

SENATE BILL REPORT

SB 5320

As of February 6, 2017

Title: An act relating to abortion notification.

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

Sponsors: Senators Padden, Warnick, Angel, Rivers, Fortunato, Miloscia, O'Ban, Wilson, Braun, Becker, Brown, Baumgartner, Bailey, Honeyford, Pearson and Zeiger.

Brief History:

Committee Activity: Law & Justice: 1/26/17.

Brief Summary of Bill

- Requires at least 48 hours actual notice to one parent or the legal guardian of the pregnant minor prior to performing an abortion on a pregnant minor.
- Authorizes that notice is not required in a medical emergency where there is insufficient time to provide notice. The person entitled to notice may waive the notice in writing. A pregnant minor may petition the court for a waiver of the notice requirement. The court must rule within 48 hours after the filing of the petition.
- Establishes that an individual who knowingly performs an abortion on a pregnant minor without providing the required notice is guilty of a gross misdemeanor. Any person who coerces a pregnant minor to have an abortion is guilty of a misdemeanor.
- Establishes that failure to provide the required notice is prima facie evidence in a civil action for interference with family relations.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Tim Ford (786-7423)

Background: Parental notification statutes generally require notification to the parents or guardians of a pregnant minor seeking an abortion. Currently, 38 states require parental involvement in a minor's decision to have an abortion. Twenty-one states require parental

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.

consent only, three of which require consent from both parents; 12 states require parental notification only, one requires both parents to be notified; and five states require both parental consent and notification. Thirty-eight states include a judicial bypass procedure which allows a minor to obtain approval by a court. Five states require judges to use specific criteria, such as a minor's intelligence or emotional stability, when deciding whether to waive a parental involvement requirement. Thirteen states require judges to use a clear and convincing standard when deciding whether to waive the parental involvement requirement.

Thirty-six states permit exceptions that permit a minor to obtain an abortion in a medical emergency and 16 states make exceptions in cases of abuse, assault, incest, or neglect. There is no parental notification law in Washington. 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.

Summary of Bill: 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; the notice is waived in writing by the person who is entitled to notice; or the notice is waived by the court.

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 un-emancipated, 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;
- 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; then

- 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. The court must 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 (Department) 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 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 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*—defined as legally sufficient to establish a fact or a case unless disproved—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.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony: PRO: Laws protecting parental participation in a minor's decision on whether or not to seek an abortion are the rule in the United States, rather than the exception. Only five other states permit a minor to obtain an abortion without her parent's knowledge. The U.S. Supreme Court has held parental notification laws constitutional so long as they provide provisions to address exceptional cases. Women suffer the negative emotional and psychological consequences following an abortion. It is similar to post traumatic syndrome. They are in crisis when they make the decision to abort, and they carry the symptoms for years later. The symptoms include depression, eating disorders, and attempted suicide. This is corroborated in studies. It is constitutional for parents to have supervision over their children. There is recent brain research that teens don't have mature decision making ability until their early to mid-twenties. It is beneficial for adolescents to involve their parents in these decisions. It may reduce the sexual exploitation and abuse of girls. State law requires notification if a teen gets a tattoo.

CON: This bill is cruel and ineffective. There are young girls who can count on being slapped by their mothers and called a whore, or locked in a closet by their fathers and called damaged goods when they reveal an unplanned pregnancy. The decision a young woman must make on ending an unplanned pregnancy is made more difficult in such a broken family setting if a bill such as this is passed into law. Going before a judge is traumatic. Most adults find the court system difficult. Girls need safe and confidential medical assistance. It undermines a fundamental right to determine reproductive health. Judicial bypass delays an important medical procedure. Putting these types of decisions in the hands of judges creates uncertainties. The decision should be a private decision and this bill creates a high burden for girls. This will endanger young girls.

Persons Testifying: PRO: Senator Phil Fortunato, Sponsor; Professor David DeWolf, citizen; Valery Jacobs, citizen; Dr. Sharon Quick, American Academy of Medical Ethics, American College of Pediatricians; Lynne Jacobsen, Human Life of Washington; James Silberman, Human Life of Washington; John Alger, Human Life of Washington; Jon Didrickson, Human Life of Washington; Michael Pauley, Human Life of Washington; Laurel Berger, citizen.

CON: Pastor Andy Castrolang, Westminster Congregational United Church of Christ; Dr. Lyndsey Benson, OB/GYN; Priya Walia, Legal Voice; Andrea Fullerton, citizen; Andrea

Piper-Wentland, WA Coalition of Sexual Assault Programs; Judith Konopaski, Planned Parenthood; Carrie Callison, Planned Parenthood; Jeff Beaulac, Young Democrats of Washington; Nicole Hockney, citizen; Megan Richie, citizen; Claudia Wagener, citizen; Emmeline Bird, citizen.

Persons Signed In To Testify But Not Testifying: CON: Tiffany Hankins, citizen; Mercedes Johnson, citizen; Ali Brenes, citizen; Linda Hart, citizen; Amanda Milstein, citizen; Khadija Hassan, Students United for Reproductive Justice; Johanna Kraemer, citizen; Xochitl Maykovich, WA Community Action Network; Joelle Craft, citizen; Geena Barker, citizen; Kenzie Balleu, citizen; Sara Ainsworth, citizen; Judith McGinty, citizen; Carl Bergstron, citizen; Ky O'Dell, citizen; Judith DaSilva, citizen

OTHER: Ali Lee, citizen.