

---

HOUSE BILL 1361

---

State of Washington

56th Legislature

1999 Regular Session

By Representatives Fortunato, O'Brien, Mulliken, Boldt, Ericksen, Campbell, Schindler, Carrell, Sheahan, Dunn, Bush, Koster, Mielke, Benson and DeBolt

Read first time 02/04/1999. Referred to Committee on Judiciary.

1 AN ACT Relating to parental notification for abortions provided to  
2 minors; amending RCW 9.02.100; adding new sections to chapter 9.02 RCW;  
3 creating a new section; prescribing penalties; and declaring an  
4 emergency.

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

6 NEW SECTION. **Sec. 1.** Sections 1 through 11 of this act may be  
7 cited as the parental notification of abortion act.

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

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

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

15 (c) The capacity to become pregnant and the capacity for mature  
16 judgment concerning the wisdom of an abortion are not necessarily  
17 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 ensure that she receives adequate support, counseling, and medical  
7 attention before and after her abortion;

8 (f) Parental or guardian consultation and notification is usually  
9 desirable and in the best interests of the unemancipated minor child or  
10 incompetent person.

11 (2) The purpose of the legislature in enacting this parental  
12 notification law is to further the important and compelling state  
13 interests of:

14 (a) Protecting the constitutional rights of parents to rear  
15 children who are members of their household;

16 (b) Fostering family unity and preserving the family as a viable  
17 social unit; and

18 (c) Reducing teenage pregnancy and unnecessary abortion.

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

22 (1) "Abortion" means the use or prescription of any instrument,  
23 medicine, drug, or other substance or device to terminate the pregnancy  
24 of a woman for any other purpose than producing a live birth.

25 (2) "Actual notification" means the giving of notification directly  
26 by conversing with the parent or guardian, either in person or by  
27 telephone.

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

31 (4) "Coercion" means restraining or dominating the choice of an  
32 unemancipated minor or incompetent person by use of force, threat of  
33 force, or deprivation of necessary food and shelter or by use of fraud,  
34 misrepresentation, or deceit.

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

37 (6) "Incompetent person" means a person who has been found to be  
38 legally incompetent under chapter 11.88 RCW.

1 (7) "Medical emergency" means a condition that, on the basis of the  
2 physician's good-faith clinical judgment, so complicates the medical  
3 condition of a pregnant woman as to necessitate the immediate  
4 termination of her pregnancy to avert her death or for which a delay  
5 will create serious risk of substantial and irreversible impairment of  
6 a major bodily function.

7 (8) "Neglect" means the failure of a parent or guardian to supply  
8 an unemancipated minor or incompetent person with necessary food,  
9 clothing, shelter, or medical care when reasonably able to do so or the  
10 failure to protect an unemancipated minor or incompetent person from  
11 conditions or actions that imminently and seriously endanger the  
12 unemancipated minor's or incompetent person's physical health when  
13 reasonably able to do so.

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

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

22 NEW SECTION. **Sec. 4.** (1) A physician may not perform an abortion  
23 upon an unemancipated minor or upon an incompetent person unless the  
24 physician has given forty-eight hours actual notification to a  
25 custodial parent or to the guardian of the pregnant unemancipated minor  
26 or pregnant incompetent person of his or her intention to perform the  
27 abortion. The notification may be given by a referring physician. The  
28 physician who performs the abortion must receive the written statement  
29 of the referring physician certifying that the referring physician has  
30 provided notification. If actual notice is not possible after a  
31 reasonable effort, the physician or his or her agent must give forty-  
32 eight hours constructive notice.

33 (2) Before notification is given under subsection (1) of this  
34 section, the unemancipated minor or incompetent person must have signed  
35 a form prepared by the department of health indicating that the  
36 unemancipated minor or incompetent person has been fully informed of  
37 the options available under sections 1 through 11 of this act. The

1 form must be made available to all physicians in the state and must  
2 include information covering the following:

3 (a) That notification of a parent or guardian is generally required  
4 before the unemancipated minor or incompetent person may obtain an  
5 abortion;

6 (b) That notification of a parent or guardian of the mother of the  
7 unborn child is not required if the mother is emancipated;

