
ENGROSSED SUBSTITUTE HOUSE BILL 1523

State of Washington

54th Legislature

1995 Regular Session

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)

Read first time 02/24/95.

1 AN ACT Relating to parental notice of abortion; amending RCW
2 9.02.100; adding new sections to chapter 9.02 RCW; prescribing
3 penalties; and declaring an emergency.

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

5 NEW SECTION. **Sec. 1.** Sections 1 through 11 of this act may be
6 cited as the parental notice of abortion act.

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

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

11 (b) The medical, emotional, and psychological consequences of
12 abortion are sometimes serious and can be lasting, particularly when
13 the patient is immature or incompetent.

14 (c) The capacity to become pregnant and the capacity for mature
15 judgment concerning the wisdom of an abortion are not necessarily
16 related.

1 (d) Parents or guardians ordinarily possess information essential
2 to a physician's exercise of his or her best medical judgment
3 concerning an unemancipated minor child or an incompetent person.

4 (e) Parents or guardians who are aware that an unemancipated minor
5 daughter or incompetent person is having or has had an abortion may
6 better ensure that she receives adequate support, counseling, and
7 medical attention before and after her abortion.

8 (f) Parental or guardian consultation is usually desirable and in
9 the best interests of the unemancipated minor child or incompetent
10 person.

11 (2) The purpose of the legislature in enacting this parental notice
12 law is to further the important and compelling state interests of:

13 (a) Protecting unemancipated minors and incompetent persons against
14 their own immaturity or inability.

15 (b) Fostering family unity and preserving the family as a viable
16 social unit.

17 (c) Protecting the constitutional rights of parents to rear
18 children who are members of their household.

19 (d) Reducing teenage pregnancy and unnecessary abortion.

20 NEW SECTION. **Sec. 3.** Unless the context clearly requires
21 otherwise, the definitions in this section apply throughout sections 1
22 through 11 of this act.

23 (1) "Abortion" means the use or prescription of any instrument,
24 medicine, drug, or any other substance or device to terminate the
25 pregnancy of a woman known by the defendant to be pregnant. Such use
26 or prescription is not an abortion if done with the intent to (a) save
27 the life or preserve the health of an unborn child, (b) remove a dead
28 unborn child, or (c) deliver an unborn child prematurely in order to
29 preserve the health of both the pregnant woman and her unborn child.

30 (2) "Actual notice" means the giving of notice directly, in person
31 or by telephone.

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

35 (4) "Coercion" means restraining or dominating the choice of an
36 unemancipated minor or incompetent by use of force, threat of force, or
37 deprivation of necessary food and shelter or by use of fraud,
38 misrepresentation, or deceit.

1 (5) "Emancipated minor" means any female person under eighteen
2 years of age who is or has been married or who has been emancipated.

3 (6) "Incompetent" means any female person who has been found to be
4 legally incompetent or disabled pursuant to chapter 11.88 RCW.

5 (7) "Medical emergency" means a condition that, on the basis of the
6 physician's good-faith clinical judgment, so complicates the medical
7 condition of a pregnant woman as to necessitate the immediate abortion
8 of her pregnancy to avert her death or for which a delay will create
9 serious risk of substantial and irreversible impairment of a major
10 bodily function.

11 (8) "Neglect" means the failure of a parent or guardian to supply
12 an unemancipated minor or incompetent with necessary food, clothing,
13 shelter, or medical care when reasonably able to do so or the failure
14 to protect an unemancipated minor or incompetent from conditions or
15 actions that imminently and seriously endanger the unemancipated
16 minor's or incompetent's physical health when reasonably able to do so.

17 (9) "Physical abuse" means any physical injury that is
18 intentionally inflicted by a parent or guardian on an unemancipated
19 minor child or incompetent and is medically significant as determined
20 by a physician.

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

23 (11) "Sexual abuse" means any offense involving sexual contact or
24 sexual intercourse as defined in RCW 9A.44.010 and committed against an
25 unemancipated minor or incompetent by a family member or guardian.

26 NEW SECTION. **Sec. 4.** (1) No person shall perform an abortion upon
27 an unemancipated minor or upon an incompetent unless that person has
28 given at least forty-eight hours' actual notice to one parent or to the
29 guardian of the pregnant unemancipated minor or pregnant incompetent of
30 his or her intention to perform the abortion. Where there is reason to
31 believe that the father of the unborn child is an unemancipated minor
32 or an incompetent, no person shall perform such an abortion unless that
33 person has also given such notice to one parent or to the guardian of
34 the father. The notice may be given by a referring physician. The
35 person who performs the abortion must receive the written statement of
36 the referring physician certifying that the referring physician has
37 given notice. If actual notice is not possible after a reasonable

1 effort, the person or his or her agent must give forty-eight hours'
2 constructive notice.

