
ENGROSSED SUBSTITUTE SENATE BILL 6290

State of Washington

55th Legislature

1998 Regular Session

By Senate Committee on Law & Justice (originally sponsored by Senators Benton, Zarelli, Stevens, McDonald, Oke, Schow and Roach)

Read first time 02/05/98.

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

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

6 NEW SECTION. **Sec. 1.** Sections 1 through 10 of this act shall be
7 known as and may be 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 an immature or incompetent person;

15 (c) The capacity to become pregnant and the capacity to exercise
16 mature judgment concerning abortion are not necessarily related;

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

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

8 (f) Parental or guardian consultation and notification is usually
9 desirable and in the best interest 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 the rights of parents to rear children who are
15 members of their household;

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

18 (c) Reducing teenage pregnancy and unnecessary abortion.

19 NEW SECTION. **Sec. 3.** Unless the context clearly requires
20 otherwise, the definitions in this section apply throughout sections 1
21 through 10 of this act.

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

29 (2) "Actual notification" means the giving of notice directly by
30 conversing with the parent or guardian, either in person or by
31 telephone.

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

36 (4) "Emancipated minor" means a person under eighteen years of age
37 who is or has been lawfully married or who has been emancipated.

1 (5) "Incompetent person" means a person who has been found to be
2 legally incompetent under RCW 11.88.010(1)(e).

3 (6) "Medical emergency" means a condition exists that, on the basis
4 of the physician's good-faith clinical judgment, necessitates immediate
5 termination of pregnancy to avert her death, or failure to immediately
6 terminate the pregnancy will create serious risk of substantial and
7 irreversible impairment of a major bodily function of the pregnant
8 woman.

9 (7) "Neglect" means the failure of a parent or guardian to supply
10 an unemancipated minor or incompetent person with necessary food,
11 clothing, shelter, or medical care when that parent or guardian is
12 reasonably able to do so, or the failure of a parent or guardian to
13 protect an unemancipated minor or incompetent person from a condition
14 or action that imminently and seriously endangers the health of the
15 unemancipated minor or incompetent person when that parent or guardian
16 is reasonably able to protect the unemancipated minor or incompetent
17 person from that condition or action.

18 (8) "Physical abuse" means any physical injury that is
19 intentionally inflicted by a parent or guardian on an unemancipated
20 minor child or incompetent person and that is medically significant as
21 determined by a physician.

22 (9) "Physician" means any person licensed to practice medicine
23 under chapter 18.57 or 18.71 RCW.

24 (10) "Sexual abuse" means a crime or offense involving sexual
25 contact or sexual intercourse as defined in RCW 9A.44.010 and committed
26 against an unemancipated minor or incompetent person by a family member
27 or guardian.

28 NEW SECTION. **Sec. 4.** (1) A physician shall not perform an
29 abortion upon an unemancipated minor or upon an incompetent person
30 unless the physician has given forty-eight hours actual notification to
31 a custodial parent or to the guardian of the pregnant unemancipated
32 minor or pregnant incompetent person of the physician's intention to
33 perform the abortion.

34 Where there is a reason to believe the male who participated in
35 creating the pregnancy is an unemancipated minor or an incompetent
36 person, no person may perform an abortion until forty-eight hours after
37 actual notification has been obtained from the custodial parent or
38 guardian of the father. The notification may be given by a referring

1 physician. If the notification is given by a referring physician, the
2 physician shall not perform the abortion without receiving the
3 referring physician's written statement certifying that the referring
4 physician has provided notification. If actual notification is not
5 possible after a reasonable effort, the physician or the physician's
6 agent shall give forty-eight hours constructive notification.

7 (2) Notification shall not be given under subsection (1) of this
8 section unless the unemancipated minor or incompetent person has signed
9 a form prescribed by the department of health indicating that the
10 unemancipated minor or incompetent person has been fully informed of
11 the options available under sections 1 through 10 of this act. The
12 department of health shall make the form available to all physicians in
13 the state. The department of health shall ensure that the form
14 includes information:

15 (a) That notification of a parent or guardian is generally required
16 before an unemancipated minor or incompetent person may obtain an
17 abortion;

18 (b) That notification of a parent or guardian of a minor female or
19 male is not required if the minor is emancipated as defined in section
20 3 of this act;

21 (c) That an alternative to providing notification may be available
22 under section 5 of this act if the mother of the unborn child has been
23 the victim of neglect or sexual or physical abuse by a parent or
24 guardian as defined in section 3 of this act;

