
SENATE BILL 5185

State of Washington **66th Legislature** **2019 Regular Session**

By Senators Padden, Warnick, Sheldon, Short, and Wagoner

Read first time 01/15/19. Referred to Committee on Law & Justice.

1 AN ACT Relating to abortion notification; adding a new chapter to
2 Title 9 RCW; and prescribing penalties.

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

4 NEW SECTION. **Sec. 1.** This chapter may be known and cited as the
5 parental notification of abortion act.

6 NEW SECTION. **Sec. 2.** (1) The legislature of the state of
7 Washington finds that:

8 (a) Immature minors often lack the ability to make fully informed
9 choices that take into account both immediate and long-range
10 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.

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.

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

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

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

6 (2) The legislature's purpose in enacting this chapter is to
7 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 abortion; and

14 (e) Allowing for judicial bypasses of parental notification to be
15 made only in exceptional or rare circumstances.

16 NEW SECTION. **Sec. 3.** For purposes of this chapter:

17 (1) "Abortion" means abortion as defined in RCW 9.02.170.

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

20 (3) "Coercion" means restraining or dominating the choice of a
21 pregnant minor by force, threat of force, or deprivation of food and
22 shelter.

23 (4) "Constructive notice" means notice by certified mail to the
24 last known address of the parent or guardian with delivery deemed to
25 have occurred forty-eight hours after the certified notice is mailed.

26 (5) "Department" means the department of health.

27 (6) "Emancipated minor" means any person under eighteen years of
28 age who is or has been married or who has been legally emancipated.

29 (7) "Incompetent person" means a person who has been adjudged a
30 person with a disability and has had a guardian appointed for her
31 under Title 11 RCW.

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

38 (9) "Neglect" means the failure of a parent or legal guardian to
39 supply a minor with necessary food, clothing, shelter, or medical

1 care when reasonably able to do so or the failure to protect a minor
2 from conditions or actions that imminently and seriously endanger the
3 minor's physical or mental health when reasonably able to do so.

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

6 (11) "Physician," "attending physician," or "referring physician"
7 means a person licensed to practice medicine in this state, and
8 includes medical doctors and doctors of osteopathy.

9 (12) "Pregnant minor" means a woman who is pregnant, less than
10 eighteen years of age, and not emancipated, or who has been adjudged
11 an incompetent person under Title 70 or 71 RCW.

12 (13) "Sexual abuse" means any sexual contact or sexual
13 intercourse as defined in RCW 9A.44.010 committed against a pregnant
14 minor by a parent or legal guardian.

15 NEW SECTION. **Sec. 4.** A person must not perform an abortion upon
16 a pregnant minor unless that person has given at least forty-eight
17 hours actual notice to one parent or the legal guardian of the
18 pregnant minor of his or her intention to perform the abortion. The
19 notice may be given by a referring physician. The person who performs
20 the abortion must receive the written statement of the referring
21 physician certifying that the referring physician has given notice to
22 the parent or legal guardian of the pregnant minor who is to receive
23 the abortion. If actual notice is not possible after a reasonable
24 effort, the person or his or her agent must give forty-eight hours
25 constructive notice.

26 NEW SECTION. **Sec. 5.** Notice is not required under section 4 of
27 this act if:

28 (1) The attending physician certifies in the pregnant minor's
29 medical record that a medical emergency exists and there is
30 insufficient time to provide the required notice; or

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

33 (3) Notice is waived under section 8 of this act.

34 NEW SECTION. **Sec. 6.** A parent, legal guardian, or any other
35 person must not coerce a pregnant minor to have an abortion
36 performed. If a pregnant minor is denied financial support by the
37 pregnant minor's parents or legal guardian due to the pregnant

1 minor's refusal to have an abortion, the pregnant minor is deemed
2 emancipated for the purposes of eligibility for public assistance
3 benefits, except that the benefits may not be used to obtain an
4 abortion.

5 NEW SECTION. **Sec. 7.** A monthly report indicating the number of
6 notices issued under this chapter, the number of times in which
7 exceptions were made to the notice requirement under this chapter,
8 the type of exception, the pregnant minor's age, and the number of
9 prior pregnancies and prior abortions of the pregnant minor must be
10 filed with the department on forms prescribed by the department.
11 Patient names must not be used on the forms. A compilation of the
12 data reported must be made by the department on an annual basis and
13 be available to the public.

14 NEW SECTION. **Sec. 8.** (1) The requirements and procedures under
15 this section are available to a pregnant minor whether or not she is
16 a resident of this state.

