

HOUSE BILL REPORT

ESHB 1523

As Passed House:

March 15, 1995

Title: An act relating to parental notice of abortion.

Brief Description: Requiring parental notice of abortion.

Sponsors: By House Committee on Law & Justice (originally sponsored by Representatives Boldt, Mulliken, Fuhrman, Goldsmith, Benton, Pennington, Stevens, Johnson, Sherstad, McMahan, Hargrove, Padden, Sheahan, Campbell, Chandler, D. Schmidt, Koster, Beeksma, Backlund and Smith).

Brief History:

Committee Activity:

Law & Justice: 2/8/95, 2/22/95 [DPS].

Floor Activity:

Passed House: 3/15/95, 55-44.

HOUSE COMMITTEE ON LAW & JUSTICE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Padden, Chairman; Delvin, Vice Chairman; Hickel, Vice Chairman; Campbell; Carrell; Lambert; McMahan; Morris; Robertson; Sheahan and Smith.

Minority Report: Do not pass. Signed by 6 members: Representatives Appelwick, Ranking Minority Member; Costa, Assistant Ranking Minority Member; Chappell; Cody; Thibaudeau and Veloria.

Staff: Bill Perry (786-7123).

Background: Abortion has been the subject of great debate and considerable legislative and judicial activity over the past few decades. Since 1973, both the United States and Washington State Supreme Courts have spoken on the subject, as have the people of the state through the initiative process.

FEDERAL DECISIONS. The U.S. Supreme Court held in Roe v. Wade, 410 U.S. 113 (1973), that a woman could choose, in consultation with her doctor, whether or not to have an abortion during the first trimester of her pregnancy. State interference with such a decision was not allowed. The Court held, however, that during the

second trimester of a pregnancy, state regulation was permissible at least to the extent of protecting the health of the pregnant woman. The Court further held that during the third trimester, or after "viability," state prohibition of an abortion was permissible, except to the extent that an abortion was necessary to preserve the health or life of the woman.

In 1992, in Planned Parenthood of Southeastern Pennsylvania v. Casey, 112 S. Ct. 2791 (1992), the Court significantly altered its holding in Roe. The Court did not overturn the basic premise of Roe that a woman has a constitutionally protected right to choose whether or not to have an abortion, although four of the Court's justices would have done so. The Court also retained "viability" as the critical point beyond which a state can prohibit abortions. However, the Court greatly expanded the authority of states to regulate abortions prior to viability. Under Casey, the test to be employed in judging the constitutionality of a state law is whether or not the law is an "undue burden" on a woman's right.

This test prohibits state legislation that has the primary purpose of placing a substantial obstacle in the way of a woman seeking an abortion of a nonviable fetus. Permissible purposes include protection of a woman's health and expressing a preference for childbirth over abortion. The undue burden test prohibits interference with a woman's right to make the ultimate decision about abortion. The test does not prohibit laws that have incidental effects on the expense or difficulty of obtaining an abortion.

The particular Pennsylvania statute examined and upheld in Casey involved among other things a requirement that an unemancipated minor have the consent of a parent before obtaining an abortion. The Pennsylvania law provides a judicial bypass that allows a court to authorize such an abortion absent parental consent if the court finds the minor to be mature enough to give informed consent, or if the court finds that an abortion would be in her best interests.

STATE DECISION. In 1975, two years after Roe v. Wade, the Washington State Supreme Court decided State v. Koome, 84 Wn.2d 901 (1975). That decision deals specifically with the question of parental consent to a minor child's abortion. The court declared the consent requirement unconstitutional. However, the court explicitly noted the possibility that a parental notice might be permissible. The court stated, "if parental supervision is considered valuable in itself, perhaps the State could make a certificate of parental consultation prerequisite to a minor's abortion."

STATE LEGISLATION. In 1991 the voters of the state, by a vote of 756,653 to 752,354, approved Initiative 120 which codified the basic holding of Roe v. Wade. The initiative provides that "every woman has the fundamental right to choose or refuse to have an abortion," except as specifically limited by the terms of the initiative. The initiative further declares that, except as specifically permitted by the

initiative, "the state shall not deny or interfere with a woman's fundamental right to choose or refuse to have an abortion."

The initiative prohibits interference with a woman's right prior to "viability" which is defined as the point in a pregnancy when "there is reasonable likelihood of the fetus' sustained survival outside the uterus without the application of extraordinary medical measures." Pregnancy is defined as beginning with the "implantation of an embryo."

The initiative allows regulation of abortion only if such regulation is:

- o Medically necessary to protect the life or health of the woman terminating her pregnancy;
- o Consistent with established medical practice; and
- o The least restrictive alternative.

The initiative also specifically prohibits discrimination against the rights granted by the initiative "in the regulation or provision of benefits, facilities, services, or information." It also requires that any state program that provides benefits for maternity care also provide "substantially equivalent benefits" for terminating pregnancies.

As part of the state's criminal code, it is a crime to "coerce" a person. Coercion is the use of threats to prevent a person from doing something the person has a lawful right to do, or the use of threats to force a person to do something he or she is not legally bound to do. The crime of coercion is a gross misdemeanor. (RCW 9A.36.070) Threats under this statute may take the form of communicating the intent to: (1) cause bodily injury; (2) cause physical damage to property; or (3) subject a person to confinement or restraint.

