
HOUSE BILL 1688

State of Washington 61st Legislature 2009 Regular Session

By Representatives Shea, Miloscia, Short, Schmick, Crouse, Hope, McCune, Kristiansen, Kretz, O'Brien, Ericksen, Warnick, and Roach

Read first time 01/27/09. Referred to Committee on Health Care & Wellness.

1 AN ACT Relating to abortion procedures and treatments performed on
2 minor females and females subject to guardianship; amending RCW
3 9.02.100, 9.02.110, 9.02.120, and 9.02.140; adding new sections to
4 chapter 9.02 RCW; creating new sections; and providing an effective
5 date.

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

7 NEW SECTION. **Sec. 1.** (1) There is a longstanding medical and
8 legal history requiring physicians to obtain voluntary informed consent
9 from a patient, and the parents or guardians in the case of a minor,
10 before any medical procedure or surgery. Likewise, following emergency
11 medical procedures, there is a longstanding medical and legal history
12 requiring physicians to notify parents or guardians of the procedure.
13 The legislature intends to make these longstanding requirements apply
14 to abortion.

15 (2) The legislature intends to encourage unmarried pregnant minors
16 to seek the advice and counsel of their parents or guardians when faced
17 with the difficult decision of whether or not to terminate a pregnancy.
18 The legislature finds that:

1 (a) Other medical procedures including, but not limited to, body
2 piercings, tattoos, and the administration of aspirin require the
3 consent of a parent or guardian, and wants the decision to terminate a
4 pregnancy treated no differently. The legislature also wants to ensure
5 that health care decisions regarding the termination of a pregnancy are
6 made with voluntary informed consent;

7 (b) Abortion procedures and treatments can lead to death and are,
8 therefore, major medical procedures;

9 (c) In almost every other major medical procedure, there is in-
10 depth consultation with the attending physician, imaging, and securing
11 of voluntary informed consent. The legislature intends for abortion
12 procedures and treatments to be the same.

13 (3) The legislature acknowledges that in instances of medical
14 emergency, obtaining consent from parents or guardians may not be
15 feasible. Circumstances may also arise involving incest or where
16 contact of the parents or guardians for the purpose of obtaining
17 consent or giving notice may result in physical harm to the minor.
18 Therefore, the legislature intends for the procedures enumerated in
19 this act for such instances and circumstances to be strictly construed.
20 The legislature wants to ensure compliance with the spirit and intent
21 of this act.

22 NEW SECTION. **Sec. 2.** (1)(a) No person may knowingly perform an
23 abortion or treatment upon a pregnant unemancipated minor female or
24 upon a female for whom a guardian has been appointed because of a
25 finding of incompetency in the state of Washington, unless:

26 (i) The attending physician has secured the voluntary, written
27 informed consent of both of the minor's parents, if living, or the
28 surviving parent if one parent is deceased, or the legal guardian or
29 guardians if the minor is subject to guardianship no later than forty-
30 eight hours before the procedure or treatment; or

31 (ii) The minor is emancipated and the attending physician has
32 received proof of emancipation and the minor's voluntary, written
33 informed consent no later than forty-eight hours before the procedure
34 or treatment; or

35 (iii) A medical emergency exists for the minor that is so urgent
36 that there is insufficient time for the physician to obtain the consent
37 of the parents or guardian, and the attending physician certifies such

1 in the minor's medical records. In so certifying, the attending
2 physician must include the factual circumstances supporting his or her
3 professional judgment that a medical emergency existed and the grounds
4 for the determination that there was insufficient time to obtain the
5 informed consent of the parents or guardian. The physician must still
6 secure voluntary, written informed consent. Immediately following an
7 abortion procedure or treatment under this subsection, the physician
8 shall, with due diligence, provide actual written notice to the parents
9 or guardians that the operation has been performed; or

10 (iv) The pregnancy is the result of incest where a parent or
11 guardian is a party to the incestuous act and the attending physician
12 certifies such in the minor's medical records. In so certifying, the
13 attending physician must include the factual circumstances surrounding
14 the incident and report the incident to local law enforcement within
15 twenty-four hours of performing the abortion procedure or treatment.
16 The physician need only obtain written consent, in person, of the
17 nonparty parent or guardian, if living, or any adult person standing in
18 loco parentis, provided that the adult person is not an employee of the
19 health care provider and physician performing the abortion procedure or
20 treatment; or

21 (v) Any judge of a juvenile court in the county where the minor
22 resides or the county where the abortion procedure or treatment is to
23 be caused or performed, upon petition, or motion, and after appropriate
24 hearing, shall determine, by clear and convincing evidence, that:

25 (A) It is in the best interest of the minor that the parent's or
26 guardian's consent be withheld;

27 (B) The minor is mature and capable of giving informed consent to
28 the abortion procedure or treatment; and

29 (C) The attending physician has secured the minor's voluntary
30 written, informed consent.

