

2 **SSB 6290** - S AMD - 728

3 By Senators Benton, Long, Hargrove and Swecker

4 ADOPTED AS AMENDED 2/16/98

5 Strike everything after the enacting clause and insert the
6 following:

7 "NEW SECTION. **Sec. 1.** Sections 1 through 10 of this act shall be
8 known as and may be cited as the parental notification of abortion act.

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

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

13 (b) The medical, emotional, and psychological consequences of
14 abortion are sometimes serious and can be lasting, particularly when
15 the patient is an immature or incompetent person;

16 (c) The capacity to become pregnant and the capacity to exercise
17 mature judgment concerning abortion are not necessarily related;

18 (d) Parents or guardians ordinarily possess information essential
19 to a physician's medical judgment concerning an unemancipated minor
20 child or an incompetent person;

21 (e) Parents or guardians who are aware that an unemancipated minor
22 child or incompetent person may have or has had an abortion may ensure
23 that she receives adequate support, counseling, and medical attention
24 before and after her abortion;

25 (f) Parental or guardian consultation and notification is usually
26 desirable and in the best interest of the unemancipated minor child or
27 incompetent person.

28 (2) The purpose of the legislature in enacting this parental
29 notification law is to further the important and compelling state
30 interests of:

31 (a) Protecting the rights of parents to rear children who are
32 members of their household;

33 (b) Fostering family unity and preserving the family as a viable
34 social unit; and

35 (c) Reducing teenage pregnancy and unnecessary abortion.

1 NEW SECTION. **Sec. 3.** Unless the context clearly requires

2 otherwise, the definitions in this section apply throughout sections 1
3 through 10 of this act.

4 (1) "Abortion" means the use or prescription of any instrument,
5 medicine, drug, or other substance or device to terminate the pregnancy
6 of a woman known by the physician to be pregnant. The use or
7 prescription is not an abortion if done with the intent to (a) save the
8 life or preserve the health of an unborn child, (b) remove a dead
9 unborn child, or (c) deliver an unborn child prematurely in order to
10 preserve the health of both the pregnant woman and her unborn child.

11 (2) "Actual notification" means the giving of notice directly by
12 conversing with the parent or guardian, either in person or by
13 telephone.

14 (3) "Constructive notification" means notice by certified mail to
15 the last known address of the parent or guardian, with delivery deemed
16 to have occurred forty-eight hours after the certified notice is
17 mailed.

18 (4) "Emancipated minor" means a person under eighteen years of age
19 who is or has been lawfully married or who has been emancipated.

20 (5) "Incompetent person" means a person who has been found to be
21 legally incompetent under RCW 11.88.010(1)(e).

22 (6) "Medical emergency" means a condition exists that, on the basis
23 of the physician's good-faith clinical judgment, necessitates immediate
24 termination of pregnancy to avert her death, or failure to immediately
25 terminate the pregnancy will create serious risk of substantial and
26 irreversible impairment of a major bodily function of the pregnant
27 woman.

28 (7) "Neglect" means the failure of a parent or guardian to supply
29 an unemancipated minor or incompetent person with necessary food,
30 clothing, shelter, or medical care when that parent or guardian is
31 reasonably able to do so, or the failure of a parent or guardian to
32 protect an unemancipated minor or incompetent person from a condition
33 or action that imminently and seriously endangers the health of the
34 unemancipated minor or incompetent person when that parent or guardian
35 is reasonably able to protect the unemancipated minor or incompetent
36 person from that condition or action.

37 (8) "Physical abuse" means any physical injury that is
38 intentionally inflicted by a parent or guardian on an unemancipated

1 minor child or incompetent person and that is medically significant as
2 determined by a physician.

3 (9) "Physician" means any person licensed to practice medicine
4 under chapter 18.57 or 18.71 RCW.

5 (10) "Sexual abuse" means a crime or offense involving sexual
6 contact or sexual intercourse as defined in RCW 9A.44.010 and committed
7 against an unemancipated minor or incompetent person by a family member
8 or guardian.

9 NEW SECTION. **Sec. 4.** (1) A physician shall not perform an
10 abortion upon an unemancipated minor or upon an incompetent person
11 unless the physician has given forty-eight hours actual notification to
12 a custodial parent or to the guardian of the pregnant unemancipated
13 minor or pregnant incompetent person of the physician's intention to
14 perform the abortion.

15 Where there is a reason to believe the male who participated in
16 creating the pregnancy is an unemancipated minor or an incompetent
17 person, no person may perform an abortion until forty-eight hours after
18 actual notification has been obtained from the custodial parent or
19 guardian of the father. The notification may be given by a referring
20 physician. If the notification is given by a referring physician, the
21 physician shall not perform the abortion without receiving the
22 referring physician's written statement certifying that the referring
23 physician has provided notification. If actual notification is not
24 possible after a reasonable effort, the physician or the physician's
25 agent shall give forty-eight hours constructive notification.

