

---

**SUBSTITUTE SENATE BILL 6338**

---

**State of Washington**

**55th Legislature**

**1998 Regular Session**

**By** Senate Committee on Law & Justice (originally sponsored by Senators Benton, Swecker, Stevens, Oke, McDonald, Schow, Morton, Johnson, Hochstatter, McCaslin, Roach, Anderson and Strannigan)

Read first time 02/06/98.

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 providing for  
4 submission of this act to a vote of the people.

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

6 NEW SECTION. **Sec. 1.** Sections 1 through 11 of this act shall be  
7 known as and may be 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 to exercise  
16 mature judgment concerning abortion are not necessarily related;

1 (d) Parents or guardians ordinarily possess information essential  
2 to a physician's medical judgment concerning an unemancipated minor  
3 child or an incompetent person;

4 (e) Parents or guardians who are aware that an unemancipated minor  
5 child or incompetent person may have or has had an abortion may ensure  
6 that she receives adequate support, counseling, and medical attention  
7 before and after her abortion;

8 (f) Parental or guardian consultation and notification is usually  
9 desirable and in the best interest 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 rights of parents to rear children who are  
15 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 known by the physician to be pregnant. The use or  
25 prescription is not an abortion if done with the intent to (a) save the  
26 life or preserve the health of an unborn child, (b) remove a dead  
27 unborn child, or (c) deliver an unborn child prematurely in order to  
28 preserve the health of both the pregnant woman and her unborn child.

29 (2) "Actual notification" means the giving of notice directly by  
30 conversing with the parent or guardian, either in person or by  
31 telephone.

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

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

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

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

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

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

13 (8) "Neglect" means the failure of a parent or guardian to supply  
14 an unemancipated minor or incompetent person with necessary food,  
15 clothing, shelter, or medical care when that parent or guardian is  
16 reasonably able to do so, or the failure of a parent or guardian to  
17 protect an unemancipated minor or incompetent person from a condition  
18 or action that imminently and seriously endangers the health of the  
19 unemancipated minor or incompetent person when that parent or guardian  
20 is reasonably able to protect the unemancipated minor or incompetent  
21 person from that condition or action.

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

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

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

32 NEW SECTION. **Sec. 4.** (1) A physician shall not perform an  
33 abortion upon an unemancipated minor or upon an incompetent person  
34 unless the physician has given forty-eight hours actual notification to  
35 a custodial parent or to the guardian of the pregnant unemancipated  
36 minor or pregnant incompetent person of the physician's intention to  
37 perform the abortion. The notification may be given by a referring  
38 physician. If the notification is given by a referring physician, the

1 physician shall not perform the abortion without receiving the  
2 referring physician's written statement certifying that the referring  
3 physician has provided notification. If actual notification is not  
4 possible after a reasonable effort, the physician or the physician's  
5 agent shall give forty-eight hours constructive notification.

6 (2) Notification shall not be given under subsection (1) of this  
7 section unless the unemancipated minor or incompetent person has signed  
8 a form prescribed by the department of health indicating that the  
9 unemancipated minor or incompetent person has been fully informed of  
10 the options available under sections 1 through 11 of this act. The  
11 department of health shall make the form available to all physicians in  
12 the state. The department of health shall ensure that the form  
13 includes information:

14 (a) That notification of a parent or guardian is generally required  
15 before an unemancipated minor or incompetent person may obtain an  
16 abortion;

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

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

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

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

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

1 (g) That coercion, as defined in section 3 of this act, of the  
2 mother of an unborn child to have an abortion is a violation of the  
3 law.

4 NEW SECTION. **Sec. 5.** If the pregnant unemancipated minor or  
5 pregnant incompetent person makes a written, signed declaration that  
6 she is a victim of sexual abuse, neglect, or physical abuse by either  
7 of her parents or her guardian, the physician intending to perform the  
8 abortion shall provide the notification required by sections 1 through  
9 11 of this act to a brother or sister of the unemancipated minor or  
10 incompetent person so long as that sibling is over twenty-one years of  
11 age, or to a stepparent or grandparent specified by the unemancipated  
12 minor or incompetent person; and that physician shall place in the  
13 unemancipated minor's or incompetent person's medical record  
14 certification of having received the written declaration of abuse or  
15 neglect. The physician shall ensure that the written declaration  
16 remains confidential.

17 A physician relying in good faith upon a written declaration under  
18 this section shall not be civilly liable under sections 1 through 11 of  
19 this act for failure to provide notification to a parent or guardian.

20 Receipt of a written declaration under this section does not  
21 authorize the physician to perform an abortion. The physician shall  
22 not perform an abortion unless authorized to do so under sections 1  
23 through 11 of this act.

