

# MAINE STATE LEGISLATURE

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STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
114TH LEGISLATURE  
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 457, L.D. 622, Bill, "An Act to Require Parental Consent to a Minor's Abortion"

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

Sec. 1. 4 MRSA §152, sub-§8 is enacted to read:

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

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

§1597-A. Consent to a minor's decision to have an abortion

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

A. "Abortion" means the intentional interruption of a pregnancy by the application of external agents, whether chemical or physical, or the ingestion of chemical agents with an intention other than to produce a live birth or to remove a dead fetus.

B. "Counselor" means a person who is:

- (1) A psychiatrist;
- (2) A psychologist licensed under Title 32, chapter 56;
- (3) A social worker licensed under Title 32, chapter 83;

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(4) An ordained member of the clergy;

(5) A physician's assistant registered by the Board of Registration in Medicine, Title 32, chapter 48;

(6) A nurse practitioner registered by the Board of Registration in Medicine, Title 32, chapter 48;

(7) A certified guidance counselor;

(8) A registered professional nurse licensed under Title 32, chapter 31; or

(9) A practical nurse licensed under Title 32, chapter 31.

C. "Minor" means a person who is less than 18 years of age.

2. Prohibitions; exceptions. Except as otherwise provided by law, no person may knowingly perform an abortion upon a pregnant minor unless:

A. The attending physician has received and will make part of the medical record the informed written consent of the minor and one parent, guardian or adult family member;

B. The attending physician has secured the informed written consent of the minor as prescribed in subsection 3 and the minor, under all the surrounding circumstances, is mentally and physically competent to give consent;

C. The minor has received the information and counseling required under subsection 4, has secured written verification of receiving the information and counseling and the attending physician has received and will make part of the medical record the informed written consent of the minor and the written verification of receiving information and counseling required under subsection 4; or

D. The Probate Court or District Court issues an order under subsection 6 on petition of the minor or the next friend of the minor for purposes of filing a petition for the minor, granting:

(1) To the minor majority rights for the sole purpose of consenting to the abortion and the attending physician has received the informed written consent of the minor; or

(2) To the minor consent to the abortion, when the court has given its informed written consent and the

1           minor is having the abortion willingly, in compliance  
2           with subsection 7.

3           3. Informed consent; disallowance of recovery. No  
4           physician may perform an abortion upon a minor unless, prior to  
5           performing the abortion, the attending physician received the  
6           informed written consent of the minor.

7           A. To ensure that the consent for an abortion is informed  
8           consent, the attending physician shall:

9                   (1) Inform the minor in a manner which, in the  
10                   physician's professional judgment, is not misleading  
11                   and which will be understood by the patient, of at  
12                   least the following:

13                           (a) According to the physician's best judgment  
14                           the minor is pregnant;

15                           (b) The number of weeks of duration of the  
16                           pregnancy; and

17                           (c) The particular risks associated with the  
18                           minor's pregnancy, the abortion technique that may  
19                           be performed and the risks involved for both;

20                   (2) Provide the information and counseling described  
21                   in subsection 4 or refer the minor to a counselor who  
22                   will provide the information and counseling described  
23                   in subsection 4; and

24                   (3) Determines whether the minor is, under all the  
25                   surrounding circumstances, mentally and physically  
26                   competent to give consent.

27           B. No recovery may be allowed against any physician upon  
28           the grounds that the abortion was rendered without the  
29           informed consent of the minor when:

30                   (1) The physician, in obtaining the minor's consent,  
31                   acted in accordance with the standards of practice  
32                   among members of the same health care profession with  
33                   similar training and experience situated in the same or  
34                   similar communities; or

35                   (2) The physician has received and acted in good faith  
36                   on the informed written consent to the abortion given  
37                   by the minor to a counselor.

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1           4. Information and counseling for minors. The provision of  
2 information and counseling by any physician or counselor for any  
3 pregnant minor for decision making regarding pregnancy shall be  
4 in accordance with this subsection.

5           A. Any physician or counselor providing pregnancy  
6 information and counseling under this subsection shall, in a  
7 manner that will be understood by the minor:

8                   (1) Explain that the information being given to the  
9 minor is being given objectively and is not intended to  
10 coerce, persuade or induce the minor to choose either  
11 to have an abortion or to carry the pregnancy to term;

12                   (2) Explain that the minor may withdraw a decision to  
13 have an abortion at any time before the abortion is  
14 performed or may reconsider a decision not to have an  
15 abortion at any time within the time period during  
16 which an abortion may legally be performed;

17                   (3) Clearly and fully explore with the minor the  
18 alternative choices available for managing the  
19 pregnancy, including:

20                           (a) Carrying the pregnancy to term and keeping  
21 the child;

22                           (b) Carrying the pregnancy to term and placing  
23 the child with a relative or with another family  
24 through foster care or adoption;

25                           (c) The elements of prenatal and postnatal care;  
26 and

27                           (d) Having an abortion;

28                   (4) Explain that public and private agencies are  
29 available to provide birth control information and that  
30 a list of these agencies and the services available  
31 from each will be provided if the minor requests;

32                   (5) Discuss the possibility of involving the minor's  
33 parents, guardian or other adult family members in the  
34 minor's decision making concerning the pregnancy and  
35 explore whether the minor believes that involvement  
36 would be in the minor's best interests; and

37                   (6) Provide adequate opportunity for the minor to ask  
38 any questions concerning the pregnancy, abortion, child  
39 care and adoption, and provide the information the  
40 minor seeks or, if the person cannot provide the  
41 information, indicate where the minor can receive the  
42 information.

