

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE
4

5 Legislative Document

No. 1113

6
7 S.P. 403

In Senate, March 26, 1985

8 Reference to the Committee on Judiciary suggested and ordered printed.

9 JOY J. O'BRIEN, Secretary of the Senate

10 Presented by Senator Hichens of York.

Cosponsored by Representative Paradis of Augusta and Representative Sproul of Augusta.

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

17 AN ACT Relating to Parental or Court Consent
18 Prior to Performing an Abortion on a Minor.
19

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

22 Sec. 1. 22 MRSA §1597, as enacted by PL 1979, c.
23 413, is repealed.

24 Sec. 2. 22 MRSA §1597-A is enacted to read:

25 §1597-A. Parental or court consent required prior to
26 performing an abortion on a minor

27 1. Prohibition; exceptions. No person may know-
28 ingly perform an abortion upon a pregnant woman under
29 the age of eighteen years unless:

30 A. The attending physician has secured the in-
31 formed written consent of the minor and one par-
32 ent or guardian;

1 B. The minor is emancipated and the attending
2 physician has received the informed written con-
3 sent of the minor;

4 C. The minor has been granted the right to
5 self-consent to the abortion by court order pur-
6 suant to subsection 2, and the attending physi-
7 cian has received the informed written consent of
8 the minor; or

9 D. The minor has been granted consent to the
10 abortion by court order and the court has given
11 its informed written consent in accordance with
12 subsection 2, and the minor is having the abor-
13 tion willingly, in compliance with subsection 3.

14 2. Minor's right to self-consent. The right of
15 a minor to self-consent to an abortion under subsec-
16 tion 1, paragraph C, or court consent under subsec-
17 tion 1, paragraph D, may be granted by a court pursu-
18 ant to the following procedures.

19 A. The minor or legal representative of the mi-
20 nor shall make an application to the District
21 Court which shall assist the minor or legal rep-
22 resentative in preparing the petition and notices
23 required pursuant to this section. The minor or
24 legal representative shall file a petition set-
25 ting forth the initials of the minor; the age of
26 the minor; the names and addresses of each par-
27 ent, guardian or, if the the minor's parents are
28 deceased and no guardian has been appointed, any
29 other person standing in loco parentis of the mi-
30 nor; that the minor has been fully informed of
31 the risks and consequences of the abortion; that
32 the minor is of sound mind and has sufficient in-
33 tellectual capacity to consent to the abortion;
34 that, if the court does not grant the minor ma-
35 majority rights for the purpose of consent to the
36 abortion, the court should find that the abortion
37 is in the best interest of the minor and give ju-
38 dicial consent to the abortion; that the court
39 should appoint a guardian ad litem of the child;
40 and, if the minor does not have private counsel,
41 that the court should appoint counsel. The peti-
42 tion shall be signed by the minor or the legal
43 representative of the minor.

1 B. Copies of the petition and a notice of the
2 date, time and place of the hearing shall be per-
3 sonally served upon each parent, guardian or, if
4 the minor's parents are deceased and no guardian
5 has been appointed, any other person standing in
6 loco parentis of the minor listed in the petition
7 by the sheriff or his deputy. If a parent or
8 guardian or, if the minor's parents are deceased
9 and no guardian has been appointed, any other
10 person standing in loco parentis cannot be per-
11 sonally served within 2 days after reasonable ef-
12 fort, the sheriff or his deputy shall give con-
13 structive notice to them by certified mail to
14 their last known address and the hearing shall
15 not be held for at least 48 hours from the time
16 of the mailing. In any case where there exists
17 the potential or appearance of conflict of inter-
18 ests between the parents or guardian or legal
19 representative of the minor and the minor, the
20 court shall appoint a guardian ad litem to defend
21 the minor's interests. The court shall set
22 forth, for the record, the grounds for that ap-
23 pointment.

24 C. A hearing on the merits of the petition, to
25 be held on the record, shall be held as soon as
26 possible within 5 days of the filing of the peti-
27 tion. If any party is unable to afford counsel,
28 the court shall appoint counsel at least 24 hours
29 before the time of the hearing. At the hearing,
30 the court shall hear evidence relating to the
31 emotional development, maturity, intellect and
32 understanding of the minor; the nature, possible
33 consequences and alternatives to the abortion;
34 and any other evidence that the court may find
35 useful in determining whether the minor should be
36 granted majority rights for the purpose of con-
37 senting to the abortion or whether the abortion
38 is in the best interests of the minor.

39 D. In the decree, the court shall, for good
40 cause:

41 (1) Grant the petition for majority rights
42 for the purpose of consenting to the abor-
43 tion;

1 (2) Find the abortion to be in the best in-
2 terests of the minor and give judicial con-
3 sent to the abortion, setting forth the
4 grounds for so finding; or

5 (3) Deny the petition, setting forth the
6 grounds on which the petition is denied.

7 E. If the petition is allowed, the informed con-
8 sent of the minor, pursuant to a court grant of
9 majority rights, or the judicial consent, shall
10 bar an action by the parents or guardian of the
11 minor on the grounds of battery of the minor by
12 those performing the abortion. The immunity
13 granted shall only extend to the performance of
14 the abortion in accordance with this section and
15 any necessary accompanying services which are
16 performed in a competent manner. The costs of
17 the action shall be borne by the parties.

18 F. An appeal from an order issued under this
19 section may be taken to the Superior Court by the
20 minor or by a parent or guardian of the minor.
21 The notice of intent to appeal must be given
22 within 24 hours from the date of issuance of the
23 order. The record on appeal must be completed
24 and the appeal must be perfected within 5 days
25 from the filing of notice to appeal. Because
26 time may be of the essence regarding the perform-
27 ance of the abortion, the Supreme Judicial Court
28 of this State shall, by court rule, provide for
29 expedited appellate review of cases appealed un-
30 der this section.

31 3. Minor's consent. If a minor desires an abor-
32 tion, then she shall be orally informed of and, if
33 possible, sign the written consent required by sec-
34 tion 1599 in the same manner as an adult person. No
35 abortion may be performed on any minor against her
36 will, except than an abortion may be performed
37 against the will of a minor pursuant to a court order
38 described in subsection 1, paragraph D, that the
39 abortion is necessary to preserve the life of the mi-
40 nor.

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STATEMENT OF FACT

The State has a compelling interest in:

1. Protecting minors against their own immaturity;
2. Fostering the family structure and preserving it as a viable social unit; and
3. Protecting the rights of parents to rear children who are members of their household.

Immature minors often lack the ability to make fully-informed choices that take account of both immediate and long-range consequences. The medical, emotional and psychological consequences of abortion are serious and can be lasting, particularly when the patient is immature. The capacity to become pregnant and the capacity for mature judgment concerning the wisdom of an abortion are not necessarily related. Parents ordinarily possess information essential to a physician's exercise of his best medical judgment concerning their child, and parents who are aware that their minor daughter has had an abortion may better ensure that she receives adequate medical attention after her abortion. Parental consultation is usually desirable and in the best interests of the minor and the right to parental consent prior to an abortion on a minor has been upheld by the United States Supreme Court in the June 15, 1983, case of Planned Parenthood v. John Ashcroft, Attorney General of Missouri.

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