
HOUSE BILL 2265

State of Washington

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By Representatives McMahan, Sheahan, Mulliken, Goldsmith, Hargrove, Carrell, Backlund, McMorris, Talcott, Thompson, Honeyford, Robertson, D. Sommers, L. Thomas, Johnson, Casada, Beeksma and Boldt

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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 prescribing penalties; and declaring an emergency.

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

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

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

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

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

14 (c) The capacity to become pregnant and the capacity for mature
15 judgment concerning the wisdom of an abortion are not necessarily
16 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 unemancipated minors and incompetent persons against
15 their own immaturity or inability;

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

18 (c) Protecting the constitutional rights of parents to rear
19 children who are members of their household; and

20 (d) Reducing teenage pregnancy and unnecessary abortion.

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

24 (1) "Abortion" means the use or prescription of any instrument,
25 medicine, drug, or other substance or device to terminate the pregnancy
26 of a woman known by the defendant to be pregnant. The use or
27 prescription is not an abortion if done with the intent to (a) save the
28 life or preserve the health of an unborn child, (b) remove a dead
29 unborn child, or (c) deliver an unborn child prematurely in order to
30 preserve the health of both the pregnant woman and her unborn child.

31 (2) "Actual notification" means the giving of notification
32 directly, in person or by telephone.

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

36 (4) "Coercion" means restraining or dominating the choice of an
37 unemancipated minor or incompetent by use of force, threat of force, or

1 deprivation of necessary food and shelter or by use of fraud,
2 misrepresentation, or deceit.

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

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

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

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

19 (9) "Physical abuse" means any physical injury that is
20 intentionally inflicted by a parent or guardian on an unemancipated
21 minor child or incompetent and is medically significant as determined
22 by a physician.

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

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

28 NEW SECTION. **Sec. 4.** (1) No person may perform an abortion upon
29 an unemancipated minor or upon an incompetent unless that person has
30 given forty-eight hours actual notification to a custodial parent or to
31 the guardian of the pregnant unemancipated minor or pregnant
32 incompetent of his or her intention to perform the abortion. The
33 notification may be given by a referring physician. The person who
34 performs the abortion must receive the written statement of the
35 referring physician certifying that the referring physician has
36 provided notification. If actual notice is not possible after a
37 reasonable effort, the person or his or her agent must give forty-eight
38 hours constructive notice.

1 (2) Before notification is given under subsection (1) of this
2 section, the unemancipated minor or incompetent must have signed a form
3 prepared by the department of health indicating that the unemancipated
4 minor or incompetent has been fully informed of the options available
5 under sections 1 through 11 of this act. The form must be made
6 available to all physicians in the state and must include information
7 covering the following:

8 (a) That notification of a parent or guardian is generally required
9 before the unemancipated minor or incompetent may obtain an abortion;

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

13 (c) That an alternative to providing notification to a parent or
14 guardian of the mother of the unborn child may be available under
15 section 5 of this act if the mother has been the victim of neglect or
16 sexual or physical abuse by a parent or guardian as defined in section
17 3 of this act;

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

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

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

32 (g) That it is a violation of the law for a person to coerce the
33 mother of an unborn child to have an abortion as defined in section 3
34 of this act.

35 NEW SECTION. **Sec. 5.** If the unemancipated minor or incompetent
36 declares in a signed written statement that she is a victim of sexual
37 abuse, neglect, or physical abuse by either of her parents or her
38 guardian, the attending physician shall provide the notification

1 required by sections 1 through 11 of this act to a brother or sister of
2 the unemancipated minor or incompetent who is over twenty-one years of
3 age, or to a stepparent or grandparent specified by the unemancipated
4 minor or incompetent. The physician who intends to perform the
5 abortion must certify in the unemancipated minor's or incompetent's
6 medical record that he or she has received the written declaration of
7 abuse or neglect.

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

12 Receipt by a physician of a written statement under this section
13 does not authorize the physician to perform an abortion. The physician
14 must not perform an abortion unless authorized by under sections 1
15 through 11 of this act.