3 (2) Before any notice is given under subsection (1) of this
4 section, the unemancipated minor or incompetent must have signed a form
5 indicating that she has been fully informed of the options available to
6 her under this act. The form shall be prepared by the department of
7 health. The form shall be made available to all physicians in the
8 state and shall contain information covering at least the following:

9 (a) That no notice is required if she is emancipated as defined in
10 section 3 of this act;

11 (b) That alternative notice may be made under section 5 of this act
12 if she has been the victim of neglect or sexual or physical abuse by a
13 parent or guardian;

14 (c) That notice may be waived under section 6 of this act if a
15 medical emergency exists; and

16 (d) That notice may be waived by a court at no cost to her and with
17 the assistance of a court-appointed attorney under section 9 of this
18 act if the court finds that she is sufficiently mature to decide about
19 an abortion, or that there is evidence of a pattern of sexual or
20 physical abuse by a parent or guardian, or that notice to a parent or
21 guardian would not be in her best interest.

22 NEW SECTION. **Sec. 5.** If the unemancipated minor or incompetent
23 declares in a signed written statement that she is a victim of sexual
24 abuse, neglect, or physical abuse by either of her parents or her
25 guardian, the attending physician shall give the notice required by
26 sections 1 through 11 of this act to a brother or sister of the
27 unemancipated minor or incompetent who is over twenty-one years of age,
28 or to a stepparent or grandparent specified by the unemancipated minor
29 or incompetent. The doctor who intends to perform the abortion must
30 certify in the unemancipated minor's or incompetent's medical record
31 that he or she has received the written declaration of abuse or
32 neglect.

33 Any physician relying in good faith on a written statement under
34 this section shall not be civilly liable under any provisions of
35 sections 1 through 11 of this act for failure to give notice to a
36 parent or guardian. The physician shall ensure the written statement
37 remains confidential.

1 Receipt by a physician of a written statement under this section
2 does not authorize the physician to perform an abortion. The physician
3 shall not perform an abortion unless authorized by other provisions of
4 this act.

5 NEW SECTION. **Sec. 6.** Notice shall not be required under section
6 4 or 5 of this act if:

7 (1) The attending physician certifies in the unemancipated minor's
8 or incompetent's medical record that a medical emergency exists and
9 there is insufficient time to provide the required notice;

10 (2) Notice is waived in writing by the person who is entitled to
11 notice; or

12 (3) Notice is waived under section 9 of this act.

13 NEW SECTION. **Sec. 7.** A parent, guardian, or any other person
14 shall not coerce an unemancipated minor or incompetent to have an
15 abortion performed. If an unemancipated minor or incompetent is denied
16 necessary food, clothing, or shelter by the parents or guardian of the
17 unemancipated minor or incompetent related to the minor's or
18 incompetent's refusal to have an abortion performed, the unemancipated
19 minor or incompetent shall be considered dependent under chapter 13.34
20 RCW.

21 NEW SECTION. **Sec. 8.** A monthly report indicating the number of
22 notices issued to a parent and the number of notices issued to a
23 guardian during the preceding month under sections 1 through 11 of this
24 act, and the number of times in which exceptions were made to the
25 notice requirement under sections 1 through 11 of this act, as well as
26 the type of exception, shall be filed by the physician issuing the
27 notice with the department of health on forms prescribed by the
28 department. No unemancipated minor's or incompetent's name is to be
29 used on the forms. A compilation of the data reported shall be made by
30 the department on an annual basis and shall be available to the public.

31 NEW SECTION. **Sec. 9.** (1) The requirements and procedures under
32 this section are available to unemancipated minors and incompetents
33 whether or not they are residents of this state.

34 (2) The unemancipated minor or incompetent may petition any
35 superior court for a waiver of the notice requirement and may

1 participate in proceedings on her or his own behalf. The petition
2 shall include a statement that the complainant is pregnant or is
3 believed to be the father of the unborn child and is unemancipated or
4 incompetent. The court shall appoint a guardian ad litem for her or
5 him. Any guardian ad litem appointed under this section shall act to
6 maintain the confidentiality of the proceedings.

7 The court shall advise the unemancipated minor or incompetent that
8 he or she has a right to court-appointed counsel and shall provide such
9 counsel upon request.