31 (b)(i) A minor shall have the legal capacity to make and prosecute
32 a petition or motion as provided for in this section and may
33 participate in proceedings in the court on her own behalf. The court
34 may appoint a guardian ad litem to assist her. The court shall advise
35 her that she has a right to court-appointed counsel, and shall provide
36 her with such counsel unless she wishes to appear with private counsel
37 or has knowingly and intelligently waived representation.

1 (ii) Court proceedings under this section are confidential and
2 shall be given such precedence over other pending matters as will
3 ensure that the court may reach a decision promptly and without delay.
4 In no case shall the court fail to rule within three business days of
5 the date of the petition or motion. The name of the pregnant minor
6 shall not be entered on any docket that is subject to public
7 inspection. All persons shall be excluded from hearings under this
8 section except the petitioner and such other persons whose presence is
9 specifically requested by the petitioner.

10 (iii) A court that conducts proceedings under this section shall
11 make in writing specific factual findings and legal conclusions
12 supporting its decision and shall, upon the initial filing of the
13 minor's petition or motion for judicial authorization of an abortion
14 procedure or treatment without parental or guardian consent, order a
15 sealed record of the petition, pleadings, submissions, transcripts,
16 exhibits, orders, evidence, and any other written material to be
17 maintained, which shall include its own findings and conclusions.

18 (iv) The petition or motion to the court as provided for in this
19 section shall be accompanied by a nonnotarized verification stating
20 that the information therein is true and correct to the best of the
21 minor's knowledge, and the petition or motion shall, at a minimum, set
22 forth the following facts:

23 (A) The initials of the pregnant minor;

24 (B) The age of the pregnant minor;

25 (C) The names and addresses of each parent or guardian;

26 (D) That voluntary, written informed consent has been obtained by
27 the attending physician;

28 (E) That the pregnant minor is of sound mind and has sufficient
29 intellectual capacity to consent to the abortion procedure or
30 treatment;

31 (F) A prayer for relief asking the court to grant the pregnant
32 minor judicial authorization for an abortion procedure or treatment
33 without parental or guardian consent;

34 (G) That the pregnant minor is aware that any false statements made
35 in the petition or motion are punishable by law; and

36 (H) The signature of the pregnant minor. If necessary to serve the
37 interest of justice, the court shall refer the pregnant minor to the

1 appropriate personnel for assistance in preparing the petition or
2 motion.

3 (v) At the hearings provided for under this section, the court
4 shall hear evidence relating to the emotional development, maturity,
5 intellect, and understanding of the pregnant minor, the fact and
6 duration of her pregnancy, the circumstances and facts showing why
7 judicial authorization of an abortion procedure or treatment without
8 parental or guardian consent is in the minor's best interest, and any
9 other evidence that the court may find useful in determining whether
10 judicial authorization should be granted. The court shall also notify
11 the pregnant minor at the hearing that it must rule on her petition or
12 motion within three business days of the date of its filing and that,
13 should the court fail to rule in favor of her petition or motion within
14 the allotted time, she has the right to appeal to the superior court.

15 (vi) An expedited confidential appeal shall be available to any
16 pregnant minor whom the court fails to grant judicial authorization for
17 an abortion procedure or treatment without parental or guardian consent
18 within the time specified in this section. Any court to which an
19 appeal is taken under this section shall give prompt and confidential
20 attention and shall rule within five business days of the filing of the
21 appeal. The supreme court may issue such rules, consistent with this
22 section, as may further assure that the process provided in this
23 section is conducted in such a manner as will ensure confidentiality
24 and sufficient precedence over other pending matters.

25 (vii) No filing fees shall be required of any pregnant minor
26 availing herself of the procedures provided by this section.

27 (c) Compliance with this section shall be considered reasonable
28 medical practice. Failure to comply with the requirements of this
29 section is prima facie evidence of failure to obtain voluntary, written
30 informed consent and of interference with family relations in
31 appropriate civil actions. This chapter shall not be construed to
32 preclude the award of exemplary damages, or damages for emotional
33 distress, even if unaccompanied by physical complications in any
34 appropriate civil action relevant to violation of this section.
35 Nothing shall be construed to limit the common law rights of parents.

36 (2) For the purposes of this section:

37 (a) "Actual written notice" means a notice that shall be addressed
38 to the parents or guardian at the usual place of abode of the parents

1 or guardian, and delivered personally by the physician or physician's
2 agent within twenty-four hours of the abortion procedure or treatment.
3 In lieu of such delivery, notice may be made by certified mail
4 addressed to the parents or guardian at the usual place of abode of the
5 parents or guardian with return receipt requested and restricted
6 delivery to the addressee. If notice is made by certified mail, the
7 time of delivery shall be deemed to occur at twelve noon on the next
8 day on which regular mail delivery takes place subsequent to mailing.

9 (b) "Best interest" means a judicial finding of fact that more
10 likely than not, physical harm will occur to the minor if there is
11 contact with her parents or guardians for the purpose of giving notice
12 of, or obtaining consent for, an abortion procedure or treatment. The
13 threat to physical safety includes the potential for physical harm as
14 a repercussion for having the abortion procedure or treatment.