16 NEW SECTION. **Sec. 6.** Notification is not required under section
17 4 or 5 of this act if:

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

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

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

24 NEW SECTION. **Sec. 7.** A parent, guardian, or other person must
25 not coerce an unemancipated minor or incompetent to have an abortion
26 performed. If an unemancipated minor or incompetent is denied
27 necessary food, clothing, or shelter by the parents or guardian of the
28 unemancipated minor or incompetent related to the minor's or
29 incompetent's refusal to have an abortion performed, the unemancipated
30 minor or incompetent is considered dependent under chapter 13.34 RCW.

31 NEW SECTION. **Sec. 8.** A monthly report indicating the number of
32 notifications provided to a parent and the number of notifications
33 provided to a guardian during the preceding month under sections 1
34 through 11 of this act, and the number of times in which exceptions
35 were made to the notification requirement under sections 1 through 11
36 of this act, as well as the type of exception, must be filed by the

1 physician providing the notification with the department of health on
2 forms prescribed by the department. No unemancipated minor's or
3 incompetent's name is to be used on the forms. A compilation of the
4 data reported must be made by the department on an annual basis and
5 must be available to the public.

6 NEW SECTION. **Sec. 9.** (1) The requirements and procedures under
7 this section are available to unemancipated minors and incompetents
8 whether or not they are residents of this state.

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

16 The court must advise the unemancipated minor or incompetent that
17 she has a right to court-appointed counsel and provide the counsel upon
18 request.

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

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

1 (5) In the case of a petition by an unemancipated minor or
2 incompetent who is pregnant, if the court finds, by clear and
3 convincing evidence, that there is evidence of a pattern of physical or
4 sexual abuse by a parent or guardian of the petitioner, or that
5 notification to a parent or guardian is not in the best interest of the
6 petitioner, the court must issue an order authorizing the petitioner to
7 consent to the performance or inducement of an abortion without
8 notification to a parent or guardian. If the court does not make the
9 finding specified in this subsection or subsection (4) of this section,
10 it must dismiss the petition.

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

15 (7) An expedited confidential appeal must be available, as the
16 supreme court provides by rule, to an unemancipated minor or
17 incompetent to whom the court denies a waiver of notification. An
18 order authorizing an abortion without notification is not subject to
19 appeal.

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

24 NEW SECTION. **Sec. 10.** The supreme court is respectfully requested
25 to establish rules to ensure that proceedings under sections 1 through
26 11 of this act are handled in an expeditious and confidential manner
27 and to satisfy requirements of federal courts binding on this
28 jurisdiction.

29 NEW SECTION. **Sec. 11.** (1) Any person who intentionally performs
30 an abortion with knowledge that or with reckless disregard as to
31 whether the person upon whom the abortion is to be performed is an
32 unemancipated minor or an incompetent without providing the required
33 notification is guilty of a gross misdemeanor.

34 (2) Failure to provide the notification required under section 4 or
35 5 of this act is prima facie evidence of failure to provide
36 notification and of interference with family relations in appropriate
37 civil actions. The prima facie evidence does not apply to an issue

1 other than failure to provide notification to the parents or guardian
2 and interference with family relations in appropriate civil actions.
3 The civil action may be based on a claim that the act was a result of
4 simple negligence, gross negligence, wantonness, willfulness,
5 intention, or other legal standard of care. The law of this state must
6 not be construed to preclude the award of exemplary damages in an
7 appropriate civil action relevant to violations of sections 1 through
8 11 of this act. Nothing in sections 1 through 11 of this act may be
9 construed to limit the common law rights of parents.

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

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

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

17 The sovereign people hereby declare that every individual possesses
18 a fundamental right of privacy with respect to personal reproductive
19 decisions.

20 Accordingly, it is the public policy of the state of Washington
21 that:

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

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

28 (3) Except as specifically permitted by RCW 9.02.100 through
29 9.02.170 (~~and~~), 9.02.900 through 9.02.902, and sections 1
30 of this act, the state shall not deny or interfere with a woman's
31 fundamental right to choose or refuse to have an abortion; and

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

35 NEW SECTION. **Sec. 13.** If any provision of this act or its
36 application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other
2 persons or circumstances is not affected.

3 NEW SECTION. **Sec. 14.** Sections 1 through 11 of this act are each
4 added to chapter 9.02 RCW.

5 NEW SECTION. **Sec. 15.** This act is necessary for the immediate
6 preservation of the public peace, health, morals, or safety, or support
7 of the state government and its existing public institutions, and shall
8 take effect immediately.

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