

# MAINE STATE LEGISLATURE

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STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
112TH LEGISLATURE  
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 298, L.D. 387,  
Bill, "AN ACT to Require Parental Consent in the Case  
of Minors' Abortions."

Amend the bill by striking out all of the title  
and inserting in its place the following:

'AN ACT Concerning Parental or Court Consent Prior  
to Performing an Abortion on a Minor.'

Further amend the bill by striking out everything  
after the enacting clause and inserting in its place  
the following:

'Sec. 1. 4 MRSA §152, sub-§4, as repealed and  
replaced by PL 1983, c. 796, §1, is amended to read:

4. Exclusive jurisdiction. Original jurisdic-  
tion, not concurrent with that of the Superior Court,  
of mental health commitment hearings under Title 34,  
chapter 229, mental retardation certification hear-  
ings under Title 34, chapter 229 and, small claims  
actions under Title 14, chapter 738 and actions seek-  
ing judicial consent to a minor's abortion under Ti-  
tle 22, section 1597-A; and

Sec. 2. 22 MRSA §1597, as enacted by PL 1979, c.  
413, is repealed.

Sec. 3. 22 MRSA §1597-A is enacted to read:  
§1597-A. Parental or court consent required prior to  
performing an abortion on a minor

1. Definitions. As used in this section, unless  
the context otherwise indicates, the following terms

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1 have the following meanings.

2 A. "Minor" means a pregnant woman under the age  
3 of 16 years.

4 2. Prohibition; exceptions. Unless otherwise  
5 provided by law, no person may knowingly perform an  
6 abortion upon a pregnant woman under the age of 16  
7 years unless:

8 A. The attending physician has secured the in-  
9 formed written consent of the minor and one par-  
10 ent or guardian;

11 B. The minor is married and the attending physi-  
12 cian has received the informed written consent of  
13 the minor;

14 C. The minor has been granted the right to  
15 self-consent to the abortion by court order pur-  
16 suant to subsection 3 and the attending physician  
17 has received the informed written consent of the  
18 minor;

19 D. The minor has been granted consent to the  
20 abortion by court order and the court has given  
21 its informed written consent in accordance with  
22 subsection 3 and the minor is having the abortion  
23 in compliance with subsection 4; or

24 E. The attending physician determines that the  
25 abortion is immediately necessary to preserve the  
26 life of the minor.

27 3. Minor's right to self-consent. The right of  
28 a minor to self-consent to an abortion under subsec-  
29 tion 2, paragraph C, or court consent under subsec-  
30 tion 2, paragraph D, may be granted by a court pursu-  
31 ant to the following procedures.

32 A. The minor or next friend of the minor shall  
33 make an application to the District Court which

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1       shall assist the minor or next friend in prepar-  
2       ing the petition required pursuant to this sec-  
3       tion. The minor or next friend shall file a pe-  
4       tion setting forth the initials of the minor;  
5       the age of the minor; that the minor has been  
6       fully informed of the risks and consequences of  
7       the abortion; that the minor is of sound mind and  
8       has sufficient intellectual capacity to consent  
9       to the abortion; that, if the court does not  
10       grant the minor majority rights for the purpose  
11       of consent to the abortion, the court should find  
12       that the abortion is in the best interests of the  
13       minor and give judicial consent to the abortion;  
14       that the court should appoint a guardian ad litem  
15       of the minor if the minor so requests; and, if  
16       the minor does not have private counsel, that the  
17       court should appoint counsel if the minor objects  
18       to the report of the master under paragraph B.  
19       The petition shall be initialed by the minor or  
20       signed by the next friend of the minor. The pe-  
21       tion is a confidential record.

22       B. The clerk of the District Court shall sched-  
23       ule a meeting for the minor at the minor's conve-  
24       nience with a master as near as possible to where  
25       the minor resides. The meeting must occur within  
26       3 days of the filing of the petition. The clerk  
27       shall transmit the petition to the master prior  
28       to the meeting. All records, communications and  
29       proceedings under this paragraph shall be kept  
30       confidential. The master shall be chosen from a  
31       list of qualified masters appointed by the court.  
32       The qualifications of the masters shall be the  
33       same as those provided in section 1599-A, subsec-  
34       tion 4, paragraph A. A master shall be paid \$50  
35       by the court for each petition on which a master  
36       holds a meeting with a minor. The master's ac-  
37       tion on a petition shall proceed as follows.