15 (c) "Medical emergency" is defined as any situation where the
16 continuation of the pregnancy will, more than likely, result in the
17 death of the minor.

18 (d) "Minor" means any female who is less than eighteen years of
19 age.

20 (e) "Physical harm" means physical pain or injury, illness, or an
21 impairment of physical condition.

22 (f) "Voluntary informed consent" means and only exists if:

23 (i) At least forty-eight hours before the abortion procedure or
24 treatment, the physician who is to perform the abortion procedure or
25 treatment, in a face-to-face consultation, orally and in writing
26 informs the minor of:

27 (A) The nature of the abortion procedure or treatment, and
28 specifically how the procedure will affect the fetus, and the risk and
29 alternatives to an abortion procedure or treatment that any person
30 would consider material to the decision of whether or not to undergo an
31 abortion;

32 (B) Specifically how, and by what means, the procedure or treatment
33 will affect the fetus;

34 (C) That the abortion procedure or treatment will terminate the
35 life of a living human being; and

36 (D) The probable gestational age and a description of the
37 development of the fetus at the time the abortion procedure or
38 treatment would be performed;

- 1 (ii) The physician who is to perform the abortion procedure or
2 treatment obtains the consent in writing; and
3 (iii) The physician performs a mandatory ultrasound of the fetus,
4 while displaying the ultrasound so that it is clearly visible to the
5 minor.

6 **Sec. 3.** RCW 9.02.100 and 1992 c 1 s 1 are each amended to read as
7 follows:

8 The sovereign people hereby declare that every individual possesses
9 a fundamental right of privacy with respect to personal reproductive
10 decisions.

11 Accordingly, it is the public policy of the state of Washington
12 that:

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

15 (2) Every woman has the fundamental right to choose or refuse to
16 have an abortion, except as specifically limited by RCW 9.02.100
17 through 9.02.170 (~~and~~), 9.02.900 through 9.02.902, and section 2 of
18 this act;

19 (3) Except as specifically permitted by RCW 9.02.100 through
20 9.02.170 (~~and~~), 9.02.900 through 9.02.902, and section 2 of this act,
21 the state shall not deny or interfere with a woman's fundamental right
22 to choose or refuse to have an abortion; and

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

26 **Sec. 4.** RCW 9.02.110 and 1992 c 1 s 2 are each amended to read as
27 follows:

28 The state may not deny or interfere with a woman's right to choose
29 to have an abortion prior to viability of the fetus, or to protect her
30 life or health, except as specifically limited by section 2 of this
31 act.

32 A physician may terminate and a health care provider may assist a
33 physician in terminating a pregnancy as permitted by this section.

34 **Sec. 5.** RCW 9.02.120 and 1992 c 1 s 3 are each amended to read as
35 follows:

1 Unless authorized by RCW 9.02.110 and performed in compliance with
2 section 2 of this act, any person who performs an abortion on another
3 person shall be guilty of a class C felony punishable under chapter
4 9A.20 RCW.

5 **Sec. 6.** RCW 9.02.140 and 1992 c 1 s 5 are each amended to read as
6 follows:

7 Any regulation promulgated by the state relating to abortion shall
8 be valid only if:

9 (1) The regulation is medically necessary to protect the life or
10 health of the woman terminating her pregnancy,

11 (2) The regulation is consistent with established medical practice,
12 and

13 (3) Of the available alternatives, the regulation imposes the least
14 restrictions on the woman's right to have an abortion as defined by RCW
15 9.02.100 through 9.02.170 (~~and~~), 9.02.900 through 9.02.902, and
16 section 2 of this act.

17 NEW SECTION. **Sec. 7.** Except in a medical emergency, as defined
18 under section 2 of this act, no parent, guardian, or other person
19 standing in loco parentis shall coerce a pregnant unemancipated minor
20 or pregnant female subject to guardianship to undergo an abortion
21 procedure or treatment. Any pregnant unemancipated minor or pregnant
22 female subject to guardianship may apply to the superior court for
23 relief. The court shall provide her with counsel, give the matter
24 expedited consideration, and grant such relief as may be necessary to
25 prevent coercion. Should a minor be denied the financial support of
26 her parents by reason of her refusal to undergo an abortion procedure
27 or treatment, she shall be considered emancipated for purposes of
28 eligibility for assistance of benefits.

29 NEW SECTION. **Sec. 8.** The provisions of this act are to be
30 liberally construed to effectuate the intent, policies, and purposes of
31 this act.

32 NEW SECTION. **Sec. 9.** If any provision of this act or its
33 application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other
2 persons or circumstances is not affected.

3 NEW SECTION. **Sec. 10.** Sections 2 and 7 of this act are each added
4 to chapter 9.02 RCW.

5 NEW SECTION. **Sec. 11.** This act may be known and cited as the
6 healthy family daughter protection act of 2009.

7 NEW SECTION. **Sec. 12.** This act takes effect December 1, 2009.

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