

Initiative Measure No. 1004

filed March 14, 2019

BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: I-3620.1/19

ATTY/TYPIST: CL:amh

BRIEF DESCRIPTION:

Initiative Measure No. 1004

filed March 14, 2019

AN ACT Relating to abortion notification; adding a new chapter to Title 9 RCW; and prescribing penalties.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec. 1.** This act may be known and cited as the parental notification of abortion act.

NEW SECTION. **Sec. 2.** (1) The people of the state of Washington find that:

(a) Immature minors often lack the ability to make fully informed choices that take into account both immediate and long-range consequences;

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

(c) The capacity to become pregnant and the capacity for mature judgment concerning the wisdom of an abortion are not necessarily related;

(d) Parents ordinarily possess information essential to a physician's exercise of his or her best medical judgment concerning their child;

(e) Parents who are aware that their minor daughter has had an abortion may better ensure that she receives adequate medical attention after her abortion; and

(f) Parental consultation is usually desirable and in the best interests of the minor.

(2) The people's purpose in enacting this chapter is to further the important and compelling state interests of:

(a) Protecting minors against their own immaturity;

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

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

(d) Reducing teenage pregnancy and abortion; and

(e) Allowing for judicial bypasses of parental notification to be made only in exceptional or rare circumstances.

NEW SECTION. **Sec. 3.** For purposes of this chapter:

(1) "Abortion" means abortion as defined in RCW 9.02.170.

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

(3) "Coercion" means restraining or dominating the choice of a pregnant minor by force, threat of force, or deprivation of food and shelter.

(4) "Constructive notice" means notice by certified mail to the last known address of the parent or guardian with delivery occurring forty-eight hours after the certified notice is mailed.

(5) "Department" means the department of health.

(6) "Emancipated minor" means any person under eighteen years of age who is or has been married or who has been legally emancipated.

(7) "Incompetent person" means a person who has been adjudged a person with a disability and has had a guardian appointed for her under Title 11 RCW.

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

(9) "Neglect" means the failure of a parent or legal guardian to supply a minor with necessary food, clothing, shelter, or medical care when reasonably able to do so or the failure to protect a minor from conditions or actions that imminently and seriously endanger the minor's physical or mental health when reasonably able to do so.

(10) "Physical abuse" means any physical injury intentionally inflicted by a parent or legal guardian on a minor.

(11) "Physician," "attending physician," or "referring physician" means a person licensed to practice medicine in this state, and includes medical doctors and doctors of osteopathy.

(12) "Pregnant minor" means a woman who is pregnant, less than eighteen years of age, and not emancipated, or who has been adjudged an incompetent person under Title 70 or 71 RCW.

(13) "Sexual abuse" means any sexual contact or sexual intercourse as defined in RCW 9A.44.010 committed against a pregnant minor by a parent or legal guardian.

NEW SECTION. **Sec. 4.** A person may not perform an abortion upon a pregnant minor unless that person has given at least forty-eight hours actual notice to one parent or the legal guardian of the pregnant minor of his or her intention to perform the abortion. The notice may be given by a referring physician. The person who performs the abortion must receive the written statement of 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 or his or her agent must give forty-eight hours constructive notice.

NEW SECTION. **Sec. 5.** Notice is not required under section 4 of this act if:

(1) The attending physician certifies in the pregnant minor's medical record that a medical emergency exists and there is insufficient time to provide the required notice;

(2) Notice is waived in writing by the person who is entitled to notice; or

(3) Notice is waived under section 8 of this act.

NEW SECTION. **Sec. 6.** A parent, legal guardian, or any other person may not coerce a pregnant minor into having an abortion performed on her. If a pregnant minor is denied financial support by the pregnant minor's parents or legal guardian due to the pregnant minor's refusal to have an abortion, the pregnant minor is emancipated for the purposes of eligibility for public assistance benefits, except that the benefits may not be used to obtain an abortion.

