

SENATE BILL REPORT

SB 5289

As of February 4, 2015

Title: An act relating to abortion notification.

Brief Description: Requiring notification to parents or guardians in cases of abortion.

Sponsors: Senators Padden, Hargrove, O'Ban, Miloscia, Angel, Dammeier, Pearson and Benton.

Brief History:

Committee Activity: Law & Justice: 2/02/15.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Aldo Melchiori (786-7439)

Background: Parental notification statutes generally require notification to the parents or guardians of a pregnant minor seeking an abortion. Currently, 38 states require parental involvement in a minor's decision to have an abortion. Twenty-one states require parental consent only, three of which require consent from both parents; 12 states require parental notification only, one requires both parents to be notified; and five states require both parental consent and notification. Thirty-eight states include a judicial bypass procedure which allows a minor to obtain approval by a court. Five states require judges to use specific criteria, such as a minor's intelligence or emotional stability, when deciding whether to waive a parental involvement requirement. Thirteen states require judges to use a clear and convincing standard when deciding whether to waive the parental involvement requirement. Thirty-six states permit exceptions that permit a minor to obtain an abortion in a medical emergency and 16 states make exceptions in cases of abuse, assault, incest, or neglect. There is no parental notification law in Washington.

The United States Supreme Court has generally upheld the constitutionality of parental notification statutes under the First and Fourteenth Amendments to the United States Constitution, so long as they include judicial bypass provisions sufficient to protect the minor's rights.

Summary of Bill: A person must not perform an abortion upon a pregnant minor unless that person has given at least 48 hours' actual notice to one parent or the legal guardian of the pregnant minor. The person who performs the abortion must receive a written statement from the referring physician certifying that the referring physician has given notice to the

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

parent or legal guardian of the pregnant minor who is to receive the abortion. If actual notice is not possible after a reasonable effort, the person must give 48 hours' constructive notice.

Notice is not required if the attending physician certifies that a medical emergency exists and there is insufficient time to provide the required notice; notice is waived in writing by the person who is entitled to notice; or notice is waived by the court.

A pregnant minor may petition any superior court for a waiver of the notice requirement. No filing fees are required to petition a court for a waiver of parental notification at either the trial or the appellate level. The petition must include a statement that she is unemancipated, that notice has not been waived, and that she wishes to have an abortion without giving notice to a parent or guardian. The proceeding must be given precedence over other pending matters to the extent necessary to ensure that the court reaches a decision promptly.

The court must appoint a guardian ad litem for the petitioner. The superior court must advise her that she has a right to court-appointed counsel and provide her with counsel upon request. The pregnant minor has the right to file her petition in the superior court using a pseudonym or using solely her initials. Court proceedings must be confidential and ensure the anonymity of the petitioner and must be sealed. Any guardian ad litem appointed must maintain the confidentiality of the proceedings. All documents related to the petition must be confidential and not be made available to the public.

The court must consider evidence relating to the petitioner's emotional development, maturity, intellect, and understanding. If the court finds, by clear and convincing evidence that she is sufficiently mature and well-informed to decide whether to have an abortion, or either that she is the victim of physical or sexual abuse by one or both of her parents or her legal guardian; or the notification of a parent or guardian is not in her best interest; the court must issue an order authorizing her to consent without the notification of her parent or guardian. If the court does not make these findings, it must dismiss the petition. The court must issue written and specific factual findings and legal conclusions supporting its decision and order that a confidential record of the evidence and the judge's findings and conclusions be maintained.

The court must rule, and issue the written findings of fact and conclusions of law, within 48 hours of the time that the petition was filed, unless the petitioner requests an extension. If the court fails to rule within 48 hours and an extension was not requested, the petition is deemed to have been granted, and the notice requirement must be waived. An expedited confidential appeal must be available, as the Supreme Court provides by rule, to any pregnant minor to whom the superior court denies a waiver of notice. An order authorizing an abortion without notice is not subject to appeal.

A parent, legal guardian, or any other person must not coerce a pregnant minor to have an abortion performed. If a pregnant minor is denied financial support by her parents or legal guardian due to her refusal to have an abortion, she is deemed emancipated for the purposes of eligibility for public assistance benefits, except that the benefits may not be used to obtain an abortion.

A monthly report indicating the number of notices issued, the number of times in which exceptions were made to the notice requirement, the type of exception, the pregnant minor's age, and the number of prior pregnancies and prior abortions of the pregnant minor must be filed with the Department of Health on forms prescribed by the department. Patient names are not on the forms. A compilation of the data reported is made by the department on an annual basis and is available to the public.