38       (1) The master shall meet with the minor in  
39       a meeting room provided by the master or in  
40       a meeting room provided by the court. A

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1 next friend of the minor or, if appointed, a  
2 guardian ad litem may attend the meeting  
3 with her. The meeting shall be conducted  
4 informally.

5 (2) The master shall provide the minor with  
6 the information and have the minor sign the  
7 form required by section 1599-A, subsection  
8 4. The master shall transmit the form to  
9 the minor's attending physician, if she so  
10 requests, or shall give the form to the mi-  
11 nor.

12 (3) The master shall solicit evidence from  
13 the minor relating to her emotional develop-  
14 ment, maturity, intellect and understanding;  
15 the nature and possible consequences of the  
16 abortion for the minor and of alternatives  
17 to abortion for the minor; and any other ev-  
18 idence the master may find useful in deter-  
19 mining whether the minor should be granted  
20 the right to self-consent to the abortion or  
21 whether the abortion is in the best inter-  
22 ests of the minor.

23 (4) The master shall file a written report  
24 with the court within 2 days of meeting with  
25 the minor. The report shall be confiden-  
26 tial, except for disclosure to the court and  
27 the minor. The report shall state, with  
28 findings for divisions (a) and (b), the  
29 master's decision that the minor:

30 (a) Should be granted the right to  
31 self-consent to the abortion;

32 (b) Should not be granted the right to  
33 self-consent to the abortion, but  
34 should receive judicial consent to the  
35 abortion because the abortion is in her  
36 best interests; or

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1                   (c) Should have her petition denied.

2                   The report shall include a statement by the  
3                   master as to how the court may inform the  
4                   minor as required by subparagraph 5.

5                   (5) The court shall enter judgment on the  
6                   master's report immediately upon receiving  
7                   the report. The court may, as directed by  
8                   the Supreme Judicial Court as circumstances  
9                   necessitate, receive the report and enter  
10                   judgment on it by telephone. The court  
11                   shall immediately inform the minor, in a  
12                   confidential manner, of the judgment and  
13                   ask, if judgment was entered on subparagraph  
14                   (4), division (c), if the minor wishes to  
15                   object to the judgment. If the minor ob-  
16                   jects to the judgment, the court shall va-  
17                   cate the judgment, appoint counsel for the  
18                   minor within 24 hours if she requests or has  
19                   requested appointment of counsel and proceed  
20                   to hold a hearing under paragraph C.

21                   C. A hearing on the merits of the petition, to  
22                   be held on the record, shall be held as soon as  
23                   possible within 5 days of entry of judgment on  
24                   the master's report if the minor objects to the  
25                   report under paragraph B, subparagraph (5). At  
26                   the hearing, the court shall hear evidence relat-  
27                   ing to the emotional development, maturity, in-  
28                   tellect and understanding of the minor; the na-  
29                   ture, possible consequences and alternatives to  
30                   the abortion; and any other evidence that the  
31                   court may find useful in determining whether the  
32                   minor should be granted majority rights for the  
33                   purpose of consenting to the abortion or whether  
34                   the abortion is in the best interests of the mi-  
35                   nor. The master's report and testimony by the  
36                   master shall not be admissable in the hearing.

37                   D. In the decree after the hearing, the court  
38                   shall, for good cause:

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1                   (1) Grant the petition for majority rights  
2                   for the purpose of consenting to the abor-  
3                   tion;

4                   (2) If the court does not find that it can  
5                   grant the petition under subparagraph (1),  
6                   find the abortion to be in the best inter-  
7                   ests of the minor and give judicial consent  
8                   to the abortion, setting forth the grounds  
9                   for so finding; or

10                   (3) If the court does not find that it can  
11                   grant the petition under subparagraph (1) or  
12                   give judicial consent under subparagraph  
13                   (2), deny the petition, setting forth the  
14                   grounds on which the petition is denied.

15                   E. If the petition is allowed, the informed con-  
16                   sent of the minor, pursuant to a court grant of  
17                   majority rights, or the judicial consent, shall  
18                   bar an action by the parents or guardian of the  
19                   minor on the grounds of battery of the minor by  
20                   those performing the abortion. The immunity  
21                   granted shall only extend to the performance of  
22                   the abortion in accordance with this section and  
23                   any necessary accompanying services which are  
24                   performed in a competent manner.

