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SENATE BILL 5615

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State of Washington

58th Legislature

2003 Regular Session

By Senators Mulliken, Hargrove, Swecker, Stevens, Sheahan, Oke and Schmidt

Read first time 02/03/2003. Referred to Committee on Children & Family Services & Corrections.

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 may be  
7 known and cited as the parental notification and consent of abortion  
8 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

1 unemancipated minor or incompetent person by use of force, by threat of  
2 force, by deprivation of necessary food and shelter, or by use of  
3 fraud, misrepresentation, or deceit.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1        NEW SECTION.    **Sec. 7.** A parent, guardian, or other person who  
2 engages in coercion, as defined in section 3 of this act, of an  
3 unemancipated minor or incompetent person to persuade her to have an  
4 abortion performed is guilty of a misdemeanor. Being subjected to  
5 coercion to obtain or for refusal to obtain an abortion by the parents  
6 or guardian of the unemancipated minor or incompetent person shall  
7 constitute grounds for the unemancipated minor or incompetent person to  
8 be found dependent under chapter 13.34 RCW.

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

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

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

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

35        (3) Court proceedings under this section shall be closed and  
36 confidential and shall ensure the anonymity of the unemancipated minor

1 or incompetent person. All court documents under this section shall be  
2 sealed. The unemancipated minor or incompetent person has the right to  
3 file her petition in the court using a pseudonym or using solely her  
4 initials. These proceedings shall be given precedence over other  
5 pending matters to the extent necessary to ensure that the court  
6 reaches a decision promptly. The court shall rule, and issue written  
7 findings of fact and conclusions of law, within four court days from  
8 the filing of the petition, except that the four-day rule may be  
9 extended at the request of the unemancipated minor or incompetent  
10 person.

11 (4) If the court finds, by clear, cogent, and convincing evidence,  
12 that the petitioner is sufficiently mature or able to decide whether to  
13 have an abortion, the court shall issue an order authorizing the  
14 petitioner to consent to the performance or inducement of an abortion  
15 without providing notification and consent to a parent or guardian. If  
16 the court does not make the finding specified in this subsection or  
17 subsection (5) of this section, it shall dismiss the petition.

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

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

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

36 (8) Filing fees shall not be required of an unemancipated minor or  
37 incompetent person who petitions a court for a waiver of parental

1 notification and consent under sections 1 through 11 of this act at  
2 either the trial or the appellate level.

3 NEW SECTION. **Sec. 10.** The supreme court is respectfully requested  
4 to establish rules to ensure that proceedings under sections 1 through  
5 11 of this act are handled in an expeditious and confidential manner  
6 and to satisfy requirements of federal courts binding on this  
7 jurisdiction.

8 NEW SECTION. **Sec. 11.** (1) Any physician who intentionally  
9 performs an abortion with knowledge that, or with reckless disregard as  
10 to whether, the person upon whom the abortion is to be performed is an  
11 unemancipated minor or an incompetent person, without providing the  
12 required notification and consent shall be guilty of a gross  
13 misdemeanor.

14 (2) Failure to provide the notification and consent required under  
15 section 4 or 5 of this act is prima facie evidence of failure to  
16 provide notification and consent and of interference with family  
17 relations in appropriate civil actions. The prima facie evidence shall  
18 not apply to an issue other than failure to provide notification and  
19 consent to the parents or guardian and interference with family  
20 relations in appropriate civil actions. The civil action may be based  
21 on a claim that the act was a result of simple negligence, gross  
22 negligence, wantonness, willfulness, intention, or other legal standard  
23 of care. The law of this state shall not be construed to preclude the  
24 award of exemplary damages in an appropriate civil action relevant to  
25 violations of sections 1 through 11 of this act. Nothing in sections  
26 1 through 11 of this act shall be construed to limit the common law  
27 rights of parents.

28 (3) A person not authorized to receive notification and consent  
29 under sections 1 through 11 of this act who signs a waiver of  
30 notification and consent under section 6(2) of this act is guilty of a  
31 misdemeanor.

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

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



1 The sovereign people hereby declare that every individual possesses  
2 a fundamental right of privacy with respect to personal reproductive  
3 decisions.

4 Accordingly, it is the public policy of the state of Washington  
5 that:

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

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

12 (3) Except as specifically permitted by RCW 9.02.100 through  
13 9.02.170 (~~and~~), 9.02.900 through 9.02.902, and sections 1 through 11  
14 of this act, the state shall not deny or interfere with a woman's  
15 fundamental right to choose or refuse to have an abortion; and

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

19 NEW SECTION. Sec. 13. The provisions of this act are to be  
20 liberally construed to effectuate the policies and purposes of this  
21 act. In the event of conflict between this act and any other provision  
22 of law, the provisions of this act shall govern.

23 NEW SECTION. Sec. 14. If any provision of this act or its  
24 application to any person or circumstance is held invalid, the  
25 remainder of the act or the application of the provision to other  
26 persons or circumstances is not affected.

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

29 NEW SECTION. Sec. 16. This act is necessary for the immediate  
30 preservation of the public peace, health, morals, or safety, or support  
31 of the state government and its existing public institutions, and takes  
32 effect immediately.

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