Any person who intentionally performs an abortion with knowledge that, or with reckless disregard as to whether, the person upon whom the abortion is to be performed is a pregnant minor without providing the required notice is guilty of a gross misdemeanor. It is a defense that she falsely represented her age or identity to the physician to be at least 18 years of age by displaying an apparently valid governmental record of identification such that a careful and prudent person under similar circumstances would have relied on for representation. The defense does not apply if the physician is shown to have had independent knowledge of her actual age or identity, or failed to use due diligence in determining her age or identity.

Any person not authorized to receive notice who signs a waiver of notice is guilty of a gross misdemeanor. Any person who coerces a pregnant minor to have an abortion is guilty of a gross misdemeanor.

Failure to provide a person with the notice required is prima facie evidence of failure to provide notice and of interference with family relations in appropriate civil actions. The prima facie evidence does not apply to any issue other than failure to inform the parents or legal guardian and interference with family relations. The civil action may be based on a claim that the act was a result of simple negligence, gross negligence, wantonness, willfulness, intention, or other legal standard of care. The laws of this state must not be construed to preclude the award of exemplary damages.

By concurrent resolution the Legislature may appoint one or more of its members to intervene and defend the act in any case in which it is subject to challenge.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: Up to half of pregnant teens already notify their parents. The support of parents is important when making difficult life decisions. Human traffickers are taking young girls in to get abortions so they can use them again. An abortion is easier to obtain than any other medical procedure. It's harder to get permission to leave school. Parents are ready and willing to help their children if they are aware of what is happening. Children need more support, not less. Children sometimes do not know how to approach their parents with this decision and in these situations, a physician may be able to provide assistance. Parents are the logical people to be able to help their own children. Family reactions are often more helpful than envisioned by the teen. This provision will help

ensure that these important decisions are not made under duress. Let parents do their job – they are good at it. The bill's bypass provisions will comply with the constitutional parameters given by the U.S. Supreme Court. The law currently assumes that a parent cannot be trusted, but they most often can be. Parental notification laws in other states have not caused the horror stories told by the bill's opponents. Wrong decisions have lasting consequences. Parents are legally responsible for their children's health, so they should get notice. The bill just provides for notice to a parent, not consent. This will strengthen families. Who is a better protector of children than their parents?

CON: This will endanger the health and wellbeing of pregnant teens. Women should make the choice themselves in consultation with their physicians. The law should not force these women to risk their safety at home. Women have a right to safe and confidential health care. This just adds another barrier to teens getting health care. In a small town, going to court can be the same thing as telling your parents. This does not protect women, it endangers them. The lack of guidance to the court will allow judges to make arbitrary decisions. The bill does not help women and it does not help parents. Not everyone has a parent they can trust. Women are not the sexual property of their parents. The legal process will be daunting to many women. You cannot legislate communication with parents. This creates an unneeded barrier to a legal medical procedure.

Persons Testifying: PRO: Senator Padden, prime sponsor; Leanna Benn, Teen-Aid; Dr. Deborah Rodriguez, Cindy Zapotock, Lauren Milne, Ciara Rasmussen, Prof. David DeWolf, Bethany Burns, Trish Otterholt, Sophia Pettis, Joseph Backholm, Janice Kristiansen, Geraldine Luemmler, Matt Coombs, Aimee Coombs, Megan Crawford, Rachel Nelson, Karen McCall, citizens; Michael Pauley, Human Life of WA; Sarah Davenport-Smith, Family Policy Institute of WA; Lorie Lucky, WA National Abortion and Reproductive Rights Action League (NARAL); Phillip Passantino, Connor York, Abigail Cort, Sarah Eneim, Kristine Vaz, Casey Dail, Meena Davies, Allyson Reimers, Maria Fernanda Gomez, Lisa Akins, Katie Lodjic, Leah Burlingame, Caleb Knezevich, Melody Durrett, Students for Life; Tammi Murray, Vocare Movement; Anne Jackson, Sidewalk Counseling; Jeannet Sheppard Mullaly, Vocare; Kerry Hooks, Former Fetuses.

CON: Lisa Stone, Legal Voice; Trina Stout Community Abortion Information & Resource Project; Tori Westman, Victoria Redmen, Anna Jansen, Amelia Hogan, NARAL, Pro-Choice WA; Nancy Sapiro, National Counsel for Jewish Women, Anti-Defamation League; Rabbi Yohanna Kinberg, Justin Alley, Diana Stack Roberts, Laura Hamilton, Sage Appel, Jazzy Smith, Dani Adams, Tiffany Honkins, Karen Tennyson, William Wilson, Alex Kory, Nelda Ward, Dr. Lyndsey Benson, Megan Miller, citizens.