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**SUBSTITUTE HOUSE BILL 1036**

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**State of Washington**

**55th Legislature**

**1997 Regular Session**

**By** House Committee on Law & Justice (originally sponsored by Representatives Boldt, Mulliken, Koster, Johnson, Thompson, Sheahan, Sherstad, Carrell, Bush, Smith, Dunn, D. Schmidt and Backlund)

Read first time 03/05/97.

1 AN ACT Relating to parental notification for abortions provided to  
2 minors; amending RCW 9.02.100 and 13.34.030; adding new sections to  
3 chapter 9.02 RCW; repealing RCW 9.02.170; prescribing penalties; and  
4 declaring an emergency.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** Sections 1 through 11 of this act may be  
7 cited as the parental notification of abortion act.

8 NEW SECTION. **Sec. 2.** (1) The legislature finds that:

9 (a) Unemancipated minor children and incompetent persons often lack  
10 the maturity or ability to make fully informed choices that take into  
11 account both immediate and long-range consequences;

12 (b) The medical, emotional, and psychological consequences of  
13 abortion are sometimes serious and can be lasting, particularly when  
14 the patient is immature or incompetent;

15 (c) The capacity to become pregnant and the capacity for mature  
16 judgment concerning the wisdom of an abortion are not necessarily  
17 related;

1 (d) Parents or guardians ordinarily possess information essential  
2 to a physician's exercise of his or her best medical judgment  
3 concerning an unemancipated minor child or an incompetent person;

4 (e) Parents or guardians who are aware that an unemancipated minor  
5 daughter or incompetent person is having or has had an abortion may  
6 ensure that she receives adequate support, counseling, and medical  
7 attention before and after her abortion; and

8 (f) Parental or guardian consultation and notification is usually  
9 desirable and in the best interests of the unemancipated minor child or  
10 incompetent person.

11 (2) The purpose of the legislature in enacting this parental  
12 notification law is to further the important and compelling state  
13 interests of:

14 (a) Protecting unemancipated minors and incompetent persons against  
15 their own immaturity or inability;

16 (b) Fostering family unity and preserving the family as a viable  
17 social unit;

18 (c) Protecting the constitutional rights of parents to rear  
19 children who are members of their household; and

20 (d) Reducing teenage pregnancy and unnecessary abortion.

21 NEW SECTION. **Sec. 3.** The definitions in this section apply  
22 throughout sections 1 through 11 of this act unless the context clearly  
23 requires otherwise.

24 (1) "Abortion" means the use or prescription of any instrument,  
25 medicine, drug, or other substance or device to terminate the pregnancy  
26 of a woman known by the defendant to be pregnant. The use or  
27 prescription is not an abortion if done with the intent to (a) save the  
28 life or preserve the health of an unborn child, (b) remove a dead  
29 unborn child, or (c) deliver an unborn child prematurely in order to  
30 preserve the health of both the pregnant woman and her unborn child.

31 (2) "Actual notice" means the giving of notice directly, in person  
32 or by telephone.

33 (3) "Constructive notice" means notice by certified mail to the  
34 last known address of the parent or guardian with delivery deemed to  
35 have occurred forty-eight hours after the certified notice is mailed.

36 (4) "Coercion" means restraining or dominating the choice of an  
37 unemancipated minor or incompetent by use of force, threat of force, or

1 deprivation of necessary food and shelter or by use of fraud,  
2 misrepresentation, or deceit.

3 (5) "Emancipated minor" means a person under eighteen years of age  
4 who is or has been married or who has been emancipated under chapter  
5 13.64 RCW.

6 (6) "Health care provider" means a physician or a person acting  
7 under the general direction of a physician.

8 (7) "Incompetent" means a person who has been found to be legally  
9 incompetent or incapacitated under chapter 11.88 RCW.

10 (8) "Medical emergency" means a condition that, on the basis of the  
11 physician's good faith clinical judgment, so complicates the medical  
12 condition of a pregnant woman as to necessitate the immediate abortion  
13 of her pregnancy to avert her death or for which a delay will create  
14 serious risk of substantial and irreversible impairment of a major  
15 bodily function.