1           B. After the person provides the information and counseling  
2           to a minor as required by this subsection, that person shall  
3           have the minor sign and date a form stating that:

5                   (1) The minor has received information on prenatal  
6                   care and alternatives to abortion and that there are  
7                   agencies that will provide assistance;

9                   (2) The minor has received an explanation that the  
10                   minor may withdraw an abortion decision or reconsider a  
11                   decision to carry a pregnancy to term;

13                   (3) The alternatives available for managing the  
14                   pregnancy have been clearly and fully explored with the  
15                   minor;

17                   (4) The minor has received an explanation about  
18                   agencies available to provide birth control information;

19                   (5) The minor has discussed with the person providing  
20                   the information and counseling the possibility of  
21                   involving the minor's parents, guardian or other adult  
22                   family members in the minor's decision making about the  
23                   pregnancy;

25                   (6) The reasons for not involving the minor's parents,  
26                   guardian or other adult family members are put in  
27                   writing on the form by the minor or the person  
28                   providing the information and counseling; and

30                   (7) The minor has been given an adequate opportunity  
31                   to ask questions.

33                   The person providing the information and counseling shall  
34                   also sign and date the form, and include that person's  
35                   address and telephone number. The person shall keep a copy  
36                   for that person's files and shall give the form to the minor  
37                   or, if the minor requests and if the person providing the  
38                   information is not the attending physician, transmit the  
39                   form to the minor's attending physician.

41                   5. Presumption of validity of informed written consent;  
42                   rebuttal. An informed consent which is evidenced in writing  
43                   containing information and statements provided in subsection 4  
44                   and which is signed by the minor shall be presumed to be a valid  
45                   informed consent. This presumption may be subject to rebuttal  
46                   only upon proof that the informed consent was obtained through  
47                   fraud, deception or misrepresentation of material fact.

49                   6. Court order concerning consent to abortion. The court  
50                   may issue an order for the purpose of consenting to the abortion  
51                   by the minor under the following circumstances and procedures.

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A. The minor or next friend of the minor for the purposes of filing a petition may make an application to the Probate Court or District Court which shall assist the minor or next friend in preparing the petition. The minor or the next friend of the minor shall file a petition setting forth:

- (1) The initials of the minor;
- (2) The age of the minor;
- (3) That the minor has been fully informed of the risks and consequences of the abortion;
- (4) That the minor is of sound mind and has sufficient intellectual capacity to consent to the abortion;
- (5) That, if the court does not grant the minor majority rights for the purpose of consent to the abortion, the court should find that the abortion is in the best interest of the minor and give judicial consent to the abortion;
- (7) That, if the minor does not have private counsel, that the court may appoint counsel.

The minor or the next friend shall sign the petition.

B. The petition is a confidential record and the court files on the petition shall be impounded.

C. A hearing on the merits of the petition shall be held as soon as possible within 5 days of the filing of the petition. If any party is unable to afford counsel, the court shall appoint counsel at least 24 hours before the time of the hearing. At the hearing, the court shall hear evidence relating to:

- (1) The emotional development, maturity, intellect and understanding of the minor;
- (2) The nature, possible consequences and alternatives to the abortion; and
- (3) Any other evidence that the court may find useful in determining whether the minor should be granted majority rights for the purpose of consenting to the abortion or whether the abortion is in the best interest of the minor.

The hearing on the petition shall be held as soon as possible within 5 days of the filing of the petition. The

1 court shall conduct the hearing in private with only the  
2 minor, interested parties as determined by the court and  
3 necessary court officers or personnel present. The record  
4 of the hearing is not a public record.

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

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8 (1) Grant the petition for majority rights for the  
9 sole purpose of consenting to the abortion;

10 (2) Find the abortion to be in the best interest of  
11 the minor and give judicial consent to the abortion,  
12 setting forth the grounds for the finding; or

13 (3) Deny the petition only if the court finds that the  
14 minor is not mature enough to make her own decision and  
15 that the abortion is not in her best interest.

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

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27 F. The minor may appeal an order issued in accordance with  
28 this section to the Superior Court. The notice of appeal  
29 shall be filed within 24 hours from the date of issuance of  
30 the order. Any record on appeal shall be completed and the  
31 appeal shall be perfected within 5 days from the filing of  
32 notice to appeal. The Supreme Judicial Court shall, by  
33 court rule, provide for expedited appellate review of cases  
34 appealed under this section.