25 (d) That notification of a parent or guardian of the mother of the
26 unborn child may not be required under section 6 of this act if a
27 medical emergency exists and there is insufficient time to obtain the
28 required notification;

29 (e) That the minor female and male will be provided court-appointed
30 counsel at his or her request, and that notification may be waived by
31 a court under section 8 of this act, if the court finds: (i) By clear
32 and convincing evidence that one or both of the petitioning minors are
33 sufficiently mature to decide whether to have an abortion; or (ii) by
34 a preponderance of the evidence that (A) there is a pattern of sexual
35 or physical abuse by her parent or guardian; or (B) notification to a
36 parent or guardian would not be in the best interest of the petitioning
37 minors; and

38 (f) That in any circumstance the mother of the unborn child may
39 choose to discuss her situation with her parent or guardian.

1 NEW SECTION. **Sec. 5.** If the pregnant unemancipated minor or
2 pregnant incompetent person makes a written, signed declaration that
3 she is a victim of sexual abuse, neglect, or physical abuse by either
4 of her parents or her guardian, the physician intending to perform the
5 abortion shall provide the notification required by sections 1 through
6 10 of this act to a brother or sister of the unemancipated minor or
7 incompetent person so long as that sibling is over twenty-one years of
8 age, or to a stepparent or grandparent specified by the unemancipated
9 minor or incompetent person; and that physician shall place in the
10 unemancipated minor's or incompetent person's medical record
11 certification of having received the written declaration of abuse or
12 neglect. The physician shall ensure that the written declaration
13 remains confidential.

14 A physician relying in good faith upon a written declaration under
15 this section shall not be civilly liable under sections 1 through 10 of
16 this act for failure to provide notification to a parent or guardian.

17 Receipt of a written declaration under this section does not
18 authorize the physician to perform an abortion. The physician shall
19 not perform an abortion unless authorized to do so under sections 1
20 through 10 of this act.

21 NEW SECTION. **Sec. 6.** Notification is not required under section
22 4 or 5 of this act if:

23 (1) The attending physician certifies in the unemancipated minor's
24 or incompetent person's medical record that a medical emergency exists,
25 and there is insufficient time to provide the required notification;

26 (2) Notification is waived in writing by the person who is, under
27 sections 1 through 10 of this act, entitled to notification; or

28 (3) Notification is waived under section 8 of this act.

29 NEW SECTION. **Sec. 7.** Physicians required to provide notification
30 under sections 1 through 10 of this act shall file with the department
31 of health, on forms prescribed by the department, monthly reports
32 indicating the number of notifications provided to a parent, guardian,
33 brother, sister, stepparent, or grandparent during the preceding month
34 under sections 1 through 10 of this act, and the number of times in
35 which exceptions were made to the notification requirement under
36 sections 1 through 10 of this act, as well as the type of exception.
37 Physicians shall not use names of the unemancipated minors or

1 incompetent persons on the forms. The department shall on an annual
2 basis compile and make available to the public the data required to be
3 reported under this section.

4 NEW SECTION. **Sec. 8.** (1) The provisions of this section shall
5 apply to unemancipated minors and incompetent persons whether or not
6 they are residents of this state.

7 (2) The unemancipated minor or incompetent person may petition a
8 superior court for a waiver of the notification requirement and may
9 participate in proceedings on her or his own behalf. The petition for
10 waiver of notification shall include a statement that the petitioner is
11 pregnant, or is believed to be the male who participated in creating
12 the pregnancy, and is an unemancipated minor or incompetent person.
13 The court reviewing the petition shall appoint a guardian ad litem for
14 her or him. A guardian ad litem appointed under this section shall
15 act to maintain the confidentiality of the proceedings.

16 The court shall advise the unemancipated minor or incompetent
17 person that she or he has a right to court-appointed counsel and shall
18 provide the counsel upon request.

19 (3) Court proceedings under this section shall be closed and
20 confidential and shall ensure the anonymity of the unemancipated minor
21 or incompetent person. All court documents under this section shall be
22 sealed. The unemancipated minor or incompetent person has the right to
23 file her or his petition in the court using a pseudonym or using solely
24 her or his initials. These proceedings shall be given precedence over
25 other pending matters to the extent necessary to ensure that the court
26 reaches a decision promptly. The court shall rule, and issue written
27 findings of fact and conclusions of law, within four court days from
28 the filing of the petition, except that the four-day rule may be
29 extended at the request of the unemancipated minor or incompetent
30 person.