16 (9) "Neglect" means the failure of a parent or guardian to supply  
17 an unemancipated minor or incompetent with necessary food, clothing,  
18 shelter, or medical care when reasonably able to do so or the failure  
19 to protect an unemancipated minor or incompetent from conditions or  
20 actions that imminently and seriously endanger the unemancipated  
21 minor's or incompetent's physical health when reasonably able to do so.

22 (10) "Physical abuse" means any physical injury that is  
23 intentionally inflicted by a parent or guardian on an unemancipated  
24 minor child or incompetent and is medically significant as determined  
25 by a physician.

26 (11) "Physician" means any person licensed to practice medicine  
27 under chapter 18.57 or 18.71 RCW.

28 (12) "Pregnancy" means the reproductive process beginning with the  
29 implantation of an embryo.

30 (13) "Private medical facility" means any medical facility that is  
31 not owned or operated by the state.

32 (14) "Sexual abuse" means an offense involving sexual contact or  
33 sexual intercourse as defined in RCW 9A.44.010 and committed against an  
34 unemancipated minor or incompetent by a family member or guardian.

35 (15) "State" means the state of Washington and counties, cities,  
36 towns, municipal corporations, and quasi-municipal corporations in the  
37 state of Washington.

38 (16) "Viability" means the point in the pregnancy when, in the  
39 judgment of the physician on the particular facts of the case before

1 such physician, there is a reasonable likelihood of the fetus'  
2 sustained survival outside the uterus without the application of  
3 extraordinary medical measures.

4 NEW SECTION. **Sec. 4.** (1) No person may perform an abortion upon  
5 an unemancipated minor or upon an incompetent unless that person has  
6 given forty-eight hours actual notice to a custodial parent or to the  
7 guardian of the pregnant unemancipated minor or pregnant incompetent of  
8 his or her intention to perform the abortion. The notice may be given  
9 by a referring physician. The person who performs the abortion must  
10 receive the written statement of the referring physician certifying  
11 that the referring physician has provided notice. If actual notice is  
12 not possible after a reasonable effort, the person or his or her agent  
13 must give forty-eight hours constructive notice.

14 (2) Before notice is given under subsection (1) of this section,  
15 the unemancipated minor or incompetent must have signed a form prepared  
16 by the department of health indicating that the unemancipated minor or  
17 incompetent has been fully informed of the options available under  
18 sections 1 through 11 of this act. The form must be made available to  
19 all physicians in the state and must include information covering the  
20 following:

21 (a) That notice of a parent or guardian is generally required  
22 before the unemancipated minor or incompetent may obtain an abortion;

23 (b) That notice of a parent or guardian of the mother of the unborn  
24 child is not required if the mother is emancipated as defined in  
25 section 3 of this act;

26 (c) That an alternative to providing notice to a parent or guardian  
27 of the mother of the unborn child may be available under section 5 of  
28 this act if the mother has been the victim of neglect, sexual abuse, or  
29 physical abuse by a parent or guardian as defined in section 3 of this  
30 act;

31 (d) That notice to a parent or guardian of the mother of the unborn  
32 child may not be required under section 6 of this act if a medical  
33 emergency exists and there is insufficient time to provide the required  
34 notice;

35 (e) That the mother of the unborn child will be provided  
36 court-appointed counsel at her request and that notice may be waived by  
37 a court under section 9 of this act if the court finds by clear and  
38 convincing evidence that: (i) She is sufficiently mature to decide

1 whether to have an abortion, (ii) there is evidence of a pattern of  
2 sexual or physical abuse by a parent or guardian of the mother, or  
3 (iii) notice to a parent or guardian would not be in her best interest;

4 (f) That in any circumstance the mother of the unborn child may  
5 choose to discuss her situation with her parent or guardian; and

6 (g) That it is a violation of law for a person to coerce the mother  
7 of an unborn child to have an abortion as defined in section 3 of this  
8 act.

9 NEW SECTION. **Sec. 5.** If the unemancipated minor or incompetent  
10 declares in a signed written statement that she is a victim of sexual  
11 abuse, neglect, or physical abuse by either of her parents or her  
12 guardian, the attending physician shall provide the notice required by  
13 sections 1 through 11 of this act to a brother or sister of the  
14 unemancipated minor or incompetent who is over twenty-one years of age,  
15 or to a stepparent or grandparent specified by the unemancipated minor  
16 or incompetent. The physician who intends to perform the abortion must  
17 certify in the unemancipated minor's or incompetent's medical record  
18 that he or she has received the written declaration of abuse or  
19 neglect.

