

MAINE STATE LEGISLATURE

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118th MAINE LEGISLATURE

FIRST REGULAR SESSION-1997

Legislative Document

No. 662

H.P. 491

House of Representatives, January 30, 1997

An Act to Require Parental Notification for Minors Seeking Abortions.

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in black ink that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative AHEARNE of Madawaska.

Cosponsored by Representatives: BOUFFARD of Lewiston, DESMOND of Mapleton,
GERRY of Auburn, KASPRZAK of Newport, KNEELAND of Easton, LANE of Enfield,
MERES of Norridgewock, WATERHOUSE of Bridgton.

Be it enacted by the People of the State of Maine as follows:

2 **Sec. 1. 4 MRSA §152, sub-§8, as enacted by PL 1989, c. 573,**
4 **§1, is amended to read:**

6 **8. Consent to minor's abortion.** Original jurisdiction,
8 concurrent with that of the Probate Court, to grant equitable
8 relief in proceedings brought under Title 22, section 1597-A 14.
chapter 751.

10 **Sec. 2. 14 MRSA c. 751** is enacted to read:

12 **CHAPTER 751**

14 **JUDICIAL REVIEW OF ABORTION FOR MINORS**

16 **§8401. Definitions**

18 As used in this chapter, unless the context otherwise
20 indicates, the following terms have the following meanings.

22 **1. Parent.** "Parent" means one of a pregnant woman's
24 parents or a guardian or custodian.

26 **2. Petitioner.** "Petitioner" means a pregnant woman filing
28 a petition under section 8402.

30 **3. Physician.** "Physician" means a person licensed under
32 Title 32, chapter 36 or 48 to practice medicine in the State as a
34 medical or osteopathic physician.

36 **4. Trial court.** "Trial court" means a District Court in
38 whose district a pregnant woman has her residence, a District
40 Court in whose district a hospital, clinic or other facility in
42 which an abortion would be performed or induced is located, a
44 Probate Court in whose county a pregnant woman has her residence
46 or a Probate Court in whose county a hospital, clinic or other
48 facility in which an abortion would be performed or induced is
50 located.

52 **5. Unemancipated.** "Unemancipated" means a woman who is
54 unmarried, is under 18 years of age, is not in the Armed Forces
56 of the United States and is not employed full-time and
58 self-subsisting or otherwise independent from the care and
60 control of her parent.

62 **§8402. Judicial bypass; commencement of action**

64 **1. Petition for authorization to consent.** An unemancipated
66 pregnant woman who wishes to have an abortion without the

2 notification of her parent shall file a petition in a trial
3 court, as defined in section 8401, requesting the issuance of an
4 order authorizing her to consent to the performance or inducement
of an abortion without the notification of her parent.

6 **2. Petition requirements.** The petition must be made under
7 oath and must include all of the following:

8 A. A statement that the petitioner is pregnant;

10 B. A statement that the petitioner is unemancipated;

12 C. A statement that the petitioner wishes to have an
14 abortion without the notification of her parent;

16 D. An allegation of one or both of the following:

18 (1) That the petitioner is sufficiently mature and
20 informed to intelligently decide whether to have an
abortion without the notification of her parent; or

22 (2) That the petitioner's parent was engaged in a
24 pattern of physical, sexual or emotional abuse against
her or that the notification of her parent otherwise is
not in her best interest; and

26 E. A statement as to whether the petitioner has retained an
28 attorney and, if she has retained an attorney, the name,
address and telephone number of her attorney.

30 **§8403. Procedural provisions**

32 **1. Hearing; judgment; constructive order.** The court shall
34 fix a time for a hearing on any petition filed under this chapter
36 and shall keep a record of all testimony and other oral
proceedings in the action. The court shall hear and determine
38 the action and may not refer any portion of it to a referee. The
40 hearing must be held at the earliest possible time, but not later
than the 5th business day after the day that the petition is
42 filed. The court shall enter judgment on the petition
immediately after the hearing is concluded. If the hearing
44 required by this section is not held by the 5th business day
after the petition is filed, the failure to hold the hearing is
46 deemed to be a constructive order of the court authorizing the
petitioner to consent to the performance or inducement of an
abortion without the notification of her parent, and the
48 petitioner and any other person may rely on the constructive
order as if the court actually had issued an order under this
section authorizing the petitioner to consent to the performance

2 or inducement of an abortion without the notification of her
parent.