17 (2) A pregnant minor may petition any superior court for a waiver
18 of the notice requirement and may participate in proceedings on her
19 own behalf. The petition must include a statement that the pregnant
20 minor is pregnant and is unemancipated. The petition must also
21 include a statement that notice has not been waived and that the
22 pregnant minor wishes to abort without giving notice under this
23 chapter. The court must appoint a guardian ad litem for her. Any
24 guardian ad litem appointed under this chapter must maintain the
25 confidentiality of the proceedings. The superior court must advise
26 her that she has a right to court-appointed counsel and provide her
27 with counsel upon her request.

28 (3) Court proceedings under this section must be confidential and
29 ensure the anonymity of the pregnant minor. All court proceedings
30 under this section must be sealed. A pregnant minor has the right to
31 file her petition in the superior court using a pseudonym or using
32 solely her initials. All documents related to the petition must be
33 confidential and not be made available to the public. These
34 proceedings must be given precedence over other pending matters to
35 the extent necessary to ensure that the court reaches a decision
36 promptly. The court must rule, and issue written findings of fact and
37 conclusions of law, within forty-eight hours of the time that the
38 petition was filed, except that the forty-eight hour limitation may

1 be extended at the request of the pregnant minor. If the court fails
2 to rule within the forty-eight hour period and an extension was not
3 requested, then the petition is deemed to have been granted, and the
4 notice requirement must be waived.

5 (4) If the court finds, by clear and convincing evidence, that
6 the pregnant minor is both sufficiently mature and well-informed to
7 decide whether to have an abortion, the court must issue an order
8 authorizing the pregnant minor to consent to the performance or
9 inducement of an abortion without the notification of a parent or
10 guardian and the court must execute the required forms. If the court
11 does not make the finding specified in this subsection or subsection
12 (5) of this section, it must dismiss the petition.

13 (5) If the court finds, by clear and convincing evidence, that
14 the pregnant minor is the victim of physical or sexual abuse by one
15 or both of her parents or her legal guardian, or that the
16 notification of a parent or guardian is not in the best interest of
17 the pregnant minor, the court must issue an order authorizing the
18 pregnant minor to consent to the performance or inducement of an
19 abortion without the notification of a parent or guardian. If the
20 court does not make the finding specified in this subsection or
21 subsection (4) of this section, it must dismiss the petition.

22 (6) A court that conducts proceedings under this section must
23 issue written and specific factual findings and legal conclusions
24 supporting its decision and order that a confidential record of the
25 evidence and the judge's findings and conclusions be maintained. At
26 the hearing, the court must hear evidence relating to the emotional
27 development, maturity, intellect, and understanding of the pregnant
28 minor.

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

33 (8) No filing fees are required of any pregnant minor who
34 petitions a court for a waiver of parental notification under this
35 section at either the trial or the appellate level.

36 NEW SECTION. **Sec. 9.** The supreme court is respectfully
37 requested to establish rules to ensure that proceedings under this
38 chapter are handled in an expeditious and confidential manner and to
39 satisfy the requirements of federal courts.

1 NEW SECTION. **Sec. 10.** (1) Any person who intentionally performs
2 an abortion with knowledge that or with reckless disregard as to
3 whether the person upon whom the abortion is to be performed is a
4 pregnant minor without providing the required notice is guilty of a
5 gross misdemeanor. It is a defense to prosecution under this section
6 that the pregnant minor falsely represented her age or identity to
7 the physician to be at least eighteen years of age by displaying an
8 apparently valid governmental record of identification such that a
9 careful and prudent person under similar circumstances would have
10 relied on the representation. The defense does not apply if the
11 physician is shown to have had independent knowledge of the pregnant
12 minor's actual age or identity or failed to use due diligence in
13 determining the pregnant minor's age or identity.

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

27 (3) Any person not authorized to receive notice under this
28 chapter who signs a waiver of notice under section 5(2) of this act
29 is guilty of a gross misdemeanor.

30 (4) Any person who coerces a pregnant minor to have an abortion
31 is guilty of a gross misdemeanor.

32 NEW SECTION. **Sec. 11.** (1) Nothing in this chapter may be
33 construed as creating or recognizing a right to abortion.

34 (2) It is not the intent of this chapter to make lawful an
35 abortion that is currently unlawful.

36 NEW SECTION. **Sec. 12.** If any provision of this act or its
37 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.** The legislature, by concurrent
4 resolution, may appoint one or more of its members who is a sponsor
5 or cosponsor of this act, as a matter of right and in his or her
6 official capacity, to intervene to defend this chapter in any case in
7 which its constitutionality is challenged.

8 NEW SECTION. **Sec. 14.** Sections 1 through 13 of this act
9 constitute a new chapter in Title 9 RCW.

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