31 (4)(a) If the court finds, by clear, cogent, and convincing
32 evidence, that the petitioner is sufficiently mature or able to decide
33 whether to have an abortion, the court shall issue an order authorizing
34 the petitioner to consent to the performance or inducement of an
35 abortion without providing notification to a parent or guardian. If
36 the court does not make the finding specified in this subsection or
37 subsection (5) of this section, it shall dismiss the petition.

1 (b) In the case of a petition by an unemancipated or incompetent
2 male, if the court finds by clear, cogent, and convincing evidence,
3 that the petitioner is sufficiently mature or able to deal with the
4 decision by the pregnant unemancipated or incompetent pregnant person
5 to have an abortion, the court shall waive the requirement that a
6 parent or guardian of the male be notified. If the court does not make
7 the finding specified in this subsection (4)(b) or in (a) of this
8 subsection, the petition shall be dismissed.

9 (5) If the court finds, by a preponderance of the evidence, that
10 there is a pattern of physical or sexual abuse by a parent or guardian
11 of the petitioner, or that notification to a parent or guardian is not
12 in the best interest of the petitioner, the court shall issue an order
13 authorizing the petitioner to consent to the performance or inducement
14 of an abortion without notification to a parent or guardian. If the
15 court does not make the finding specified in this subsection or
16 subsection (4) of this section, it shall dismiss the petition.

17 (6) A court that conducts proceedings under this section shall
18 issue written and specific factual findings and legal conclusions
19 supporting its decision and shall maintain a confidential record of
20 evidence and the judge's findings and conclusions.

21 (7) A procedure for expedited confidential appeal shall be
22 available, as the supreme court provides by rule, to an unemancipated
23 minor or incompetent person whose waiver of notification is denied. An
24 order waiving the notification requirement shall not be subject to
25 appeal.

26 (8) Filing fees shall not be required of an unemancipated minor or
27 incompetent person who petitions a court for a waiver of parental
28 notification under sections 1 through 10 of this act at either the
29 trial or the appellate level.

30 NEW SECTION. **Sec. 9.** The supreme court is respectfully requested
31 to establish rules to ensure that proceedings under sections 1 through
32 10 of this act are handled in an expeditious and confidential manner
33 and to satisfy requirements of federal courts binding on this
34 jurisdiction.

35 NEW SECTION. **Sec. 10.** (1) Any physician who intentionally
36 performs an abortion with knowledge that, or with reckless disregard as
37 to whether, the person upon whom the abortion is to be performed is an

1 unemancipated minor or an incompetent person, without providing the
2 required notification shall be guilty of a gross misdemeanor.

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

16 (3) A person not authorized to receive notification under sections
17 1 through 10 of this act who signs a waiver of notification under
18 section 6(2) of this act is guilty of a misdemeanor.

19 **Sec. 11.** RCW 9.02.100 and 1992 c 1 s 1 are each amended to read as
20 follows:

21 The sovereign people hereby declare that every individual possesses
22 a fundamental right of privacy with respect to personal reproductive
23 decisions.

24 Accordingly, it is the public policy of the state of Washington
25 that:

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

28 (2) Every woman has the fundamental right to choose or refuse to
29 have an abortion, except as specifically limited by RCW 9.02.100
30 through 9.02.170 (~~and~~), 9.02.900 through 9.02.902, and sections 1
31 through 10 of this act;

32 (3) Except as specifically permitted by RCW 9.02.100 through
33 9.02.170 (~~and~~), 9.02.900 through 9.02.902, and sections 1 through 10
34 of this act, the state shall not deny or interfere with a woman's
35 fundamental right to choose or refuse to have an abortion; and

36 (4) The state shall not discriminate against the exercise of
37 (~~these~~) this right(~~s~~) in the regulation or provision of benefits,
38 facilities, services, or information.

1 NEW SECTION. **Sec. 12.** The provisions of this act are to be
2 liberally construed to effectuate the policies and purposes of this
3 act. In the event of conflict between this act and any other provision
4 of law, the provisions of this act shall govern.

5 NEW SECTION. **Sec. 13.** If any provision of this act or its
6 application to any person or circumstance is held invalid, the
7 remainder of the act or the application of the provision to other
8 persons or circumstances is not affected.

9 NEW SECTION. **Sec. 14.** Sections 1 through 10 of this act are each
10 added to chapter 9.02 RCW.

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

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