4 **2. Guardian ad litem.** The court shall appoint a guardian
6 ad litem to protect the interests of the petitioner at the
hearing that is held pursuant to this section. If the petitioner
8 has not retained an attorney, the court shall appoint an attorney
10 to represent her. If the guardian ad litem is an attorney
 admitted to practice law in the State, the court may appoint the
guardian ad litem to serve also as the petitioner's attorney.

12 **§8404. Standards of review**

14 **1. Allegation of competence.** If the petitioner makes only
16 the allegation set forth in section 8402, subsection 2, paragraph
D, subparagraph (1) and if the court finds, by clear and
convincing evidence, that the petitioner is sufficiently mature
18 and informed to decide intelligently whether to have an abortion,
the court shall issue an order authorizing the petitioner to
20 consent to the performance or inducement of an abortion without
 the notification of her parent. If the court does not make such
22 a finding, the court shall dismiss the petition.

24 **2. Allegation of abuse.** If the petitioner makes only the
26 allegation set forth in section 8402, subsection 2, paragraph D,
subparagraph (2) and if the court finds, by clear and convincing
evidence, that there is evidence of a pattern of physical, sexual
28 or emotional abuse of the petitioner by a parent or that the
notification of the parent of the petitioner otherwise is not in
30 the best interest of the petitioner, the court shall issue an
order authorizing the petitioner to consent to the performance or
32 inducement of an abortion without the notification of her
parent. If the court does not make such a finding, the court
34 shall dismiss the petition.

36 **3. Allegations of competence and abuse.** If the petitioner
38 makes both of the allegations set forth in section 8402,
subsection 2, paragraph D, subparagraphs (1) and (2), the court
40 shall proceed as follows.

42 A. The court first shall determine whether it can make the
finding specified in subsection 1 and, if so, shall issue an
44 order pursuant to that subsection. If the court issues such
an order, it may not review the allegation made under
section 8402, subsection 2, paragraph D, subparagraph (2).
46 If the court does not make the finding specified in
subsection 1, it shall review the allegation made under
48 section 8402, subsection 2, paragraph D, subparagraph (2).

2 B. If the court pursuant to paragraph A does not make the
3 finding specified in subsection 1, it shall determine
4 whether it can make the finding specified in subsection 2
5 and, if so, shall issue an order pursuant to that
6 subsection. If the court does not make the finding
7 specified in subsection 2, the court shall dismiss the
8 petition.

9
10 **§8405. Miscellaneous provisions**

11 1. Notice prohibited. The court may not notify the parent
12 of the petitioner that she is pregnant or that she wants to have
13 an abortion.

14 2. Notice of right to appeal. If the court dismisses the
15 petition, it immediately shall notify the petitioner that she has
16 a right to appeal pursuant to section 8406.

17 3. Confidentiality. Each hearing under section 8403 must
18 be conducted in a manner that will preserve the anonymity of the
19 petitioner. The petition and all other papers and records that
20 pertain to an action commenced under this chapter are
21 confidential and are not public records under Title 1, chapter 13
22 or any other provision of law.

23 4. Forms. The Supreme Judicial Court shall prescribe
24 petition and notice of appeal forms to be used by a petitioner
25 filing a petition under this section and by an appellant filing
26 an appeal. The clerk of each trial court shall furnish blank
27 copies of the forms, without charge, to any person who requests
28 them.

29 5. Filing fee. A filing fee may not be required of and
30 court costs may not be assessed against a petitioner filing a
31 petition under section 8402 or an appellant filing an appeal
32 pursuant to section 8406.

33 6. Presumed unemancipated. For purposes of prosecutions
34 for a violation of Title 22, section 1600-A, it is a rebuttable
35 presumption that a woman who is unmarried and under 18 years of
36 age is unemancipated.

37
38 **§8406. Appeal**

39 A petitioner whose petition under this chapter is dismissed
40 by the Probate Court or District Court may appeal in accordance
41 with this section.