Summary of Bill: The "Parental Notice of Abortion Act" is adopted. The act is similar to part of the Pennsylvania statute upheld by the U.S. Supreme Court in 1992. Generally, all of the provisions described below regarding a minor and notice to her parents also apply to an incompetent person and notice to that person's guardian.

The stated purposes of the act are: (1) protecting minors against their own immaturity; (2) fostering family unity; (3) protecting the constitutional rights of parents to rear their children; (4) reducing teenage pregnancy and unnecessary abortions.

No person may perform an abortion upon an unemancipated minor or upon an incompetent unless that person has given at least 48 hours' notice in person or by phone to a parent or guardian of the minor or incompetent person. However, no parental notice is to be made until the minor has been advised of her options under the act. Mailed notice is allowed if in-person or phone notice is not possible after

reasonable effort. The same notice must also be given to the parents of the father of the unborn child if there is reason to believe the father is an unemancipated minor or incompetent.

If a pregnant minor states in writing that she is the victim of abuse or neglect, the notice must be given to a sibling over the age of 21 or to a stepparent or grandparent. A good faith reliance on such a statement protects a physician from civil liability for failure to give notice to a parent. The physician must ensure the confidentiality of the statement. A statement does not authorize the physician to perform an abortion unless the abortion is authorized by other provisions of the act.

No notice is necessary in certain emergency situations or where the requirement is waived either by the person entitled to the notice or by a court. Emergency situations include those that necessitate an immediate abortion to avert death or serious risk of substantial and irreversible impairment of a major bodily function.

A court may waive the notice requirement upon a showing by clear and convincing evidence that the minor is mature enough to decide about an abortion, or that there has been a pattern of abuse by a parent, or that waiver is in the best interest of the child. These court proceedings are to be confidential and must ensure the anonymity of the minor. The minor will have a guardian ad litem provided and has the right to a court-appointed attorney, as well. The court must issue a written ruling within 48 hours. There is no appeal from the granting of a waiver, but the Washington State Supreme Court is to provide by rule for an expedited appeal of any denial of a waiver. There is no filing fee for a petition to waive the notice requirement or for an appeal. These provisions for a judicial bypass of the parental notice requirement apply to an unemancipated minor father of an unborn child as well as to an unemancipated pregnant minor.

If a parent denies a minor financial support because the minor refuses an abortion, the minor is considered a "dependent child" under the juvenile code..

The Department of Health is to compile an annual report on the number of notices issued and exceptions made under this act.

Failure to provide notice as required by the act is prima facie evidence in a civil suit of intentional failure to provide notice or of intentional interference with family relations. Nothing in state law precludes the award of exemplary damages in a civil action relevant to the act.

Intentionally performing an abortion without giving the notice required by the act and with reckless disregard for whether the patient is a minor or is incompetent is a violation punishable by a fine of up to \$10,000.

Signing a waiver of a notice requirement when not authorized to do so is a violation punishable by a fine of up to \$5,000.

Coercing a minor to have an abortion is a violation punishable by a fine of up to \$5,000. Coercion is defined as restraining or dominating a minor's choice by use of force, threat of force, or deprivation of necessary food and shelter, or by use of fraud, misrepresentation, or deceit.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Bill: The bill contains an emergency clause and takes effect immediately.

Testimony For: The bill protects parents' rights and strengthens the family unit. Parents are in the best position to help their daughters in a time of crisis. Parental involvement laws in other states have lowered the number of teen pregnancies and abortions. Teenagers are not mature enough to handle the complex issues involved in a crisis pregnancy by themselves.

Testimony Against: Good communication between parents and children cannot be legislated. Putting obstacles in the way of safe abortions will lead to tragedies. The bill will cause bureaucratic red tape and delays that will increase the risk of medical complications. Laws in other states have not decreased the number of abortions.

Testified: Representative Hargrove, prime sponsor (pro); Representative Mulliken, sponsor (pro); Barbara Riggs, Registered Nurse (pro); Mitzi Hametner, citizen (pro); Dr. Lawrence Turnbull, Human Life of Washington (pro); Cindy Costanzo, citizen (pro); Ned Dolejsi, Washington State Catholic Conference (pro); Susan Gibson, citizen (pro); Stephanie McCreight, citizen (pro); Dr. Donovan Hanson, Pregnancy Help Medical Clinic (pro); Lynnlee Myer, citizen (pro); Kathy Burdick, citizen (pro); Camille DeBlasi, Human Life of Washington (pro); Denise Holland, citizen (pro); Karen Livengood, citizen (pro); Jim McIntyre, citizen (pro); Sue King, citizen (pro); Melanie Frey, citizen (pro); David Johnson, Clark County Right to Life (pro); Kim Dalton, Friends for Life and Life Chain (pro); Stephen Mosier, Clark County Right to Life (pro); Joanne Coker, citizen (pro); Beverly Whipple, A Woman's Choice Clinic (con); Diane Hale, Feminist Women's Health Center (con); Karen Cooper, Washington State Chapter of the National Abortion Reproductive Rights Action League (con); Reverend Deborah Mero, Religious Coalition for Reproductive Choice (con); Dr. Anne Davis, University of Washington (con); Deborah VanDerhei, Aurora Medical Services (con); Marcy Bloom, Arcadia Women's Health Center (con); Candace Dahlstrom, citizen (con); Patricia Clark, Planned Parenthood (con); Gwen Chaplin, Planned Parenthood of Centralia (con); Angela McKinney, citizen (con);

Stewart Jay, citizen (con); and Theresa Connor, Planned Parenthood Affiliates of Washington (con).