25                   F. The Supreme Judicial Court shall promulgate  
26                   rules to provide for expedited appeals from a de-  
27                   creed under this subsection.

28                   G. All records created under this subsection  
29                   shall be expunged on the date of the 18th birth-  
30                   day of the minor to whom the records pertain.

31                   4. Minor's consent. If a minor desires an abor-  
32                   tion, the attending physician shall certify in the  
33                   minor's medical record that he has received the  
34                   signed form required by subsection 3, paragraph B,  
35                   subparagraph (2), and shall require the minor to sign

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1     a written informed consent statement.

2             5. Penalty. Any person who knowingly performs  
3 or aids in the performance of an abortion in viola-  
4 tion of this section or who knowingly fails to per-  
5 form any action required by this section is guilty of  
6 a Class D crime.

7             Sec. 4. 22 MRSA §1599, as reallocated by PL  
8 1979, c. 663, §133, is repealed.

9             Sec. 5. 22 MRSA §1599-A is enacted to read:  
10 §1599-A. Informed consent to abortion

11             1. Definitions. As used in this section, unless  
12 the context otherwise indicates, the following terms  
13 have the following meanings.

14             A. "Emancipated" means, but is not limited to,  
15 married, serving in the Armed Forces or emanci-  
16 pated under Title 15, section 3506-A.

17             B. "Minor" means a pregnant woman 16 years of  
18 age or older, but under 18 years of age.

19             2. Consent by the woman. No physician may per-  
20 form an abortion unless, prior to the performance,  
21 the attending physician certifies in writing that the  
22 woman gave her informed written consent, freely and  
23 without coercion. He shall further certify in writ-  
24 ing the pregnant woman's age based upon proof of age  
25 offered by her.

26             3. Informed consent. In order to insure that  
27 the consent for an abortion is truly informed con-  
28 sent, the attending physician, or his designee with  
29 regard to paragraph D, shall inform the woman, in a  
30 manner which, in his professional judgment, is not  
31 misleading and which will be understood by the pa-  
32 tient, of at least the following:



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1        A. According to his best judgment she is preg-  
2        nant;

3        B. The number of weeks elapsed from the probable  
4        time of the conception;

5        C. The particular risks associated with her own  
6        pregnancy and the abortion technique to be per-  
7        formed; and

8        D. For a woman not provided this information un-  
9        der subsection 4 or under section 1597-A, subsec-  
10       tion 3, paragraph B, subparagraph (2), alterna-  
11       tives to abortion, such as childbirth and adop-  
12       tion and information concerning public and pri-  
13       vate agencies that will provide the woman with  
14       economic and other assistance to carry the fetus  
15       to term, including, if the woman so requests, a  
16       list of these agencies and the services available  
17       from each.

18       4. Counseling of minors. Counseling of minors  
19       shall be according to this subsection.

20       A. Where the woman is not emancipated, is 16  
21       years of age or older but under the age of 18  
22       years and has not secured the written consent of  
23       a parent or guardian of the minor to an abortion,  
24       no person may knowingly perform an abortion on  
25       her unless she has received the counseling and  
26       provided the form required by this subsection  
27       from a person licensed to practice his profession  
28       in this State who is:

29                (1) A psychiatrist licensed under Title 32,  
30                chapter 48, subchapter II;

31                (2) A psychologist licensed under Title 32,  
32                chapter 56, subchapter III;

33                (3) A clinical social worker licensed under  
34                Title 32, chapter 83, subchapter III; or

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- 1                   (4) A certified social worker licensed under Title 32, chapter 83, subchapter III.  
2
- 3           B. The person doing the counseling required by  
4 this subsection shall provide the information re-  
5 quired in subsection 3, paragraph D. In addi-  
6 tion, the person doing the counseling under this  
7 subsection shall, in a manner that will be under-  
8 stood by the minor:
- 9                   (1) First explain that the information be-  
10 ing given by the person to the minor is be-  
11 ing given objectively and is not intended to  
12 coerce, persuade or induce the minor to  
13 choose either to have an abortion or to car-  
14 ry her pregnancy to term;
- 15                   (2) Explain that the minor may withdraw a  
16 decision to have an abortion at any time be-  
17 fore the abortion is performed or may recon-  
18 sider a decision not to have an abortion at  
19 any time within the time period during which  
20 an abortion may legally be performed;
- 21                   (3) Discuss with the minor all the alterna-  
22 tive choices she has for managing her preg-  
23 nancy;
- 24                   (4) Explain that public and private agen-  
25 cies are available to provide her with birth  
26 control information and that a list of these  
27 agencies and the services available from  
28 each will be provided to her if she so re-  
29 quests;
- 30                   (5) Discuss the possibility of involving  
31 the minor's parents, guardians or other fam-  
32 ily members in the minor's decision-making  
33 concerning her pregnancy and explore whether  
34 or not the minor feels that such involvement  
35 would be in her best interest; and

