

SENATE BILL REPORT

SB 5156

As of February 7, 2013

Title: An act relating to abortion notification.

Brief Description: Requiring notification to parents or guardians in cases of abortion.

Sponsors: Senators Benton, Sheldon, Holmquist Newbry, Padden, Honeyford, Carrell, Hewitt, Delvin, Ericksen, Dammeier, Braun, Rivers, King, Smith, Bailey, Pearson, Shin and Roach.

Brief History:

Committee Activity: Law & Justice: 2/06/13.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Aldo Melchiori (786-7439)

Background: Parental notification statutes generally require notification to the parents or guardians of a pregnant minor seeking an abortion. Currently, 17 states have parental notification statutes in effect. The United States Supreme Court has generally upheld the constitutionality of parental notification statutes under the First and Fourteenth Amendments to the United States Constitution, so long as they include judicial bypass provisions sufficient to protect the minor's rights. There is no parental notification law in Washington.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Proposed Substitute): A person must not perform an abortion upon a pregnant minor unless that person has given at least 48 hours actual notice to one parent or the legal guardian of the pregnant minor. The person who performs the abortion must receive a written statement from the referring physician certifying that the referring physician has given notice to the parent or legal guardian of the pregnant minor who is to receive the abortion. If actual notice is not possible after a reasonable effort, the person must give 48 hours constructive notice.

Notice is not required if the attending physician certifies that a medical emergency exists and there is insufficient time to provide the required notice; notice is waived in writing by the person who is entitled to notice; or notice is waived by the court.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

A pregnant minor may petition any superior court for a waiver of the notice requirement. No filing fees are required to petition a court for a waiver of parental notification at either the trial or the appellate level. The petition must include a statement that she is unemancipated, that notice has not been waived, and that she wishes to have an abortion without giving notice to a parent or guardian. The proceeding must be given precedence over other pending matters to the extent necessary to ensure that the court reaches a decision promptly.

The court must appoint a guardian ad litem for the petitioner. The superior court must advise her that she has a right to court-appointed counsel and provide her with counsel upon request. The pregnant minor has the right to file her petition in the superior court using a pseudonym or using solely her initials. Court proceedings must be confidential and ensure the anonymity of the petitioner and must be sealed. Any guardian ad litem appointed must maintain the confidentiality of the proceedings. All documents related to the petition must be confidential and not be made available to the public.

The court must consider evidence relating to the petitioner's emotional development, maturity, intellect, and understanding. If the court finds, by clear and convincing evidence that she is sufficiently mature and well-informed to decide whether to have an abortion, or either that she is the victim of physical or sexual abuse by one or both of her parents or her legal guardian; or the notification of a parent or guardian is not in her best interest; the court must issue an order authorizing her to consent without the notification of her parent or guardian. If the court does not make these findings, it must dismiss the petition. The court must issue written and specific factual findings and legal conclusions supporting its decision and order that a confidential record of the evidence and the judge's findings and conclusions be maintained.

The court must rule, and issue the written findings of fact and conclusions of law, within 48 hours of the time that the petition was filed, unless the petitioner requests an extension. If the court fails to rule within 48 hours and an extension was not requested, the petition is deemed to have been granted, and the notice requirement must be waived. An expedited confidential appeal must be available, as the supreme court provides by rule, to any pregnant minor to whom the superior court denies a waiver of notice. An order authorizing an abortion without notice is not subject to appeal.

A parent, legal guardian, or any other person must not coerce a pregnant minor to have an abortion performed. If a pregnant minor is denied financial support by her parents or legal guardian due to her refusal to have an abortion, she is deemed emancipated for the purposes of eligibility for public assistance benefits, except that the benefits may not be used to obtain an abortion.

A monthly report indicating the number of notices issued, the number of times in which exceptions were made to the notice requirement, the type of exception, the pregnant minor's age, and the number of prior pregnancies and prior abortions of the pregnant minor must be filed with the Department of Health on forms prescribed by the department. Patient names are not on the forms. A compilation of the data reported is made by the department on an annual basis and is available to the public.

Any person who intentionally performs an abortion with knowledge that, or with reckless disregard as to whether, the person upon whom the abortion is to be performed is a pregnant minor without providing the required notice is guilty of a gross misdemeanor. It is a defense that she falsely represented her age or identity to the physician to be at least 18 years of age by displaying an apparently valid governmental record of identification such that a careful and prudent person under similar circumstances would have relied on for representation. The defense does not apply if the physician is shown to have had independent knowledge of the her actual age or identity, or failed to use due diligence in determining her age or identity.

