
HOUSE BILL 1523

State of Washington

54th Legislature

1995 Regular Session

By Representatives Boldt, Mulliken, Fuhrman, Goldsmith, Benton, Pennington, Stevens, Johnson, Sherstad, McMahan, Hargrove, Padden, Sheahan, Campbell, Chandler, D. Schmidt, Koster, Beeksma, Backlund and Smith

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

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

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

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

7 (a) Immature minors often lack the ability to make fully informed
8 choices that take into account both immediate and long-range
9 consequences.

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

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

16 (d) Parents ordinarily possess information essential to a
17 physician's exercise of his or her best medical judgment concerning the
18 child.

1 (e) Parents who are aware that their minor daughter has had an
2 abortion may better ensure that she receives adequate medical attention
3 after her abortion.

4 (f) Parental consultation is usually desirable and in the best
5 interests of the minor.

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

8 (a) Protecting minors against their own immaturity.

9 (b) Fostering family unity and preserving the family as a viable
10 social unit.

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

13 (d) Reducing teenage pregnancy and unnecessary abortion.

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

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

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

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

29 (4) "Coercion" means restraining or dominating the choice of a
30 minor female by force, threat of force, or deprivation of food and
31 shelter.

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

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

36 (7) "Medical emergency" means a condition that, on the basis of the
37 physician's good-faith clinical judgment, so complicates the medical
38 condition of a pregnant woman as to necessitate the immediate abortion

1 of her pregnancy to avert her death or for which a delay will create
2 serious risk of substantial and irreversible impairment of a major
3 bodily function.

4 (8) "Neglect" means the failure of a parent to supply a child with
5 necessary food, clothing, shelter, or medical care when reasonably able
6 to do so or the failure to protect a child from conditions or actions
7 that imminently and seriously endanger the child's physical or mental
8 health when reasonably able to do so.

9 (9) "Physical abuse" means any physical injury intentionally
10 inflicted by a parent or legal guardian on a child.

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

13 (11) "Sexual abuse" means any sexual contact or sexual intercourse
14 as defined in RCW 9A.44.010 and committed against a minor by a family
15 member.

16 NEW SECTION. **Sec. 4.** No person shall perform an abortion upon an
17 unemancipated minor or upon an incompetent unless that person has given
18 at least forty-eight hours' actual notice to one parent or to the legal
19 guardian of the pregnant minor or incompetent of his or her intention
20 to perform the abortion. The notice may be given by a referring
21 physician. The person who performs the abortion must receive the
22 written statement of the referring physician certifying that the
23 referring physician has given notice. If actual notice is not possible
24 after a reasonable effort, the person or his or her agent must give
25 forty-eight hours' constructive notice.

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

35 Any physician relying in good faith on a written statement under
36 this section shall not be civilly or criminally liable under any

1 provisions of sections 1 through 11 of this act for failure to give
2 notice.

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

5 (1) The attending physician certifies in the patient's medical
6 record that a medical emergency exists and there is insufficient time
7 to provide the required notice;

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

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

11 NEW SECTION. **Sec. 7.** A parent, guardian, or any other person
12 shall not coerce a minor to have an abortion performed. If a minor is
13 denied financial support by the minor's parents, guardian, or custodian
14 due to the minor's refusal to have an abortion performed, the minor
15 shall be deemed emancipated for the purposes of eligibility for public
16 assistance benefits, except that such benefits may not be used to
17 obtain an abortion.

18 NEW SECTION. **Sec. 8.** A monthly report indicating the number of
19 notices issued under sections 1 through 11 of this act, and the number
20 of times in which exceptions were made to the notice requirement under
21 sections 1 through 11 of this act, as well as the type of exception,
22 shall be filed with the department of health on forms prescribed by the
23 department. No patient names are to be used on the forms. A
24 compilation of the data reported shall be made by the department on an
25 annual basis and shall be available to the public.

26 NEW SECTION. **Sec. 9.** (1) The requirements and procedures under
27 this section are available to minors and incompetent persons whether or
28 not they are residents of this state.

29 (2) The minor or incompetent person may petition any circuit court
30 for a waiver of the notice requirement and may participate in
31 proceedings on her own behalf. The petition shall include a statement
32 that the complainant is pregnant and is unemancipated. The court shall
33 appoint a guardian ad litem for her. Any guardian ad litem appointed
34 under this section shall act to maintain the confidentiality of the
35 proceedings.

1 The circuit court shall advise her that she has a right to court-
2 appointed counsel and shall provide her with counsel upon her request.

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

19 (4) If the court finds, by clear and convincing evidence, that the
20 minor is sufficiently mature to decide whether to have an abortion, the
21 court shall issue an order authorizing the minor to consent to the
22 performance or inducement of an abortion without the notification of a
23 parent or guardian. If the court does not make the finding specified
24 in this subsection or subsection (5) of this section, it shall dismiss
25 the petition.

26 (5) If the court finds, by clear and convincing evidence, that
27 there is evidence of a pattern of physical, sexual, or emotional abuse
28 of the complainant by one or both of her parents, her guardian, or her
29 custodian, or that the notification of a parent or guardian is not in
30 the best interest of the complainant, the court shall issue an order
31 authorizing the minor to consent to the performance or inducement of an
32 abortion without the notification of a parent or guardian. If the
33 court does not make the finding specified in this subsection or
34 subsection (4) of this section, it shall dismiss the petition.

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

1 (7) An expedited confidential appeal shall be available, as the
2 supreme court provides by rule, to any minor or incompetent person to
3 whom the circuit court denies a waiver of notice. An order authorizing
4 an abortion without notice shall not be subject to appeal.

5 (8) No filing fees shall be required of any pregnant minor who
6 petitions a court for a waiver of parental notification under sections
7 1 through 11 of this act at either the trial or the appellate level.

8 NEW SECTION. **Sec. 10.** The supreme court is respectfully requested
9 to establish rules to ensure that proceedings under sections 1 through
10 11 of this act are handled in an expeditious and confidential manner
11 and to satisfy the requirements of federal courts.

12 NEW SECTION. **Sec. 11.** (1) Any person who intentionally performs
13 an abortion with knowledge that or with reckless disregard as to
14 whether the person upon whom the abortion is to be performed is an
15 unemancipated minor or an incompetent without providing the required
16 notice is guilty of a gross misdemeanor.

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

30 (3) Any person not authorized to receive notice under sections 1
31 through 11 of this act who signs a waiver of notice under section 6(2)
32 of this act is guilty of a misdemeanor.

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

35 NEW SECTION. **Sec. 12.** If any provision of this act or its
36 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. 13.** Sections 1 through 11 of this act are each
4 added to chapter 9.02 RCW.

5 NEW SECTION. **Sec. 14.** This act is necessary for the immediate
6 preservation of the public peace, health, or safety, or support of the
7 state government and its existing public institutions, and shall take
8 effect immediately.

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