42 1. Docketing of appeal. Within 4 days after a notice of
43 appeal is filed in an action arising under this chapter, the

2 clerk of the trial court shall deliver a copy of the notice of
3 appeal and the record on appeal to the Clerk of the Supreme
4 Judicial Court named in the notice. Upon receipt of the notice
and record, the Clerk of the Supreme Judicial Court shall place
the appeal on the docket of the court.

6 **2. Briefs and decision.** The appellant shall file her brief
8 within 4 days after the appeal is docketed. Unless the appellant
10 waives the right to oral argument, the Supreme Judicial Court
12 shall hear oral argument within 5 days after the appeal is
docketed. The Supreme Judicial Court shall enter judgment on the
appeal immediately after the oral argument or, if oral argument
has been waived, within 5 days after the appeal is docketed.

14 **3. Filing fee.** A filing fee may not be required of and
16 court costs may not be assessed against an appellant who appeals
under this section.

18 **4. Procedures; constructive order.** Upon motion of the
20 appellant and for good cause shown, the Supreme Judicial Court
22 may shorten or extend any of the maximum times set forth in this
24 section. If judgment is not entered within 5 days after the
26 appeal is docketed, the failure to enter judgment is deemed to be
28 a constructive order of the court authorizing the appellant to
30 consent to the performance or inducement of an abortion without
the notification of her parent and the appellant and any other
person may rely on the constructive order as if the court
actually had entered judgment under this section authorizing the
appellant to consent to the performance or inducement of an
abortion without the notification of her parent.

32 In the interest of justice, the Supreme Judicial Court, in an
34 appeal under this section, shall liberally modify or dispense
with the formal requirements that normally apply to the contents
and form of an appellant's brief.

36 **5. Confidentiality.** All proceedings under this section
38 must be conducted in a manner that will preserve the anonymity of
40 the appellant on appeal. The notice of appeal and all papers and
records that pertain to an appeal under this section are
42 confidential and are not public records under Title 1, chapter 13
or any other provision of law.

44 Sec. 3. 22 MRSA c. 263-B, first 2 lines are repealed and the
46 following enacted in their place:

48 **CHAPTER 263-B**

50 **ABORTIONS**

SUBCHAPTER I

ABORTIONS GENERALLY

Sec. 4. 22 MRSA §1597-A, as amended by PL 1993, c. 600, Pt. B, §21, is repealed.

Sec. 5. 22 MRSA §1598, sub-§1, as amended by PL 1993, c. 61, §2, is further amended to read:

1. Policy. It is the public policy of the State that the
12 State not restrict a woman's exercise of her private decision to
terminate a pregnancy before viability except as provided in
14 section--1597-A Title 14, chapter 751. After viability an
abortion may be performed only when it is necessary to preserve
16 the life or health of the mother. It is also the public policy of
the State that all abortions may be performed only by a physician.

Sec. 6. 22 MRSA c. 263-B, sub-c. II is enacted to read:

SUBCHAPTER II

ABORTIONS FOR MINORS

§1600. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

30 **I. Parent.** "Parent" means one of a pregnant woman's parents or a guardian or custodian.

34 **2. Physician.** "Physician" means a person licensed under
Title 32, chapter 36 or 48 to practice medicine in the State as a
medical or osteopathic physician.

3. Specified relative. "Specified relative" means a brother or sister who is 21 years of age or older or a stepparent or grandparent of a pregnant woman.

42 4. Trial court. "Trial court" means a District Court in
whose district a pregnant woman has her residence, a District
Court in whose district a hospital, clinic or other facility in
which an abortion would be performed or induced is located, a
Probate Court in whose county a pregnant woman has her residence
or a Probate Court in whose county a hospital, clinic or other
facility in which an abortion would be performed or induced is
located.

2 5. Unemancipated. "Unemancipated" means a woman who is
unmarried, is under 18 years of age, is not in the Armed Forces
of the United States and is not employed full-time and
self-subsisting or otherwise independent from the care and
control of her parent.

6 §1600-A. Parental consent required

8 A physician may not knowingly perform or induce an abortion
10 for an unemancipated pregnant woman unless at least one of the
following applies.