NEW SECTION. **Sec. 7.** A monthly report indicating the number of notices issued under this chapter, the number of times in which exceptions were made to the notice requirement under this chapter, 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 on forms prescribed by the department. Patient names may not be used on the forms. A compilation of the data reported must be created by the department on an annual basis and made available to the public.

NEW SECTION. **Sec. 8.** (1) The requirements and procedures under this section are available to a pregnant minor whether or not she is a resident of this state.

(2) A pregnant minor may petition any superior court for a waiver of the notice requirement and may participate in proceedings on her own behalf. The petition must include a statement that the pregnant minor is pregnant and is unemancipated. The petition must also include a statement that notice has not been waived and that the pregnant minor wishes to have an abortion without giving notice under this chapter. The court must appoint a guardian ad litem for her. Any guardian ad litem appointed under this chapter must maintain the confidentiality of the proceedings. The superior court must advise her that she has a right to court-appointed counsel and provide her with counsel upon her request.

(3) Court proceedings under this section must be confidential and ensure the anonymity of the pregnant minor. All court proceedings under this section must be sealed. A pregnant minor has the right to file her petition in the superior court using a pseudonym or using solely her initials. All documents related to the petition must be confidential and not be made available to the public. These proceedings must be given precedence over other pending matters to the extent necessary to ensure that the court reaches a decision promptly. The court must rule, and issue written findings of fact and conclusions of law, within forty-eight hours of the time that the petition was filed, except that the forty-eight hour limitation may be extended at the request of the pregnant minor. If the court fails to rule within the forty-eight hour period and an extension was not requested, then the petition is deemed to have been granted, and the notice requirement must be waived.

(4) If the court finds, by clear and convincing evidence, that the pregnant minor is both sufficiently mature and well-informed to decide whether to have an abortion, the court must issue an order authorizing the pregnant minor to consent to the performance or inducement of an abortion without the notification of a parent or guardian and the court must execute the required forms. If the court does not make the finding specified in this subsection or subsection (5) of this section, it must dismiss the petition.

(5) If the court finds, by clear and convincing evidence, that the pregnant minor is the victim of physical or sexual abuse by one or both of her parents or her legal guardian, or that the notification of a parent or guardian is not in the best interest of the pregnant minor, the court must issue an order authorizing the pregnant minor to consent to the performance or inducement of an abortion without the notification of a parent or guardian. If the court does not make the finding specified in this subsection or subsection (4) of this section, it must dismiss the petition.

(6) A court that conducts proceedings under this section 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. At the hearing, the court must hear evidence relating to the emotional development, maturity, intellect, and understanding of the pregnant minor.

(7) 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 must not be subject to appeal.

(8) No filing fees are required of any pregnant minor who petitions a court for a waiver of parental notification under this section at either the trial or the appellate level.

NEW SECTION. **Sec. 9.** The supreme court is respectfully requested to establish rules to ensure that proceedings under this chapter are handled in an expeditious and confidential manner and to satisfy the requirements of federal courts.

NEW SECTION. **Sec. 10.** (1) 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 to prosecution under this section that the pregnant minor falsely represented her age or identity to the physician to be at least eighteen 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 the representation. The defense does not apply if the physician is shown to have had independent knowledge of the pregnant minor's actual age or identity or failed to use due diligence in determining the pregnant minor's age or identity.

(2) Failure to provide a person with the notice required under this chapter 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 in appropriate civil actions. 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 do not preclude the award of exemplary damages in any appropriate civil action relevant to violations of this chapter. Nothing in this chapter may be construed to limit the common law rights of parents or legal guardians.

(3) Any person not authorized to receive notice under this chapter who signs a waiver of notice under section 5(2) of this act is guilty of a gross misdemeanor.

(4) Any person who coerces a pregnant minor to have an abortion is guilty of a gross misdemeanor.

NEW SECTION. **Sec. 11.** (1) Nothing in this chapter creates or recognizes a right to an abortion.

(2) It is not the intent of this chapter to make lawful an abortion that is currently unlawful.

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

NEW SECTION. **Sec. 13.** Sections 1 through 12 of this act constitute a new chapter in Title 9 RCW.

--- END ---