26 (2) Notification shall not be given under subsection (1) of this
27 section unless the unemancipated minor or incompetent person has signed
28 a form prescribed by the department of health indicating that the
29 unemancipated minor or incompetent person has been fully informed of
30 the options available under sections 1 through 10 of this act. The
31 department of health shall make the form available to all physicians in
32 the state. The department of health shall ensure that the form
33 includes information:

34 (a) That notification of a parent or guardian is generally required
35 before an unemancipated minor or incompetent person may obtain an
36 abortion;

1 (b) That notification of a parent or guardian of a minor female or
2 male is not required if the minor is emancipated as defined in section
3 3 of this act;

4 (c) That an alternative to providing notification may be available
5 under section 5 of this act if the mother of the unborn child has been
6 the victim of neglect or sexual or physical abuse by a parent or
7 guardian as defined in section 3 of this act;

8 (d) That notification of a parent or guardian of the mother of the
9 unborn child may not be required under section 6 of this act if a
10 medical emergency exists and there is insufficient time to obtain the
11 required notification;

12 (e) That the minor female and male will be provided court-appointed
13 counsel at his or her request, and that notification may be waived by
14 a court under section 8 of this act, if the court finds: (i) By clear
15 and convincing evidence that one or both of the petitioning minors are
16 sufficiently mature to decide whether to have an abortion; or (ii) by
17 a preponderance of the evidence that (A) there is a pattern of sexual
18 or physical abuse by her parent or guardian; or (B) notification to a
19 parent or guardian would not be in the best interest of the petitioning
20 minors; and

21 (f) That in any circumstance the mother of the unborn child may
22 choose to discuss her situation with her parent or guardian.

23 NEW SECTION. **Sec. 5.** If the pregnant unemancipated minor or
24 pregnant incompetent person makes a written, signed declaration that
25 she is a victim of sexual abuse, neglect, or physical abuse by either
26 of her parents or her guardian, the physician intending to perform the
27 abortion shall provide the notification required by sections 1 through
28 10 of this act to a brother or sister of the unemancipated minor or
29 incompetent person so long as that sibling is over twenty-one years of
30 age, or to a stepparent or grandparent specified by the unemancipated
31 minor or incompetent person; and that physician shall place in the
32 unemancipated minor's or incompetent person's medical record
33 certification of having received the written declaration of abuse or
34 neglect. The physician shall ensure that the written declaration
35 remains confidential.

36 A physician relying in good faith upon a written declaration under
37 this section shall not be civilly liable under sections 1 through 10 of
38 this act for failure to provide notification to a parent or guardian.

1 Receipt of a written declaration under this section does not
2 authorize the physician to perform an abortion. The physician shall
3 not perform an abortion unless authorized to do so under sections 1
4 through 10 of this act.

5 NEW SECTION. **Sec. 6.** Notification is not 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 person's medical record that a medical emergency exists,
9 and there is insufficient time to provide the required notification;

10 (2) Notification is waived in writing by the person who is, under
11 sections 1 through 10 of this act, entitled to notification; or

12 (3) Notification is waived under section 8 of this act.

13 NEW SECTION. **Sec. 7.** Physicians required to provide notification
14 under sections 1 through 10 of this act shall file with the department
15 of health, on forms prescribed by the department, monthly reports
16 indicating the number of notifications provided to a parent, guardian,
17 brother, sister, stepparent, or grandparent during the preceding month
18 under sections 1 through 10 of this act, and the number of times in
19 which exceptions were made to the notification requirement under
20 sections 1 through 10 of this act, as well as the type of exception.
21 Physicians shall not use names of the unemancipated minors or
22 incompetent persons on the forms. The department shall on an annual
23 basis compile and make available to the public the data required to be
24 reported under this section.

25 NEW SECTION. **Sec. 8.** (1) The provisions of this section shall
26 apply to unemancipated minors and incompetent persons whether or not
27 they are residents of this state.

28 (2) The unemancipated minor or incompetent person may petition a
29 superior court for a waiver of the notification requirement and may
30 participate in proceedings on her or his own behalf. The petition for
31 waiver of notification shall include a statement that the petitioner is
32 pregnant, or is believed to be the male who participated in creating
33 the pregnancy, and is an unemancipated minor or incompetent person.
34 The court reviewing the petition shall appoint a guardian ad litem for
35 her or him. A guardian ad litem appointed under this section shall
36 act to maintain the confidentiality of the proceedings.

1 The court shall advise the unemancipated minor or incompetent
2 person that she or he has a right to court-appointed counsel and shall
3 provide the counsel upon request.

4 (3) Court proceedings under this section shall be closed and
5 confidential and shall ensure the anonymity of the unemancipated minor
6 or incompetent person. All court documents under this section shall be
7 sealed. The unemancipated minor or incompetent person has the right to
8 file her or his petition in the court using a pseudonym or using solely
9 her or his initials. These proceedings shall be given precedence over
10 other pending matters to the extent necessary to ensure that the court
11 reaches a decision promptly. The court shall rule, and issue written
12 findings of fact and conclusions of law, within four court days from
13 the filing of the petition, except that the four-day rule may be
14 extended at the request of the unemancipated minor or incompetent
15 person.