20 A physician relying in good faith on a written statement under this  
21 section is not civilly liable under sections 1 through 11 of this act  
22 for failure to provide notice to a parent or guardian. The physician  
23 must ensure the written statement remains confidential.

24 Receipt by a physician of a written statement under this section  
25 does not authorize the physician to perform an abortion. The physician  
26 must not perform an abortion unless authorized under sections 1 through  
27 11 of this act.

28 NEW SECTION. **Sec. 6.** Notice is not required under section 4 or 5  
29 of this act if:

30 (1) The attending physician certifies in the unemancipated minor's  
31 or incompetent's medical record that a medical emergency exists and  
32 there is insufficient time to provide the required notice;

33 (2) Notice is waived in writing by the person who is entitled to  
34 notice; or

35 (3) Notice is waived under section 9 of this act.

1        NEW SECTION.    **Sec. 7.** A parent, guardian, or other person must not  
2        coerce an unemancipated minor or incompetent to have an abortion  
3        performed. If an unemancipated minor or incompetent is denied  
4        necessary food, clothing, or shelter by the parents or guardian of the  
5        unemancipated minor or incompetent related to the minor's or  
6        incompetent's refusal to have an abortion performed, the unemancipated  
7        minor or incompetent is considered dependent under chapter 13.34 RCW.

8        NEW SECTION.    **Sec. 8.** A monthly report indicating the number of  
9        notices provided to a parent and the number of notices provided to a  
10       guardian during the preceding month under sections 1 through 11 of this  
11       act, and the number of times in which exceptions were made to the  
12       notice requirement under sections 1 through 11 of this act, as well as  
13       the type of exception, must be filed by the physician providing the  
14       notice with the department of health on forms prescribed by the  
15       department. No unemancipated minor's or incompetent's name is to be  
16       used on the forms. A compilation of the data reported must be made by  
17       the department on an annual basis and must be available to the public.

18       NEW SECTION.    **Sec. 9.** (1) The requirements and procedures under  
19       this section are available to unemancipated minors and incompetents  
20       whether or not they are residents of this state.

21       (2) The unemancipated minor or incompetent may petition a superior  
22       court for a waiver of the notice requirement and may participate in  
23       proceedings on her own behalf. The petition must include a statement  
24       that the complainant is pregnant and is an unemancipated minor or  
25       incompetent. The court must appoint a guardian ad litem for her. A  
26       guardian ad litem appointed under this section must act to maintain the  
27       confidentiality of the proceedings.

28       The court must advise the unemancipated minor or incompetent that  
29       she has a right to court-appointed counsel and provide the counsel upon  
30       request.

31       (3) Court proceedings under this section are confidential and must  
32       ensure the anonymity of the unemancipated minor or incompetent. All  
33       court proceedings under this section must be held in chambers and the  
34       records of the proceedings must be sealed. The unemancipated minor or  
35       incompetent has the right to file her petition in the court using a  
36       pseudonym or using solely her initials. All documents related to this  
37       petition are confidential and are not available to the public. These

1 proceedings must be given precedence over other pending matters to the  
2 extent necessary to ensure that the court reaches a decision promptly.  
3 The court must rule, and issue written findings of fact and conclusions  
4 of law, within four court days from the time that the petition was  
5 filed, except that the four-day rule may be extended at the request of  
6 the unemancipated minor or incompetent.

7 (4) In the case of a petition by an unemancipated minor or  
8 incompetent who is pregnant, if the court finds, by clear and  
9 convincing evidence, that the petitioner is sufficiently mature or able  
10 to decide whether to have an abortion, the court must issue an order  
11 authorizing the petitioner to consent to the performance or inducement  
12 of an abortion without providing notice to a parent or guardian. If  
13 the court does not make the finding specified in this subsection or  
14 subsection (5) of this section, it must dismiss the petition.

15 (5) In the case of a petition by an unemancipated minor or  
16 incompetent who is pregnant, if the court finds, by clear and  
17 convincing evidence, that there is evidence of a pattern of physical  
18 abuse, neglect, or sexual abuse by a parent or guardian of the  
19 petitioner, or that notice to a parent or guardian is not in the best  
20 interest of the petitioner, the court must issue an order authorizing  
21 the petitioner to consent to the performance or inducement of an  
22 abortion without notice to a parent or guardian. If the court does not  
23 make the finding specified in this subsection or subsection (4) of this  
24 section, it must dismiss the petition.