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1                   (6) Provide adequate opportunity for the  
2                   minor to ask any questions concerning her  
3                   pregnancy, abortion and child care, and pro-  
4                   vide her the information she seeks or, if  
5                   the information cannot be provided, indicate  
6                   where the minor can receive that informa-  
7                   tion.

8                   Upon completion of providing information to a minor  
9                   as required by this subsection, the person providing  
10                   the information shall have the minor sign and date a  
11                   form stating that she has received information on al-  
12                   ternatives to abortion and agencies that will provide  
13                   assistance; that she has received an explanation that  
14                   the information was being given to her objectively;  
15                   that she has received an explanation that she may  
16                   withdraw an abortion decision or reconsider a deci-  
17                   sion to carry a pregnancy to term; that the alterna-  
18                   tives she has for managing her pregnancy have been  
19                   discussed with her; that she has received an explana-  
20                   tion about agencies available to provide her with  
21                   birth control information; that she has discussed  
22                   with the person the possibility of involving her par-  
23                   ents, guardians or other family members in her deci-  
24                   sion-making concerning her pregnancy; and that she  
25                   has been given an adequate opportunity to ask ques-  
26                   tions. The person providing the information under  
27                   this subsection shall also sign and date the form,  
28                   place his address and telephone number on the form  
29                   and transmit the form to the minor's attending physi-  
30                   cian, if the minor so requests, or give the form to  
31                   the minor.

32                   Sec. 6. Effective date. This Act shall take ef-  
33                   fect on January 1, 1986.

34   FISCAL NOTE

35                   The costs associated with this amendment result  
36                   from payments to court-appointed masters, and in some  
37                   cases, court-appointed attorneys. These costs, ap-

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1 proximately \$4,600 per year, can be absorbed within  
2 existing resources of the Judicial Department.'

3 STATEMENT OF FACT

4 The purposes of this amendment are to:

5 1. Limit the requirement of judicial consent to  
6 abortions for minors, where parental consent does not  
7 exist, to minors under the age of 16 years (see sec-  
8 tion 3 of the bill, the Maine Revised Statutes, Title  
9 22, section 1597-A, subsection 2);

10 2. Establish, through the use of specially qual-  
11 ified court masters, a less traumatic, more appropri-  
12 ate procedure for determining if a minor seeking ju-  
13 dicial consent to an abortion is mature enough to  
14 make the decision herself or, if she is not, if the  
15 abortion is nonetheless in her best interests (see  
16 section 3, the Maine Revised Statutes, Title 22, sec-  
17 tion 1597-A, subsection 3, paragraph B);

18 3. Permit the minor seeking judicial consent to  
19 an abortion access to a court hearing if she objects  
20 to the master's decision (see section 3, the Maine  
21 Revised Statutes, Title 22, section 1597-A, subsec-  
22 tion 3, paragraph B);

23 4. Permit an attending physician to designate a  
24 person other than himself to perform the counseling  
25 function of the abortion informed consent statute, as  
26 required by City of Akron v. Akron Center for Repro-  
27 duction Health, 103 S. Ct. 2481 (1983) (see section  
28 5, the Maine Revised Statutes, Title 22, §1599-A,  
29 subsection 3); and

30 5. Require more extensive counseling by special-  
31 ly qualified and licensed mental health profession-  
32 als, when the person seeking an abortion is an un-  
33 emancipated minor 16 years of age or older (see sec-

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1 tion 5, the Maine Revised Statutes, Title 22, section  
2 1599-A, subsection 4).

3 This amendment responds to the invitation to the  
4 states by the United States Supreme Court in Bellotti  
5 v. Baird, 99 S. Ct. 3035, 3048 (n. 22) (1979) to de-  
6 velop an alternative procedure to the judicial proce-  
7 dure reviewed in that case for involving the State in  
8 a minor's decision to have an abortion where parental  
9 consent is absent.

10

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