12 1. Notice given. Subject to this section, the physician
14 has given at least 24 hours' actual notice, in person or by
telephone, to the woman's parent of the intention to perform or
16 induce the abortion, except that, if the pregnant woman has
requested that notice be given to a specified relative in
18 accordance with section 1600-C and if the physician is notified
20 by a court that affidavits described in section 1600-C have been
filed with that court, the 24 hours' actual notice described in
22 this section of the intention to perform or induce the abortion
must be given, in person or by telephone, to the specified
relative instead of to the parent.

24 2. Written consent. The pregnant woman's parent has
26 consented in writing to the performance or inducement of the
abortion.

28 3. Court order. A court pursuant to Title 14, chapter 751
30 issues an order authorizing the pregnant woman to consent to the
abortion without notification of her parent.

32 4. Constructive order. The failure to hold the hearing
34 referred to in subsection 3 is deemed to be a constructive order
of the court authorizing the pregnant woman to consent to the
36 performance or inducement of an abortion without the notification
of the pregnant woman's parent, and the pregnant woman and any
38 other person may rely on the constructive order as if the court
actually had issued an order under this section authorizing the
40 pregnant woman to consent to the performance or inducement of an
abortion without the notification of her parent pursuant to Title
42 14, section 8403, subsection 1 or Title 14, section 8406,
subsection 4.

44 §1600-B. Coercion prohibited

46 A parent or any other person may not coerce an unemancipated
48 pregnant woman to have an abortion performed or induced. If the
pregnant woman is denied financial support by her parent due to
50 her refusal to have an abortion performed or induced, the

2 pregnant woman is deemed emancipated for the purposes of
3 eligibility for public-assistance benefits, except that the
4 benefits may not be used to obtain an abortion.

5

6 **§1600-C. Consent of specified relative**

7

8 If an unemancipated pregnant woman desires notification of a
9 physician's intention to perform or induce an abortion on that
10 pregnant woman to be given to a specified relative instead of to
11 her parent, the physician who intends to perform or induce the
12 abortion shall notify the specified relative instead of the
13 parent for purposes of section 1600-A, subsection 1 if all of the
14 following apply.

15

16 **1. Identification reviewed.** The pregnant woman has
17 requested the physician to provide the notification to the
18 specified relative and has identified clearly the specified
relative and her relation to that person.

19

20 **2. Affidavit of pregnant woman required.** The pregnant
21 woman has:

22

23 A. Executed an affidavit stating that she is in fear of
24 physical, sexual or severe emotional abuse from her parent
25 who otherwise would be notified under section 1600-A,
26 subsection 1 and that the fear is based on a pattern of
27 physical, sexual or severe emotional abuse of her exhibited
28 by that parent;

29

30 B. Filed the affidavit with the trial court that has
31 jurisdiction over the county or district in which the
32 pregnant woman has a residence or the trial court having
33 jurisdiction over the county or district in which the
34 hospital, clinic or other facility in which the abortion
35 would be performed or induced is located; and

36

37 C. Given the court written notice of the name and address
38 of the physician who intends to perform or induce the
39 abortion.

40

41 **3. Affidavit of specified relative required.** The specified
42 relative has executed an affidavit stating that the pregnant
43 woman has reason to fear physical, sexual or severe emotional
44 abuse from the parent who otherwise would be notified under
45 section 1600-A, subsection 1 based on a pattern of physical,
46 sexual or severe emotional abuse of her by that parent and the
47 pregnant woman has filed with the trial court the affidavit
48 described in subsection 2.

2 **4. Filing of affidavits.** The trial court in which the
affidavits described in subsections 2 and 3 were filed has
notified the physician that both affidavits have been filed with
the court.

6 A physician shall file a monthly report indicating the
number of notices issued under this subchapter and the number of
times in which exceptions were made to the notice requirement
under this section, as well as the type of exception, with the
department on forms prescribed by the department. A patient's
name may not be used on the forms. A compilation of the data
reported must be made by the department on an annual basis and
must be available to the public.