25 (6) A court that conducts proceedings under this section must issue  
26 written and specific factual findings and legal conclusions supporting  
27 its decision and must order that a confidential record of the evidence  
28 and the judge's findings and conclusions be maintained.

29 (7) An expedited confidential appeal must be available, as the  
30 supreme court provides by rule, to an unemancipated minor or  
31 incompetent to whom the court denies a waiver of notice. An order  
32 authorizing an abortion without notice is not subject to appeal.

33 (8) No filing fees are required of an unemancipated minor or  
34 incompetent who petitions a court for a waiver of parental notice under  
35 sections 1 through 11 of this act at either the trial or the appellate  
36 level.

37 NEW SECTION. **Sec. 10.** The supreme court is respectfully requested  
38 to establish rules to ensure that proceedings under sections 1 through

1 11 of this act are handled in an expeditious and confidential manner  
2 and to satisfy requirements of federal courts binding on this  
3 jurisdiction.

4 NEW SECTION. **Sec. 11.** (1) Any person who intentionally performs  
5 an abortion with knowledge that or with reckless disregard as to  
6 whether the person upon whom the abortion is to be performed is an  
7 unemancipated minor or an incompetent without providing the required  
8 notice is guilty of a gross misdemeanor.

9 (2) Failure to provide the notice required under section 4 or 5 of  
10 this act is prima facie evidence of failure to provide notice and of  
11 interference with family relations in appropriate civil actions. The  
12 prima facie evidence does not apply to an issue other than failure to  
13 provide notice to the parents or guardian and interference with family  
14 relations in appropriate civil actions. The civil action may be based  
15 on a claim that the act was a result of simple negligence, gross  
16 negligence, wantonness, willfulness, intention, or other legal standard  
17 of care. The law of this state must not be construed to preclude the  
18 award of exemplary damages in an appropriate civil action relevant to  
19 violations of sections 1 through 11 of this act. Nothing in sections  
20 1 through 11 of this act may be construed to limit the common law  
21 rights of parents.

22 (3) A person not authorized to receive notice under sections 1  
23 through 11 of this act who signs a waiver of notice under section 6(2)  
24 of this act is guilty of a misdemeanor.

25 (4) A person who coerces a minor to have an abortion is guilty of  
26 a misdemeanor.

27 **Sec. 12.** RCW 9.02.100 and 1992 c 1 s 1 are each amended to read as  
28 follows:

29 The sovereign people hereby declare that every individual possesses  
30 a fundamental right of privacy with respect to personal reproductive  
31 decisions.

32 Accordingly, it is the public policy of the state of Washington  
33 that:

34 (1) Every individual has the fundamental right to choose or refuse  
35 birth control;

36 (2) Every woman has the fundamental right to choose or refuse to  
37 have an abortion, except as specifically limited by RCW 9.02.100



1 through (~~9.02.170 and~~) 9.02.160, 9.02.900 through 9.02.902, and  
2 sections 1 through 11 of this act;

3 (3) Except as specifically permitted by RCW 9.02.100 through  
4 (~~9.02.170 and~~) 9.02.160, 9.02.900 through 9.02.902, and sections 1  
5 through 11 of this act, the state shall not deny or interfere with a  
6 woman's fundamental right to choose or refuse to have an abortion; and

7 (4) The state shall not discriminate against the exercise of these  
8 rights in the regulation or provision of benefits, facilities,  
9 services, or information.

10 **Sec. 13.** RCW 13.34.030 and 1995 c 311 s 23 are each amended to  
11 read as follows:

12 For purposes of this chapter:

13 (1) "Child" and "juvenile" means any individual under the age of  
14 eighteen years.

15 (2) "Current placement episode" means the period of time that  
16 begins with the most recent date that the child was removed from the  
17 home of the parent, guardian, or legal custodian for purposes of  
18 placement in out-of-home care and continues until the child returns  
19 home, an adoption decree or guardianship order is entered, or the  
20 dependency is dismissed, whichever occurs soonest. If the most recent  
21 date of removal occurred prior to the filing of a dependency petition  
22 under this chapter or after filing but prior to entry of a disposition  
23 order, such time periods shall be included when calculating the length  
24 of a child's current placement episode.

