; and (c) protecting the rights of parents to rear minor children.

Except in an emergency requiring immediate medical action, no person may perform an abortion on an unemancipated minor unless she has given her written consent and notified a parent or her legal guardian.

A judicial process is established to allow a minor, or her next friend— in certain situations, or if she elects not to provide the required notification, to petition the superior court for a waiver of the notice requirement. Procedures are established to provide for representation of petitioning minors, confidentiality, and expedited decisions at both the superior court and appellate court levels. The notification requirement is waived if the court finds that the minor is mature and well informed enough to make the abortion decision on her own, or that the abortion would be in the minor’s best interest. No fees may be required of any minor petitioning for a waiver.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For (Law & Justice): The purpose of the bill is to reaffirm rights of parents in critical medical decisions. The bill takes medical emergencies and hardships on minors into consideration. If we must have abortions, parents must be able to take part in the decision, except under extraordinary circumstances, and provide physical and psychological support to the minor women afterwards.

Testimony Against (Law & Justice): All organized health care associations oppose notice requirements in all cases where confidential medical procedures are involved. Parental notification tends to push abortions into second and even third trimester. Minor women should be entitled to the same confidentiality as adults.

Testified (Law & Justice): Senator Swecker, prime sponsor (pro); Senator Stevens (pro); Verna Lang (pro); Roger Altizer (pro); Camille DeBlasi (pro); Melissa Mina (pro); Dr. Maxine Hayes, Department of Health (con); Theresa Connor, Planned Parenthood (con).

Testimony For (Ways & Means): The fiscal note assumptions are unreasonable. Other states have found that abortion rates and rates of teenage pregnancy have fallen after similar laws have passed. Estimated court costs may be high in the fiscal note.

Testimony Against (Ways & Means): Local court costs in the bill are a concern. The costs of guardians ad litem and court-appointed counsels may be understated in the fiscal note.

Testified (Ways & Means): Senator Dan Swecker (sponsor); Camille DeBlasi, Human Life of Washington; Judy Turpin, Northwest Women’s Law Center.

House Amendment(s): The minor’s attending physician is allowed to petition the court for a waiver of the parental notice requirement.