10 (3) Court proceedings under this section shall be confidential and
11 shall ensure the anonymity of the unemancipated minor or incompetent.
12 All court proceedings under this section shall be sealed. The
13 unemancipated minor or incompetent has the right to file her or his
14 petition in the court using a pseudonym or using solely her or his
15 initials. All documents related to this petition shall be confidential
16 and shall not be available to the public. These proceedings shall be
17 given precedence over other pending matters to the extent necessary to
18 ensure that the court reaches a decision promptly. The court shall
19 rule, and issue written findings of fact and conclusions of law, within
20 forty-eight hours of the time that the petition was filed, except that
21 the forty-eight hour limitation may be extended at the request of the
22 unemancipated minor or incompetent. If the court fails to rule within
23 the forty-eight hour period and an extension was not requested, the
24 petition shall be deemed to have been granted, and the notice
25 requirement shall be waived.

26 (4)(a) In the case of a petition by a pregnant minor or
27 incompetent, if the court finds, by clear and convincing evidence, that
28 the unemancipated minor or incompetent is sufficiently mature or able
29 to decide whether to have an abortion, the court shall issue an order
30 authorizing the unemancipated minor or incompetent to consent to the
31 performance or inducement of an abortion without the notification of a
32 parent or guardian. If the court does not make the finding specified
33 in this subsection or subsection (5)(a) of this section, it shall
34 dismiss the petition.

35 (b) In the case of a petition by an unemancipated minor or
36 incompetent father of an unborn child, if the court finds, by clear and
37 convincing evidence, that the petitioner is sufficiently mature or able
38 to deal with the decision by the pregnant unemancipated minor or
39 incompetent regarding having an abortion, the court shall waive the

1 requirement that a parent or the guardian of the petitioner be
2 notified. If the court does not make the finding specified in this
3 subsection or subsection (5)(b) of this section, it shall dismiss the
4 petition.

5 (5)(a) In the case of a petition by a pregnant minor or
6 incompetent, if the court finds, by clear and convincing evidence, that
7 there is evidence of a pattern of physical or sexual abuse by one or
8 both of the parents or by the guardian of the unemancipated minor or
9 incompetent, or that the notification of a parent or guardian is not in
10 the best interest of the unemancipated minor or incompetent, the court
11 shall issue an order authorizing the unemancipated minor or incompetent
12 to consent to the performance or inducement of an abortion without the
13 notification of a parent or guardian. If the court does not make the
14 finding specified in this subsection or subsection (4)(a) of this
15 section, it shall dismiss the petition.

16 (b) In the case of a petition by an unemancipated minor or
17 incompetent father of an unborn child, if the court finds, by clear and
18 convincing evidence, that there is evidence of a pattern of physical or
19 sexual abuse by one or both of the parents or by the guardian of the
20 petitioner, or that the notification of a parent or guardian is not in
21 the best interest of the petitioner, the court shall waive the
22 requirement that a parent or the guardian of the petitioner be
23 notified. If the court does not make the finding specified in this
24 subsection or subsection (4)(b) of this section, it shall dismiss the
25 petition.

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

30 (7) An expedited confidential appeal shall be available, as the
31 supreme court provides by rule, to any unemancipated minor or
32 incompetent to whom the court denies a waiver of notice. An order
33 authorizing an abortion without notice shall not be subject to appeal.

34 (8) No filing fees shall be required of any unemancipated minor or
35 incompetent who petitions a court for a waiver of parental notification
36 under sections 1 through 11 of this act at either the trial or the
37 appellate level.

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

6 NEW SECTION. **Sec. 11.** (1) Any person who intentionally performs
7 an abortion with knowledge that or with reckless disregard as to
8 whether the person upon whom the abortion is to be performed is an
9 unemancipated minor or an incompetent without providing the required
10 notice is guilty of a violation of this act and shall be punished by a
11 fine in an amount fixed by the court of not more than ten thousand
12 dollars.

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

26 (3) Any person not authorized to receive notice under sections 1
27 through 11 of this act who signs a waiver of notice under section 6(2)
28 of this act is guilty of a violation of this act and shall be punished
29 by a fine in an amount fixed by the court of not more than five
30 thousand dollars.

31 (4) Any person who coerces a minor to have an abortion is guilty of
32 a violation of this act and shall be punished by a fine in an amount
33 fixed by the court of not more than five thousand dollars.

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 these
17 rights in the regulation or provision of benefits, facilities,
18 services, or information.

19 NEW SECTION. **Sec. 13.** If any provision of this act or its
20 application to any person or circumstance is held invalid, the
21 remainder of the act or the application of the provision to other
22 persons or circumstances is not affected.

23 NEW SECTION. **Sec. 14.** Sections 1 through 11 of this act are each
24 added to chapter 9.02 RCW.

25 NEW SECTION. **Sec. 15.** This act is necessary for the immediate
26 preservation of the public peace, health, or safety, or support of the
27 state government and its existing public institutions, and shall take
28 effect immediately.

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