14 **§1600-D. Documentation; notice**

16 If an affidavit described in section 1600-C, subsection 2
18 and an affidavit described in section 1600-C, subsection 3 are
20 filed with a trial court and the court has been provided with
written notice of the name and address of the physician who
22 intends to perform or induce an abortion for the pregnant woman
to whom the affidavits pertain, the court promptly shall notify
24 the physician who intends to perform or induce the abortion that
the affidavits have been filed. The notice to the physician must
be given in person or by telephone.

26 **1. Failure of notice.** If the parent can not be reached for
28 purposes of section 1600-A, subsection 1 after a reasonable
30 effort or if notification is to be given to a specified relative
under section 1600-C and the specified relative can not be
32 reached for purposes of section 1600-A, subsection 1 after a
reasonable effort, a physician may not perform or induce an
abortion without giving at least 48 hours' constructive notice to
34 the parent by both certified and ordinary mail sent to the last
known address of the parent or, if notification for purposes of
36 section 1600-C is to be given to a specified relative, without
giving at least 48 hours' constructive notice to that specified
38 relative by both certified and ordinary mail sent to the last
known address of that specified relative. The 48-hour period
40 begins when the certified mail notice is received and signed for
by the parent or the specified relative. If the parent of the
42 pregnant woman or the specified relative, if notification under
section 1600-C is to be given to a specified relative, is not
44 reached within the 48-hour period, the abortion may be performed
or induced even if the certified mail notice is not received.

46 If the parent or the specified relative who has been notified in
48 accordance with section 1600-C clearly and unequivocally
expresses a decision not to consult with the pregnant woman

2 before the pregnant woman's abortion, then the abortion may be
2 performed or induced without any further waiting period.

4 **§1600-E. Unlawful abortion**

6 A physician who violates section 1600-A commits unlawful
8 abortion, which is a Class D crime. If the offender previously
8 has been convicted of a violation of section 1600-A, unlawful
10 abortion is a Class C crime.

10 A physician who violates the provisions of this subchapter
12 commits unprofessional conduct, and the physician's license to
14 practice is subject to suspension or revocation in accordance
14 with the procedures provided under Title 32, chapter 36,
16 subchapter V or Title 32, chapter 48, subchapter II.

16 **§1600-F. Violation; penalties**

18 A person who violates the provisions of this subchapter is
20 liable to the pregnant woman and the pregnant woman's parent for
20 civil compensatory and punitive damages.

22 **§1600-G. Affirmative defenses**

24 1. False, misleading or incorrect information. It is an
26 affirmative defense to a charge under section 1600-E that the
28 pregnant woman provided the physician who performed or induced
30 the abortion with false, misleading or incorrect information
32 about the pregnant woman's age, marital status or emancipation,
34 about the age of a brother or sister to whom the pregnant woman
36 requested notice be given as a specified relative instead of the
38 pregnant woman's parent or about the last known phone number and
40 address of the pregnant woman's parent or the specified relative
42 to whom the pregnant woman requested notice be given and the
44 physician who performed or induced the abortion did not otherwise
46 have reasonable cause to believe that the pregnant woman was
48 under 18 years of age, unmarried or unemancipated, that the age
50 of a brother or sister to whom she requested notice be given as a
52 specified relative was not 21 years of age or that the last known
54 phone number and address of the pregnant woman's parent or
56 specified relative were incorrect.

42 2. Immediate threat of serious risk. It is an affirmative
44 defense to a charge under section 1600-E that compliance with the
46 requirements of section 1600-A was not possible because an
48 immediate threat of serious risk to the life or physical health
50 of the pregnant woman from the continuation of the pregnancy
52 created an emergency necessitating the immediate performance or
54 inducement of an abortion.

2

SUMMARY

4 This bill requires parental notification before an abortion
is performed or induced on a pregnant minor.

6

8 The bill requires that notification be provided to one
parent or, when the minor is in fear of physical, sexual or
emotional abuse from a parent, to a specified relative, who may
10 be a grandparent, a stepparent or a sister or brother who is 21
years of age or older.

12

14 The bill also allows for alternative procedures whereby the
minor may seek court approval for the proposed abortion and
establishes the procedures for judicial review and appeals.

16

This bill is modeled on the provisions of Ohio law.