

# MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION  
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE  
4

5 Legislative Document

No. 387

6  
7 H.P. 298

House of Representatives, January 31, 1985

8 Referred to the Committee on Judiciary and ordered printed. Sent up for  
9 concurrence.

10 EDWIN H. PERT, Clerk

Presented by Representative Carrier of Westbrook.

11 Cosponsored by Representative Brown of Gorham, Representative  
Stevenson of Unity and Representative Hitchens of York.

12 STATE OF MAINE  
13

14 IN THE YEAR OF OUR LORD  
15 NINETEEN HUNDRED AND EIGHTY-FIVE  
16

17 AN ACT to Require Parental Consent in the  
18 Case of Minors' Abortions.  
19

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

22 22 MRSA §1597-A is enacted to read:

23 §1597-A. Informed consent to minors' abortions

24 1. Notice required. No person may knowingly  
25 perform an abortion upon a pregnant woman under the  
26 age of 18 years of age unless:

27 A. The attending physician has secured the writ-  
28 ten consent of the minor and one parent or guard-  
29 ian;

30 B. The minor is emancipated and the attending  
31 physician has received the consent of the minor;

1 C. The minor has been granted the right to  
2 self-consent to the abortion by court order, pur-  
3 suant to subsection 2, and the attending physi-  
4 cian has received the written consent of the mi-  
5 nor; or

6 D. The minor has been granted consent to the  
7 abortion by court order and the court has given  
8 its written consent, in accordance with subsec-  
9 tion 2, and the minor is having the abortion  
10 willingly, in compliance with subsection 3.

11 2. Consent by the minor. The right of a minor  
12 to self-consent to an abortion under subsection 1,  
13 paragraph C, or court consent under subsection 1,  
14 paragraph D, may be granted by a court pursuant to  
15 the following procedures.

16 A. The minor or next friend shall make applica-  
17 tion to the Juvenile Court which shall assist the  
18 minor or next friend in preparing the petition  
19 and notices required pursuant to this section.  
20 The minor or the next friend of the minor shall  
21 thereafter file a petition setting forth the fol-  
22 lowing:

23 (1) The initials of the minor;

24 (2) The age of the minor;

25 (3) The names and addresses of each parent,  
26 guardian or, if the minor's parents are de-  
27 ceased and no guardian has been appointed,  
28 any other person standing in loco parentis  
29 of the minor;

30 (4) That the minor is aware of the nature  
31 and purpose of an abortion;

32 (5) That the minor is of sound mind and  
33 has sufficient intellectual capacity to con-  
34 sent to the abortion;

35 (6) That, if the court does not grant minor  
36 majority rights for the purpose of consent  
37 to the abortion, the court should find that  
38 the abortion is in the best interest of the

1                   minor and give judicial consent to the abor-  
2                   tion;

3                   (7) That the court should appoint a guardi-  
4                   an ad litem of the child; and

5                   (8) If the minor does not have private  
6                   counsel, that the court should appoint coun-  
7                   sel.

8                   The petition shall be signed by the minor or the  
9                   next friend.

10                  B. A hearing on the merits of the petition, to  
11                  be held on the record, shall be held as soon as  
12                  possible within 5 days of the filing of the peti-  
13                  tion.

14                  At the hearing, the court shall hear evidence re-  
15                  lating to the emotional development, maturity,  
16                  intellect and understanding of the minor, the na-  
17                  ture, possible consequences and alternatives to  
18                  the abortion and any other evidence that the  
19                  court may find useful in determining whether the  
20                  minor should be granted majority rights for the  
21                  purpose of consenting to the abortion or whether  
22                  it is in the best interests of the minor.

23                  C. In the decree, the court shall for good  
24                  cause:

25                   (1) Grant the petition for majority rights  
26                   for the purpose of consenting to the abor-  
27                   tion;

28                   (2) Find the abortion to be in the best in-  
29                   terests of the minor and give judicial con-  
30                   sent to the abortion, setting forth the  
31                   grounds for the finding; or

32                   (3) Deny the petition, setting forth the  
33                   grounds on which the petition is denied.

34                  D. If the petition is allowed, the consent of  
35                  the minor, pursuant to a court grant of majority  
36                  rights or the judicial consent, shall bar an ac-  
37                  tion by the parents or guardian of the minor on

1 the grounds of battery of the minor by those per-  
2 forming the abortion. The immunity granted shall  
3 only extend to the performance of the abortion in  
4 accordance with this section and any necessary  
5 accompanying services which are performed in a  
6 competent manner.

7 E. An appeal from an order issued under this  
8 section may be taken in the manner set forth for  
9 juvenile appeals, except that both the facts and  
10 the law may be reviewed.

11 3. Notice required. If a minor desires an abor-  
12 tion, then she shall be orally informed of the nature  
13 of an abortion and, if possible, sign the written  
14 consent in the same manner as an adult person. No  
15 abortion may be performed on any minor against her  
16 will.

17 4. Exception. Emancipated women under the age  
18 of 18 are exempt from the requirement of parental  
19 consent and from the alternative requirement of a ju-  
20 dicial proceeding set forth in this section.

21 5. Criminal liability; violation punish-  
22 able. Violation of this section is punishable as a  
23 Class D crime.

24 STATEMENT OF FACT

25 The right to have a say in the care and nurture  
26 of our own children is one of our most precious  
27 rights. The United States Supreme Court in the H.L.  
28 v. Matheson case has said that these rights must not  
29 be violated. In the June 15, 1983 case of Planned  
30 Parenthood v. John Ashcroft, Attorney General of  
31 Missouri, the United States Supreme Court found that  
32 that right to parental guidance included the right to  
33 require consent of parents before an immature minor  
34 could obtain an abortion. This bill seeks to secure  
35 the same parental rights in Maine.

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