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**SUBSTITUTE HOUSE BILL 1523**

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**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.** No person shall perform an abortion upon an  
27 unemancipated minor or upon an incompetent unless that person has given  
28 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. The notice may be given  
31 by a referring physician. The person who performs the abortion must  
32 receive the written statement of the referring physician certifying  
33 that the referring physician has given notice. If actual notice is not  
34 possible after a reasonable effort, the person or his or her agent must  
35 give forty-eight hours' constructive notice.

36 NEW SECTION. **Sec. 5.** If the unemancipated minor or incompetent  
37 declares in a signed written statement that she is a victim of sexual

1 abuse, neglect, or physical abuse by either of her parents or her  
2 guardian, the attending physician shall give the notice required by  
3 sections 1 through 11 of this act to a brother or sister of the  
4 unemancipated minor or incompetent who is over twenty-one years of age,  
5 or to a stepparent or grandparent specified by the unemancipated minor  
6 or incompetent. The doctor who intends to perform the abortion must  
7 certify in the unemancipated minor's or incompetent's medical record  
8 that he or she has received the written declaration of abuse or  
9 neglect.

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

15 Receipt by a physician of a written statement under this section  
16 does not authorize the physician to perform an abortion. The physician  
17 shall not perform an abortion unless authorized by other provisions of  
18 this act.

19 NEW SECTION. **Sec. 6.** Notice shall not be required under section  
20 4 or 5 of this act if:

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

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

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

27 NEW SECTION. **Sec. 7.** A parent, guardian, or any other person  
28 shall not coerce an unemancipated minor or incompetent to have an  
29 abortion performed. If an unemancipated minor or incompetent is denied  
30 necessary food, clothing, or shelter by the parents or guardian of the  
31 unemancipated minor or incompetent related to the minor's or  
32 incompetent's refusal to have an abortion performed, the unemancipated  
33 minor or incompetent shall be deemed emancipated or eligible for the  
34 purposes of qualifying for public assistance benefits.

35 NEW SECTION. **Sec. 8.** A monthly report indicating the number of  
36 notices issued to a parent and the number of notices issued to a

1 guardian during the preceding month under sections 1 through 11 of this  
2 act, and the number of times in which exceptions were made to the  
3 notice requirement under sections 1 through 11 of this act, as well as  
4 the type of exception, shall be filed by the physician issuing the  
5 notice with the department of health on forms prescribed by the  
6 department. No unemancipated minor's or incompetent's name is to be  
7 used on the forms. A compilation of the data reported shall be made by  
8 the department on an annual basis and shall be available to the public.

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

12 (2) The unemancipated minor or incompetent may petition any  
13 superior court for a waiver of the notice requirement and may  
14 participate in proceedings on her own behalf. The petition shall  
15 include a statement that the complainant is pregnant and is  
16 unemancipated or incompetent. The court shall appoint a guardian ad  
17 litem for her. Any guardian ad litem appointed under this section  
18 shall act to maintain the confidentiality of the proceedings.

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

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

37 (4) If the court finds, by clear and convincing evidence, that the  
38 unemancipated minor or incompetent is sufficiently mature or able to

1 decide whether to have an abortion, the court shall issue an order  
2 authorizing the unemancipated minor or incompetent to consent to the  
3 performance or inducement of an abortion without the notification of a  
4 parent or guardian. If the court does not make the finding specified  
5 in this subsection or subsection (5) of this section, it shall dismiss  
6 the petition.

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

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

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

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

29 NEW SECTION. **Sec. 10.** The supreme court is respectfully requested  
30 to establish rules to ensure that proceedings under sections 1 through  
31 11 of this act are handled in an expeditious and confidential manner  
32 and to satisfy any requirements of federal courts binding on this  
33 jurisdiction.

34 NEW SECTION. **Sec. 11.** (1) Any person who intentionally performs  
35 an abortion with knowledge that or with reckless disregard as to  
36 whether the person upon whom the abortion is to be performed is an  
37 unemancipated minor or an incompetent without providing the required

1 notice is guilty of a violation of this act and shall be punished by a  
2 fine in an amount fixed by the court of not more than ten thousand  
3 dollars.

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

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

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

25 **Sec. 12.** RCW 9.02.100 and 1992 c 1 s 1 are each amended to read as  
26 follows:

27 The sovereign people hereby declare that every individual possesses  
28 a fundamental right of privacy with respect to personal reproductive  
29 decisions.

30 Accordingly, it is the public policy of the state of Washington  
31 that:

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

34 (2) Every woman has the fundamental right to choose or refuse to  
35 have an abortion, except as specifically limited by RCW 9.02.100  
36 through 9.02.170 (~~and~~), 9.02.900 through 9.02.902, and sections 1  
37 through 11 of this act;

1 (3) Except as specifically permitted by RCW 9.02.100 through  
2 9.02.170 (~~and~~), 9.02.900 through 9.02.902, and sections 1 through 11  
3 of this act, the state shall not deny or interfere with a woman's  
4 fundamental right to choose or refuse to have an abortion; and

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

8 NEW SECTION. **Sec. 13.** If any provision of this act or its  
9 application to any person or circumstance is held invalid, the  
10 remainder of the act or the application of the provision to other  
11 persons or circumstances is not affected.

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

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

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