Any person not authorized to receive notice who signs a waiver of notice is guilty of a gross misdemeanor. Any person who coerces a pregnant minor to have an abortion is guilty of a gross misdemeanor.

Failure to provide a person with the notice required is prima facie evidence of failure to provide notice and of interference with family relations in appropriate civil actions. The prima facie evidence does not apply to any issue other than failure to inform the parents or legal guardian and interference with family relations. The civil action may be based on a claim that the act was a result of simple negligence, gross negligence, wantonness, willfulness, intention, or other legal standard of care. The laws of this state must not be construed to preclude the award of exemplary damages.

By concurrent resolution the Legislature may appoint one or more of its members to intervene and defend the act in any case in which it is subject to challenge.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This is a parental rights bill. The bill is about notifying parents of their children's activities before they engage in them. Children have to get permission to get their ears pierced, to get a tattoo, or to take an aspirin at school, but not to get an abortion. Thirty-nine states have notification or consent laws. Having an abortion can hurt your chances of conceiving in the future. Secrets destroy families. Desperate women who lost all their children to abortion can become suicidal. Children need their parents in a crisis. The current law presumes that parents are a danger to their own children. The law presumes that we should trust the judgment of a 15 year old. I killed someone by abortion. Parents cannot support their children properly if they are not informed. Parents must pay for the procedures, but do not have access to records. Teen pregnancy has an impact on the entire family. Families are fundamental to our society. Parents have the primary duty and responsibility for the health and welfare of their children. The law has withstood court tests in many states. The procedure is confidential, quick, and provides young women with access to services. Without notice, parents cannot be there to properly support their children. These young women are often scared and in need of family support.

CON: Will teens feel that they can talk to a judge if they cannot talk to their parents? We need to give the victims of sex offense the power to choose what to do. Good family communication cannot be legislated. How can we raise competent young women if we do not trust them to make sensitive choices? The bill could endanger young women. Judicial bypass provisions do not work. What happens to the child who was not wanted and can't be properly cared for? Young women are traumatized by having abortions without family support. Sometimes the home is the least safe place for kids. This bill does not protect young women in crisis. Many teens feel that they can't talk to their parents. This bill decreases patient safety and health. Doctors always ask if the patients have talked with their parents. Many women already come to the office with their parents. Parental involvement is not always possible or safe. Not all children have parents they can talk to. Parental notification does not ensure better family communication. We should be spending our efforts encouraging young women to voluntarily communicate with their parents. We do not need more governmental intrusion into our lives. The Legislature should focus on providing better education.

Persons Testifying: PRO: Senator Benton, prime sponsor; Valerie Vicknair, Women of the City; Hillary Snodgrass, Parents Rights of WA; Gregory Romine, Called to Rescue; Carrie Vasko, Concerned Women of America; Lee Girard, Pro Life; Paul Shlichtz, Crystal Research; Nancy Murray, Dorothy Redmann, Karen Altom, Dr. Debbie Rodriguez, Dr. Klapper, Valorie Jacobs, Ines Martinez, Isaac Govea, Vince Dhanens, Joseph Backholm, Mark Milocia, Kate Anderson, Dr. Patrick Marmion, Peggy O'Ban, Janet Kruschke, Mary Hoppes, Grace Powers, Vivian Bottyes, Vincent Dianens, Diane Jeaton, Josephine Wentze, Micheline Doan, Maria Ines Martine, Judy Leithe, Rachel Venelscello, Deborah Rodriguez, Dinah Griffey, Karen Altom, Carolyn Crain, Janet Kruschke, Mary Hoppes, Nancy Murray, Katheryn Mugartequi, Anne Meis, Patty McFarlane, Charmaine Poling, Ruth Kinney, Wayne Poling, Patrick Marmion, Christine Gibbs, Ken Morse, Hugh Fleet, Katherine Cassady, citizens.

CON: Rev. Vincent Lachina, Broadview United Church of Christ; Melanie Smith, Pro Choice WA; Terry Hegerle, Dr. Yolanda Evans, Andrea Piper, Christi Stapleton, Khadija Hassan, Dr. Sarah Praeger, Carl Bergstrom, Krishane Wyatt, Diana Stack Roberts, Laura Kussman, Lisa Davidson, Diana Veksler, Tiffany Hankins, Jessica Jones, Rick Bligh, Caitlin Sinkewicz, Ben Charles, Crazy Faith, Sarah Prager, citizens.