
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 RCW;
3 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 11 of this act shall be
7 known as and may be cited as the parental notification and consent of
8 abortion act.

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

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

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

16 (c) The capacity to become pregnant and the capacity to exercise
17 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 and consent
9 is usually desirable and in the best interest of the unemancipated
10 minor child or incompetent person.

11 (2) The purpose of the legislature in enacting this parental
12 notification and consent law is to further the important and compelling
13 state 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 11 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 and consent" means the giving of notice
30 directly by conversing with the parent or guardian, either in person or
31 by telephone.

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

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

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

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

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

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

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

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

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

28 (11) "Sexual abuse" means a crime or offense involving sexual
29 contact or sexual intercourse as defined in RCW 9A.44.010 and committed
30 against an unemancipated minor or incompetent person by a family member
31 or guardian.

32 NEW SECTION. **Sec. 4.** (1) A physician shall not perform an
33 abortion upon an unemancipated minor or upon an incompetent person
34 unless the physician has given forty-eight hours actual notification
35 and consent to a custodial parent or to the guardian of the pregnant
36 unemancipated minor or pregnant incompetent person of the physician's
37 intention to perform the abortion. The notification and consent may be
38 given by a referring physician. If the notification and consent is

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

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

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

18 (b) That notification and consent of a parent or guardian is not
19 required if the mother of the unborn child is emancipated as defined in
20 section 3 of this act;

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

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

29 (e) That the mother of the unborn child will be provided court-
30 appointed counsel at her request, and that notification and consent may
31 be waived by a court under section 9 of this act, if the court finds by
32 clear and convincing evidence that: (i) She is sufficiently mature to
33 decide whether to have an abortion; (ii) there is evidence of a pattern
34 of sexual or physical abuse by her parent or guardian; or (iii)
35 notification and consent to a parent or guardian would not be in the
36 best interest of the mother of the unborn child;

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

1 (g) That coercion, as defined in section 3 of this act, of the
2 mother of an unborn child to have an abortion is a violation of the
3 law.

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

17 A physician relying in good faith upon a written declaration under
18 this section shall not be civilly liable under sections 1 through 11 of
19 this act for failure to provide notification and consent to a parent or
20 guardian.

21 Receipt of a written declaration under this section does not
22 authorize the physician to perform an abortion. The physician shall
23 not perform an abortion unless authorized to do so under sections 1
24 through 11 of this act.

25 NEW SECTION. **Sec. 6.** Notification and consent is not required
26 under section 4 or 5 of this act if:

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

31 (2) Notification and consent is waived in writing by the person who
32 is, under sections 1 through 11 of this act, entitled to notification
33 and consent; or

34 (3) Notification and consent is waived under section 9 of this act.

35 NEW SECTION. **Sec. 7.** A parent, guardian, or other person who
36 engages in coercion, as defined in section 3 of this act, of an

1 unemancipated minor or incompetent person to persuade her to have an
2 abortion performed is guilty of a misdemeanor. Being subjected to
3 coercion to obtain or for refusal to obtain an abortion by the parents
4 or guardian of the unemancipated minor or incompetent person shall
5 constitute grounds for the unemancipated minor or incompetent person to
6 be found dependent under chapter 13.34 RCW.

7 NEW SECTION. **Sec. 8.** Physicians required to provide notification
8 and consent under sections 1 through 11 of this act shall file with the
9 department of health, on forms prescribed by the department, monthly
10 reports indicating the number of notifications provided to a parent,
11 guardian, brother, sister, stepparent, or grandparent during the
12 preceding month under sections 1 through 11 of this act, and the number
13 of times in which exceptions were made to the notification and consent
14 requirement under sections 1 through 11 of this act, as well as the
15 type of exception. Physicians shall not use names of the unemancipated
16 minors or incompetent persons on the forms. The department shall on an
17 annual basis compile and make available to the public the data required
18 to be reported under this section.