8 (c) That an alternative to providing notification to a parent or  
9 guardian of the mother of the unborn child may be available under  
10 section 5 of this act if the mother has been the victim of neglect or  
11 sexual or physical abuse by a parent or guardian;

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

16 (e) That the mother of the unborn child will be provided court-  
17 appointed counsel at her request and that notification may be waived by  
18 a court under section 9 of this act if the court finds by clear and  
19 convincing evidence that: (i) She is sufficiently mature to decide  
20 whether to have an abortion, (ii) there is evidence of a pattern of  
21 sexual or physical abuse by a parent or guardian of the mother, or  
22 (iii) notification to a parent or guardian would not be in her best  
23 interest;

24 (f) That in any circumstance the mother of the unborn child may  
25 choose to discuss her situation with her parent or guardian; and

26 (g) That it is a violation of the law for a person to coerce the  
27 mother of an unborn child to have an abortion.

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

1 A physician relying in good faith on a written statement under this  
2 section is not civilly liable under sections 1 through 11 of this act  
3 for failure to provide notification to a parent or guardian. The  
4 physician must ensure the written statement remains confidential.

5 Receipt by a physician of a written statement under this section  
6 does not authorize the physician to perform an abortion. The physician  
7 must not perform an abortion unless authorized under sections 1 through  
8 11 of this act.

9 NEW SECTION. **Sec. 6.** Notification is not required under section  
10 4 or 5 of this act if:

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

14 (2) Notification is waived in writing by the person who is entitled  
15 to notification; or

16 (3) Notification is waived under section 9 of this act.

17 NEW SECTION. **Sec. 7.** A parent, guardian, or other person must not  
18 coerce an unemancipated minor or incompetent person to have an abortion  
19 performed. If an unemancipated minor or incompetent person is denied  
20 necessary food, clothing, or shelter by the parents or guardian of the  
21 unemancipated minor or incompetent person related to the minor's or  
22 incompetent person's refusal to have an abortion performed, the  
23 unemancipated minor or incompetent person is considered dependent under  
24 chapter 13.34 RCW.

25 NEW SECTION. **Sec. 8.** A monthly report indicating the number of  
26 notifications provided to a parent, the number of notifications  
27 provided to a brother, sister, stepparent, or grandparent, and the  
28 number of notifications provided to a guardian during the preceding  
29 month under sections 1 through 11 of this act, and the number of times  
30 in which exceptions were made to the notification requirement under  
31 sections 1 through 11 of this act, as well as the type of exception,  
32 must be filed by the physician providing the notification with the  
33 department of health on forms prescribed by the department. No  
34 unemancipated minor's or incompetent person's name is to be used on the  
35 forms. A compilation of the data reported must be made by the  
36 department on an annual basis and must be available to the public.

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

4        (2) The unemancipated minor or incompetent person may petition a  
5 superior court for a waiver of the notification requirement and may  
6 participate in proceedings on her own behalf. The petition must  
7 include a statement that the complainant is pregnant and is an  
8 unemancipated minor or incompetent person. The court must appoint a  
9 guardian ad litem for her. A guardian ad litem appointed under this  
10 section must act to maintain the confidentiality of the proceedings.

11        The court must advise the unemancipated minor or incompetent person  
12 that she has a right to court-appointed counsel and provide the counsel  
13 upon request.

14        (3) Court proceedings under this section are confidential and must  
15 ensure the anonymity of the unemancipated minor or incompetent person.  
16 All court proceedings under this section must be sealed. The  
17 unemancipated minor or incompetent person has the right to file her  
18 petition in the court using a pseudonym or using solely her initials.  
19 All documents related to this petition are confidential and are not  
20 available to the public. These proceedings must be given precedence  
21 over other pending matters to the extent necessary to ensure that the  
22 court reaches a decision promptly. The court must rule, and issue  
23 written findings of fact and conclusions of law, within four court days  
24 from the time that the petition was filed, except that the four-day  
25 rule may be extended at the request of the unemancipated minor or  
26 incompetent person.

