

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

3 By Senators Benton, Long, Hargrove and Swecker

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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) "Coercion" means restraining, or dominating the choice of, an  
19 unemancipated minor or incompetent person by use of force, by threat of  
20 force, by deprivation of necessary food and shelter, or by use of  
21 fraud, misrepresentation, or deceit.

22        (5) "Emancipated minor" means a person under eighteen years of age  
23 who is or has been lawfully married or who has been emancipated.

24        (6) "Incompetent person" means a person who has been found to be  
25 legally incompetent under RCW 11.88.010(1)(e).

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

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

1 is reasonably able to protect the unemancipated minor or incompetent  
2 person from that condition or action.

3 (9) "Physical abuse" means any physical injury that is  
4 intentionally inflicted by a parent or guardian on an unemancipated  
5 minor child or incompetent person and that is medically significant as  
6 determined by a physician.

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

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

13 NEW SECTION. **Sec. 4.** (1) A physician shall not perform an  
14 abortion upon an unemancipated minor or upon an incompetent person  
15 unless the physician has given forty-eight hours actual notification to  
16 a custodial parent or to the guardian of the pregnant unemancipated  
17 minor or pregnant incompetent person of the physician's intention to  
18 perform the abortion. The notification may be given by a referring  
19 physician. If the notification is given by a referring physician, the  
20 physician shall not perform the abortion without receiving the  
21 referring physician's written statement certifying that the referring  
22 physician has provided notification. If actual notification is not  
23 possible after a reasonable effort, the physician or the physician's  
24 agent shall give forty-eight hours constructive notification.

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

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

36 (b) That notification of a parent or guardian is not required if  
37 the mother of the unborn child is emancipated as defined in section 3  
38 of this act;

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

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

9 (e) That the mother of the unborn child will be provided court-  
10 appointed counsel at her request, and that notification may be waived  
11 by a court under section 8 of this act, if the court finds: (i) By  
12 clear and convincing evidence that she is sufficiently mature to decide  
13 whether to have an abortion; or (ii) by a preponderance of the evidence  
14 that (A) there is a pattern of sexual or physical abuse by her parent  
15 or guardian; or (B) notification to a parent or guardian would not be  
16 in the best interest of the mother of the unborn child; and

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

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

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

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

1        NEW SECTION.    **Sec. 6.**    Notification is not required under section  
2 4 or 5 of this act if:

3        (1) The attending physician certifies in the unemancipated minor's  
4 or incompetent person's medical record that a medical emergency exists,  
5 and there is insufficient time to provide the required notification;

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

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

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

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

24        (2) The unemancipated minor or incompetent person may petition a  
25 superior court for a waiver of the notification requirement and may  
26 participate in proceedings on her own behalf. The petition for waiver  
27 of notification shall include a statement that the petitioner is  
28 pregnant and is an unemancipated minor or incompetent person. The  
29 court reviewing the petition shall appoint a guardian ad litem for her.  
30 A guardian ad litem appointed under this section shall act to maintain  
31 the confidentiality of the proceedings.

32        The court shall advise the unemancipated minor or incompetent  
33 person that she has a right to court-appointed counsel and shall  
34 provide the counsel upon request.

35        (3) Court proceedings under this section shall be closed and  
36 confidential and shall ensure the anonymity of the unemancipated minor  
37 or incompetent person. All court documents under this section shall be

1 sealed. The unemancipated minor or incompetent person has the right to  
2 file her petition in the court using a pseudonym or using solely her  
3 initials. These proceedings shall be given precedence over other  
4 pending matters to the extent necessary to ensure that the court  
5 reaches a decision promptly. The court shall rule, and issue written  
6 findings of fact and conclusions of law, within four court days from  
7 the filing of the petition, except that the four-day rule may be  
8 extended at the request of the unemancipated minor or incompetent  
9 person.

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

17 (5) If the court finds, by a preponderance of the evidence, that  
18 there is a pattern of physical or sexual abuse by a parent or guardian  
19 of the petitioner, or that notification to a parent or guardian is not  
20 in the best interest of the petitioner, the court shall issue an order  
21 authorizing the petitioner to consent to the performance or inducement  
22 of an abortion without notification to a parent or guardian. If the  
23 court does not make the finding specified in this subsection or  
24 subsection (4) of this section, it shall dismiss the petition.

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

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

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

1        NEW SECTION.    **Sec. 9.**    The supreme court is respectfully requested  
2 to establish rules to ensure that proceedings under sections 1 through  
3 10 of this act are handled in an expeditious and confidential manner  
4 and to satisfy requirements of federal courts binding on this  
5 jurisdiction.

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

11        (2) Failure to provide the notification required under section 4 or  
12 5 of this act is prima facie evidence of failure to provide  
13 notification and of interference with family relations in appropriate  
14 civil actions. The prima facie evidence shall not apply to an issue  
15 other than failure to provide notification to the parents or guardian  
16 and interference with family relations in appropriate civil actions.  
17 The civil action may be based on a claim that the act was a result of  
18 simple negligence, gross negligence, wantonness, willfulness,  
19 intention, or other legal standard of care. The law of this state  
20 shall not be construed to preclude the award of exemplary damages in an  
21 appropriate civil action relevant to violations of sections 1 through  
22 10 of this act. Nothing in sections 1 through 10 of this act shall be  
23 construed to limit the common law rights of parents.

24        (3) A person not authorized to receive notification under sections  
25 1 through 10 of this act who signs a waiver of notification under  
26 section 6(2) of this act is guilty of a misdemeanor.

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

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

32        Accordingly, it is the public policy of the state of Washington  
33 that:

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

36        (2) Every woman has the fundamental right to choose or refuse to  
37 have an abortion, except as specifically limited by RCW 9.02.100

1 through 9.02.170 (~~and~~), 9.02.900 through 9.02.902, and sections 1  
2 through 10 of this act;

3 (3) Except as specifically permitted by RCW 9.02.100 through  
4 9.02.170 (~~and~~), 9.02.900 through 9.02.902, and sections 1 through 10  
5 of this act, the state shall not deny or interfere with a woman's  
6 fundamental right to choose or refuse to have an abortion; and

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

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

14 NEW SECTION. **Sec. 13.** If any provision of this act or its  
15 application to any person or circumstance is held invalid, the  
16 remainder of the act or the application of the provision to other  
17 persons or circumstances is not affected.

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

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

24 **SSB 6290** - S AMD - 728

25 By Senators Benton, Long, Hargrove and Swecker

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

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