19 NEW SECTION. **Sec. 9.** (1) The provisions of this section shall
20 apply to unemancipated minors and incompetent persons whether or not
21 they are residents of this state.

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

30 The court shall advise the unemancipated minor or incompetent
31 person that she has a right to court-appointed counsel and shall
32 provide the counsel upon request.

33 (3) Court proceedings under this section shall be closed and
34 confidential and shall ensure the anonymity of the unemancipated minor
35 or incompetent person. All court documents under this section shall be
36 sealed. The unemancipated minor or incompetent person has the right to
37 file her petition in the court using a pseudonym or using solely her

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

8 (4) If the court finds, by clear, cogent, and convincing evidence,
9 that the petitioner is sufficiently mature or able to decide whether to
10 have an abortion, the court shall issue an order authorizing the
11 petitioner to consent to the performance or inducement of an abortion
12 without providing notification and consent 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 shall dismiss the petition.

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

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

28 (7) A procedure for expedited confidential appeal shall be
29 available, as the supreme court provides by rule, to an unemancipated
30 minor or incompetent person whose waiver of notification and consent is
31 denied. An order waiving the notification and consent requirement
32 shall not be subject to appeal.

33 (8) Filing fees shall not be required of an unemancipated minor or
34 incompetent person who petitions a court for a waiver of parental
35 notification and consent under sections 1 through 11 of this act at
36 either the trial or the appellate 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 physician who intentionally
5 performs an abortion with knowledge that, or with reckless disregard as
6 to whether, the person upon whom the abortion is to be performed is an
7 unemancipated minor or an incompetent person, without providing the
8 required notification and consent shall be guilty of a gross
9 misdemeanor.

10 (2) Failure to provide the notification and consent required under
11 section 4 or 5 of this act is prima facie evidence of failure to
12 provide notification and consent and of interference with family
13 relations in appropriate civil actions. The prima facie evidence shall
14 not apply to an issue other than failure to provide notification and
15 consent to the parents or guardian and interference with family
16 relations in appropriate civil actions. The civil action may be based
17 on a claim that the act was a result of simple negligence, gross
18 negligence, wantonness, willfulness, intention, or other legal standard
19 of care. The law of this state shall not be construed to preclude the
20 award of exemplary damages in an appropriate civil action relevant to
21 violations of sections 1 through 11 of this act. Nothing in sections
22 1 through 11 of this act shall be construed to limit the common law
23 rights of parents.

24 (3) A person not authorized to receive notification and consent
25 under sections 1 through 11 of this act who signs a waiver of
26 notification and consent under section 6(2) of this act is guilty of a
27 misdemeanor.

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

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

32 The sovereign people hereby declare that every individual possesses
33 a fundamental right of privacy with respect to personal reproductive
34 decisions.

35 Accordingly, it is the public policy of the state of Washington
36 that:

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

3 (2) Every woman has the fundamental right to choose or refuse to
4 have an abortion, except as specifically limited by RCW 9.02.100
5 through 9.02.170 (~~and~~), 9.02.900 through 9.02.902, and sections 1
6 through 11 of this act;

7 (3) Except as specifically permitted by RCW 9.02.100 through
8 9.02.170 (~~and~~), 9.02.900 through 9.02.902, and sections 1 through 11
9 of this act, the state shall not deny or interfere with a woman's
10 fundamental right to choose or refuse to have an abortion; and

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

14 NEW SECTION. Sec. 13. The provisions of this act are to be
15 liberally construed to effectuate the policies and purposes of this
16 act. In the event of conflict between this act and any other provision
17 of law, the provisions of this act shall govern.

18 NEW SECTION. Sec. 14. If any provision of this act or its
19 application to any person or circumstance is held invalid, the
20 remainder of the act or the application of the provision to other
21 persons or circumstances is not affected.

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

24 NEW SECTION. Sec. 16. This act is necessary for the immediate
25 preservation of the public peace, health, morals, or safety, or support
26 of the state government and its existing public institutions, and takes
27 effect immediately.

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