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

23 (b) In the case of a petition by an unemancipated or incompetent
24 male, if the court finds by clear, cogent, and convincing evidence,
25 that the petitioner is sufficiently mature or able to deal with the
26 decision by the pregnant unemancipated or incompetent pregnant person
27 to have an abortion, the court shall waive the requirement that a
28 parent or guardian of the male be notified. If the court does not make
29 the finding specified in this subsection (4)(b) or in (a) of this
30 subsection, the petition shall be dismissed.

31 (5) If the court finds, by a preponderance of the evidence, that
32 there is a pattern of physical or sexual abuse by a parent or guardian
33 of the petitioner, or that notification to a parent or guardian is not
34 in the best interest of the petitioner, the court shall issue an order
35 authorizing the petitioner to consent to the performance or inducement
36 of an abortion without notification to a parent or guardian. If the
37 court does not make the finding specified in this subsection or
38 subsection (4) of this section, it shall dismiss the petition.

1 (6) A court that conducts proceedings under this section shall
2 issue written and specific factual findings and legal conclusions
3 supporting its decision and shall maintain a confidential record of
4 evidence and the judge's findings and conclusions.

5 (7) A procedure for expedited confidential appeal shall be
6 available, as the supreme court provides by rule, to an unemancipated
7 minor or incompetent person whose waiver of notification is denied. An
8 order waiving the notification requirement shall not be subject to
9 appeal.

10 (8) Filing fees shall not be required of an unemancipated minor or
11 incompetent person who petitions a court for a waiver of parental
12 notification under sections 1 through 10 of this act at either the
13 trial or the appellate level.

14 NEW SECTION. **Sec. 9.** The supreme court is respectfully requested
15 to establish rules to ensure that proceedings under sections 1 through
16 10 of this act are handled in an expeditious and confidential manner
17 and to satisfy requirements of federal courts binding on this
18 jurisdiction.

19 NEW SECTION. **Sec. 10.** (1) Any physician who intentionally
20 performs an abortion with knowledge that, or with reckless disregard as
21 to whether, the person upon whom the abortion is to be performed is an
22 unemancipated minor or an incompetent person, without providing the
23 required notification shall be guilty of a gross misdemeanor.

24 (2) Failure to provide the notification required under section 4 or
25 5 of this act is prima facie evidence of failure to provide
26 notification and of interference with family relations in appropriate
27 civil actions. The prima facie evidence shall not apply to an issue
28 other than failure to provide notification to the parents or guardian
29 and interference with family relations in appropriate civil actions.
30 The civil action may be based on a claim that the act was a result of
31 simple negligence, gross negligence, wantonness, willfulness,
32 intention, or other legal standard of care. The law of this state
33 shall not be construed to preclude the award of exemplary damages in an
34 appropriate civil action relevant to violations of sections 1 through
35 10 of this act. Nothing in sections 1 through 10 of this act shall be
36 construed to limit the common law rights of parents.

1 (3) A person not authorized to receive notification under sections
2 1 through 10 of this act who signs a waiver of notification under
3 section 6(2) of this act is guilty of a misdemeanor.

4 **Sec. 11.** RCW 9.02.100 and 1992 c 1 s 1 are each amended to read as
5 follows:

6 The sovereign people hereby declare that every individual possesses
7 a fundamental right of privacy with respect to personal reproductive
8 decisions.

9 Accordingly, it is the public policy of the state of Washington
10 that:

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

13 (2) Every woman has the fundamental right to choose or refuse to
14 have an abortion, except as specifically limited by RCW 9.02.100
15 through 9.02.170 (~~and~~), 9.02.900 through 9.02.902, and sections 1
16 through 10 of this act;

17 (3) Except as specifically permitted by RCW 9.02.100 through
18 9.02.170 (~~and~~), 9.02.900 through 9.02.902, and sections 1 through 10
19 of this act, the state shall not deny or interfere with a woman's
20 fundamental right to choose or refuse to have an abortion; and

21 (4) The state shall not discriminate against the exercise of
22 (~~these~~) this right(~~s~~) in the regulation or provision of benefits,
23 facilities, services, or information.

24 NEW SECTION. **Sec. 12.** The provisions of this act are to be
25 liberally construed to effectuate the policies and purposes of this
26 act. In the event of conflict between this act and any other provision
27 of law, the provisions of this act shall govern.

28 NEW SECTION. **Sec. 13.** If any provision of this act or its
29 application to any person or circumstance is held invalid, the
30 remainder of the act or the application of the provision to other
31 persons or circumstances is not affected.

32 NEW SECTION. **Sec. 14.** Sections 1 through 10 of this act are each
33 added to chapter 9.02 RCW.

1 NEW SECTION. **Sec. 15.** This act is necessary for the immediate
2 preservation of the public peace, health, morals, or safety, or support
3 of the state government and its existing public institutions, and takes
4 effect immediately."

5 **SSB 6290** - S AMD - 728

6 By Senators Benton, Long, Hargrove and Swecker

7 ADOPTED AS AMENDED 2/16/98

8 On page 1, line 2 of the title, after "minors;" strike the
9 remainder of the title and insert "amending RCW 9.02.100; adding new
10 sections to chapter 9.02 RCW; creating a new section; prescribing
11 penalties; and declaring an emergency."

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