SENATE BILL REPORT

SB 6290

As Reported By Senate Committee On:
Law & Justice, February 3, 1998

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

Brief Description: Regarding parental notification for abortions.

Sponsors: Senators Benton, Zarelli, Stevens, McDonald, Oke, Schow and Roach.

Brief History:
Committee Activity: Law & Justice: 2/3/98 [DPS, DNPS].

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 6290 be substituted therefor, and the substitute bill do pass.

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

Minority Report: Do not pass substitute.

Signed by Senators Fairley, Kline and Thibaudeau.

Staff: Harry Steinmetz (786-7421)

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 non-viable 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 Substitute Bill: The declared purposes of the act are that the state has a legitimate and compelling state interest in: (a) protecting the rights of parents to rear minor children who are a part of their household; (b) fostering family unity and preserving the family as a viable social unit; and (c) reducing teenage pregnancy and unnecessary abortions.

Except in an emergency requiring immediate medical action, a physician may not perform an abortion on an unemancipated minor or an incompetent person unless he/she has given actual notice and consent to a custodial parent or legal guardian. Actual notice and consent means conversing with the parent or guardian in person or on the telephone. Where actual notice and consent is not possible after reasonable effort, constructive notice and consent may be accomplished by certified mail and waiting 48 hours. Notice and consent may be waived by the parent or guardian.

The physician must not give notice and consent unless the pregnant minor or incompetent person signs a form indicating they are fully informed of the options available. The Department of Health is directed to create this form.

If the pregnant minor or incompetent person signs a written declaration that she is a victim of sexual abuse, neglect or physical abuse by either parent or guardian, then the physician may give notice and consent to a sibling over 21 years old, a grandparent or a step-parent. Good faith reliance on this declarations will protect the physician from civil liability.

Anyone who coerces a minor or incompetent to have an abortion is guilty of a misdemeanor. If a minor or incompetent is subjected to coercion to obtain or to not obtain an abortion, it shall be grounds to find the minor or incompetent a dependent of the state.

Physicians who provide notification and consent must file monthly reports with the Department of Health indicating the number of notifications, to whom, by relationship, the notice was given and the number of exceptions. The names are to remain confidential. The department must compile and make public this data on an annual basis.

Minors may petition the superior court for a waiver of notification and consent with assurances of anonymity. The court must find the petitioner is sufficiently mature or able to decide to have an abortion; there is a pattern of physical or sexual abuse by a parent or guardian; or notification is not in the best interest of the petitioner. The Supreme Court is requested to establish rules for an expedited appeal.

Physicians who recklessly disregard or intentionally perform an abortion without complying with the notification and consent requirements are guilty of a gross misdemeanor, with a maximum penalty of one year in jail and a $5,000 fine. A civil cause of action is created against the physician who violates this act, with the possibility of exemplary damages.

Substitute Bill Compared to Original Bill: The substitute bill adds the phrase and consent– after the word notification– throughout the bill. The effect is to require the physician to give his or her consent and communicate that to the parent or guardian.

Appropriation: None.

Fiscal Note: Requested on January 29, 1998.

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

Testimony For: This is ultimately a question of parents' rights. If my child took my car without permission and was injured in a wreck, they would not want to tell me. But, the hospital would call me before they treated my child. If my child got pregnant and went to the hospital for an abortion, the hospital should also call me. There is no difference. Parents are in the best position to help a minor deal with this traumatic event. This bill strengthens family bonds and respects the rights of parents. Twenty states have parental consent laws and 11 have parental notification laws. The result has been a drop in the teen pregnancy, the teen abortion and teen birth rates.

Testimony Against: All parents hope that their children would come to them if they got pregnant, but we cannot be sure. Over 80 percent of the minors who come to clinics for abortions come with their parents. The other 20 percent will just be discouraged by this bill. You cannot legislate good family relationships. It is unrealistic to expect teens to negotiate the legal system for the waiver.

Testified: PRO: Senator Benton, prime sponsor; Melinda Lincicome, Washington Family Council; CON: Carol Miller.