25 (3) "Dependency guardian" means the person, nonprofit corporation,  
26 or Indian tribe appointed by the court pursuant to RCW 13.34.232 for  
27 the limited purpose of assisting the court in the supervision of the  
28 dependency.

29 (4) "Dependent child" means any child:

30 (a) Who has been abandoned; that is, where the child's parent,  
31 guardian, or other custodian has expressed either by statement or  
32 conduct, an intent to forego, for an extended period, parental rights  
33 or parental responsibilities despite an ability to do so. If the court  
34 finds that the petitioner has exercised due diligence in attempting to  
35 locate the parent, no contact between the child and the child's parent,  
36 guardian, or other custodian for a period of three months creates a  
37 rebuttable presumption of abandonment, even if there is no expressed  
38 intent to abandon;

1 (b) Who is abused or neglected as defined in chapter 26.44 RCW by  
2 a person legally responsible for the care of the child;

3 (c) Who has no parent, guardian, or custodian capable of adequately  
4 caring for the child, such that the child is in circumstances which  
5 constitute a danger of substantial damage to the child's psychological  
6 or physical development; ((or))

7 (d) Who has a developmental disability, as defined in RCW  
8 71A.10.020 and whose parent, guardian, or legal custodian together with  
9 the department determines that services appropriate to the child's  
10 needs can not be provided in the home. However, (a), (b), and (c) of  
11 this subsection may still be applied if other reasons for removal of  
12 the child from the home exist; or

13 (e) Who is coerced to have an abortion by use of force, threat of  
14 force, or deprivation of food, clothing, or shelter by the parents or  
15 guardian of the unemancipated child or incompetent person as provided  
16 in chapter 9.02 RCW.

17 (5) "Guardian" means the person or agency that: (a) Has been  
18 appointed as the guardian of a child in a legal proceeding other than  
19 a proceeding under this chapter; and (b) has the legal right to custody  
20 of the child pursuant to such appointment. The term "guardian" shall  
21 not include a "dependency guardian" appointed pursuant to a proceeding  
22 under this chapter.

23 (6) "Guardian ad litem" means a person, appointed by the court to  
24 represent the best interest of a child in a proceeding under this  
25 chapter, or in any matter which may be consolidated with a proceeding  
26 under this chapter. A "court-appointed special advocate" appointed by  
27 the court to be the guardian ad litem for the child, or to perform  
28 substantially the same duties and functions as a guardian ad litem,  
29 shall be deemed to be guardian ad litem for all purposes and uses of  
30 this chapter.

31 (7) "Guardian ad litem program" means a court-authorized volunteer  
32 program, which is or may be established by the superior court of the  
33 county in which such proceeding is filed, to manage all aspects of  
34 volunteer guardian ad litem representation for children alleged or  
35 found to be dependent. Such management shall include but is not  
36 limited to: Recruitment, screening, training, supervision, assignment,  
37 and discharge of volunteers.

38 (8) "Out-of-home care" means placement in a foster family home or  
39 group care facility licensed pursuant to chapter 74.15 RCW or placement

1 in a home, other than that of the child's parent, guardian, or legal  
2 custodian, not required to be licensed pursuant to chapter 74.15 RCW.

3 (9) "Preventive services" means preservation services, as defined  
4 in chapter 74.14C RCW, and other reasonably available services capable  
5 of preventing the need for out-of-home placement while protecting the  
6 child.

7 NEW SECTION. **Sec. 14.** If any provision of this act or its  
8 application to any person or circumstance is held invalid, the  
9 remainder of the act or the application of the provision to other  
10 persons or circumstances is not affected.

11 NEW SECTION. **Sec. 15.** Sections 1 through 11 of this act are each  
12 added to chapter 9.02 RCW.

13 NEW SECTION. **Sec. 16.** This act is necessary for the immediate  
14 preservation of the public peace, health, morals, or safety, or support  
15 of the state government and its existing public institutions, and takes  
16 effect immediately.

17 NEW SECTION. **Sec. 17.** RCW 9.02.170 and 1992 c 1 s 8 are each  
18 repealed.

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