27        (4) In the case of a petition by an unemancipated minor or  
28 incompetent person who is pregnant, if the court finds, by clear and  
29 convincing evidence, that the petitioner is sufficiently mature or able  
30 to decide whether to have an abortion, the court must issue an order  
31 authorizing the petitioner to consent to the performance or inducement  
32 of an abortion without providing notification to a parent or guardian.  
33 If the court does not make the finding specified in this subsection or  
34 subsection (5) of this section, it must dismiss the petition.

35        (5) In the case of a petition by an unemancipated minor or  
36 incompetent person who is pregnant, if the court finds, by clear and  
37 convincing evidence, that there is evidence of a pattern of physical or  
38 sexual abuse by a parent or guardian of the petitioner, or that  
39 notification to a parent or guardian is not in the best interest of the

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

6 (6) A court that conducts proceedings under this section must issue  
7 written and specific factual findings and legal conclusions supporting  
8 its decision and must order that a confidential record of the evidence  
9 and the judge's findings and conclusions be maintained.

10 (7) An expedited confidential appeal must be available, as the  
11 supreme court provides by rule, to an unemancipated minor or  
12 incompetent person to whom the court denies a waiver of notification.  
13 An order waiving the notification requirement is not subject to appeal.

14 (8) No filing fees are required of an unemancipated minor or  
15 incompetent person who petitions a court for a waiver of parental  
16 notification under sections 1 through 11 of this act at either the  
17 trial or the appellate level.

18 NEW SECTION. **Sec. 10.** The supreme court is respectfully requested  
19 to establish rules to ensure that proceedings under sections 1 through  
20 11 of this act are handled in an expeditious and confidential manner  
21 and to satisfy requirements of federal courts binding on this  
22 jurisdiction.

23 NEW SECTION. **Sec. 11.** (1) Any physician who intentionally  
24 performs an abortion with knowledge that or with reckless disregard as  
25 to whether the person upon whom the abortion is to be performed is an  
26 unemancipated minor or an incompetent person without providing the  
27 required notification is guilty of a gross misdemeanor.

28 (2) Failure to provide the notification required under section 4 or  
29 5 of this act is prima facie evidence of failure to provide  
30 notification and of interference with family relations in appropriate  
31 civil actions. The prima facie evidence does not apply to an issue  
32 other than failure to provide notification to the parents or guardian  
33 and interference with family relations in appropriate civil actions.  
34 The civil action may be based on a claim that the act was a result of  
35 simple negligence, gross negligence, wantonness, willfulness,  
36 intention, or other legal standard of care. The law of this state must  
37 not be construed to preclude the award of exemplary damages in an

1 appropriate civil action relevant to violations of sections 1 through  
2 11 of this act. Nothing in sections 1 through 11 of this act may be  
3 construed to limit the common law rights of parents.

4 (3) A person not authorized to receive notification under sections  
5 1 through 11 of this act who signs a waiver of notification under  
6 section 6(2) of this act is guilty of a misdemeanor.

7 (4) A person who coerces a minor to have an abortion is guilty of  
8 a misdemeanor.

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

11 The sovereign people hereby declare that every individual possesses  
12 a fundamental right of privacy with respect to personal reproductive  
13 decisions.

14 Accordingly, it is the public policy of the state of Washington  
15 that:

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

18 (2) Every woman has the fundamental right to choose or refuse to  
19 have an abortion, except as specifically limited by RCW 9.02.100  
20 through 9.02.170 (~~and~~), sections 1 through 11 of this act, and  
21 9.02.900 through 9.02.902;

22 (3) Except as specifically permitted by RCW 9.02.100 through  
23 9.02.170 (~~and~~), sections 1 through 11 of this act, and 9.02.900  
24 through 9.02.902, the state shall not deny or interfere with a woman's  
25 fundamental right to choose or refuse to have an abortion; and

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

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

33 NEW SECTION. **Sec. 14.** If any provision of this act or its  
34 application to any person or circumstance is held invalid, the  
35 remainder of the act or the application of the provision to other  
36 persons or circumstances is not affected.

1        NEW SECTION.    **Sec. 15.**    Sections 1 through 11 of this act are each  
2 added to chapter 9.02 RCW.

3        NEW SECTION.    **Sec. 16.**    This act is necessary for the immediate  
4 preservation of the public peace, health, morals, or safety, or support  
5 of the state government and its existing public institutions, and takes  
6 effect immediately.

--- END ---