24 NEW SECTION. **Sec. 6.** Notification is not required under section  
25 4 or 5 of this act if:

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

29 (2) Notification is waived in writing by the person who is, under  
30 sections 1 through 11 of this act, entitled to notification; or

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

32 NEW SECTION. **Sec. 7.** A parent, guardian, or other person who  
33 engages in coercion, as defined in section 3 of this act, of an  
34 unemancipated minor or incompetent person to persuade her to have an  
35 abortion performed is guilty of a misdemeanor. Being subjected to  
36 coercion to obtain or for refusal to obtain an abortion by the parents

1 or guardian of the unemancipated minor or incompetent person shall  
2 constitute grounds for the unemancipated minor or incompetent person to  
3 be found dependent under chapter 13.34 RCW.

4 NEW SECTION. **Sec. 8.** Physicians required to provide notification  
5 under sections 1 through 11 of this act shall file with the department  
6 of health, on forms prescribed by the department, monthly reports  
7 indicating the number of notifications provided to a parent, guardian,  
8 brother, sister, stepparent, or grandparent during the preceding month  
9 under sections 1 through 11 of this act, and the number of times in  
10 which exceptions were made to the notification requirement under  
11 sections 1 through 11 of this act, as well as the type of exception.  
12 Physicians shall not use names of the unemancipated minors or  
13 incompetent persons on the forms. The department shall on an annual  
14 basis compile and make available to the public the data required to be  
15 reported under this section.

16 NEW SECTION. **Sec. 9.** (1) The provisions of this section shall  
17 apply to unemancipated minors and incompetent persons whether or not  
18 they are residents of this state.

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

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

30 (3) Court proceedings under this section shall be closed and  
31 confidential and shall ensure the anonymity of the unemancipated minor  
32 or incompetent person. All court documents under this section shall be  
33 sealed. The unemancipated minor or incompetent person has the right to  
34 file her petition in the court using a pseudonym or using solely her  
35 initials. These proceedings shall be given precedence over other  
36 pending matters to the extent necessary to ensure that the court  
37 reaches a decision promptly. The court shall rule, and issue written

1 findings of fact and conclusions of law, within four court days from  
2 the filing of the petition, except that the four-day rule may be  
3 extended at the request of the unemancipated minor or incompetent  
4 person.

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

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

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

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

29 (8) Filing fees shall not be required of an unemancipated minor or  
30 incompetent person who petitions a court for a waiver of parental  
31 notification under sections 1 through 11 of this act at either the  
32 trial or the appellate level.

33 NEW SECTION. **Sec. 10.** The supreme court is respectfully requested  
34 to establish rules to ensure that proceedings under sections 1 through  
35 11 of this act are handled in an expeditious and confidential manner  
36 and to satisfy requirements of federal courts binding on this  
37 jurisdiction.

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

6        (2) Failure to provide the notification required under section 4 or  
7 5 of this act is prima facie evidence of failure to provide  
8 notification and of interference with family relations in appropriate  
9 civil actions. The prima facie evidence shall not apply to an issue  
10 other than failure to provide notification to the parents or guardian  
11 and interference with family relations in appropriate civil actions.  
12 The civil action may be based on a claim that the act was a result of  
13 simple negligence, gross negligence, wantonness, willfulness,  
14 intention, or other legal standard of care. The law of this state  
15 shall not be construed to preclude the award of exemplary damages in an  
16 appropriate civil action relevant to violations of sections 1 through  
17 11 of this act. Nothing in sections 1 through 11 of this act shall be  
18 construed to limit the common law rights of parents.

19        (3) A person not authorized to receive notification under sections  
20 1 through 11 of this act who signs a waiver of notification under  
21 section 6(2) of this act is guilty of a misdemeanor.

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

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

26        The sovereign people hereby declare that every individual possesses  
27 a fundamental right of privacy with respect to personal reproductive  
28 decisions.

29        Accordingly, it is the public policy of the state of Washington  
30 that:

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

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

37        (3) Except as specifically permitted by RCW 9.02.100 through  
38 9.02.170 (~~and~~), 9.02.900 through 9.02.902, and sections 1 through 11

1 of this act, the state shall not deny or interfere with a woman's  
2 fundamental right to choose or refuse to have an abortion; and

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

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

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

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

16 NEW SECTION. **Sec. 16.** The secretary of state shall submit this  
17 act to the people for their adoption and ratification, or rejection, at  
18 the next general election to be held in this state, in accordance with  
19 Article II, section 1 of the state Constitution and the laws adopted to  
20 facilitate its operation.

--- END ---