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36 7. Abortion performed against the minor's will. No  
37 abortion may be performed on any minor against her will, except  
38 that an abortion may be performed against the will of a minor  
39 pursuant to a court order described in subsection 6 that the  
40 abortion is necessary to preserve the life of the minor.

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42 8. Violation; penalties. Any person who knowingly performs  
43 or aids in the performance of an abortion in violation of this  
44 section commits a Class D crime. Any attending physician or  
45 counselor who knowingly fails to perform any action required by  
46 this section commits a civil violation for which a forfeiture of  
47 not more than \$1,000 may be adjudged for each violation.

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49 9. Nonseverability. In the event that any portion of this  
50 section is held invalid, it is the intent of the Legislature that  
51 this entire section shall be invalid.



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**Sec. 3. Appropriation.** The following funds are appropriated from the General Fund to carry out the purposes of this Act.

	1989-90	1990-91
<b>JUDICIAL DEPARTMENT</b>		

**Indigent Defense**

All Other	\$54,169	\$72,225
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Provides funds for additional requests for court appointed counsel.

**FISCAL NOTE**

In addition to the anticipated need for appointed counsel, increased workload for the state court system is anticipated which will result in additional costs. The Judicial Department can absorb those costs estimated to be \$4,185 in fiscal year 1989-90 and \$4,320 in fiscal year 1990-91.

This bill also provides that appeals be perfected by the court within 5 days from the filing of notice to appeal. This could potentially create a "bottleneck" for the Judicial Department, as justices may have to interrupt their schedules to hear these petitions as expeditiously as possible, perhaps even having to interrupt a jury trial if no other justice is available. This time cannot be quantified; however, additional costs would result in an amount which cannot be determined.'

**STATEMENT OF FACT**

This amendment revises the bill, although it retains the definitions of "abortion" and "minor," the parental consent avenue for a minor obtaining an abortion and essentially the same judicial bypass procedures. The major change is to establish standards for informed consent to an abortion which ensure that all pregnant minors receive at least a minimum amount of information and counseling to aid in the decision-making process.

The amendment adds a definition of "counselor" to expand the number of people who can provide the minor the required information and counseling, thus not creating a practical barrier to an abortion. The professionals listed in the definition are included based on their training and expertise in health issues and counseling.

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The amendment deletes any mention of an emancipated minor because after a minor goes through an emancipation proceeding, that minor is treated as an adult for all purposes, including obtaining an abortion.

The amendment prohibits any person from performing an abortion on a pregnant minor unless one of the 4 following requirements apply:

1. The physician has obtained the informed written consent of the minor and at least one parent, guardian or other adult family member;

2. The physician has secured the informed written consent of the minor, and the physician is satisfied that the minor, under all the surrounding circumstances, is mentally and physically competent to give consent. This language tracks language in the informed consent provisions of the Maine Health Security Act;

3. The physician has received written verification that the minor received the information and counseling from someone other than the physician, and the physician has also received the informed written consent of the minor; or

4. The Probate Court or the District Court has issued an order which grants the minor majority rights for the sole purpose of consenting to the abortion, or an order which provides judicial consent to the abortion if the abortion is in the minor's best interest.

Subsections 3 and 4 of the amendment establish the requirements for informed consent. These requirements apply in all cases where the minor consents to the abortion. The physician has particular duties which, if followed, also preclude any recovery against the physician for proceeding without the informed consent of the minor. Part of these duties parallel the informed consent provisions of the Maine Health Security Act. Subsection 3 specifically ties the physician's standard for obtaining the minor's consent to the standards of practice among members of the same health care profession with similar training and experience situated in the same or similar communities. This does not eliminate the physician's duty to ensure that the minor received the information and counseling required under subsection 4, but holds the physician to higher standards if other professionals in the same health care profession have additional standards of practice. This is intended to be in accordance with the Supreme Judicial Court's decision in Woolley v. Henderson, 418 A.2d 1123 (Me. 1980).

1            Subsection 4 contains the elements of the information and  
3            counseling which must be provided to the minor before the minor  
5            is considered to have given informed consent. The information  
7            and counseling may be provided by the physician or a counselor,  
          as defined in subsection 1. The minor and the person providing  
          the information must sign a verification that the requirements of  
          subsection 4 are satisfied.

9            The required information and counseling are as follows:

11           1. The physician or counselor shall explain that the  
13           information being given to the minor is being given objectively  
15           and is not intended to coerce, persuade or induce the minor to  
          choose either to have an abortion or to carry the pregnancy to  
          term;

17           2. The physician or counselor shall explain that the minor  
19           may withdraw a decision to have an abortion at any time before  
21           the abortion is performed or may reconsider a decision not to  
          have an abortion at any time within the time period during which  
          an abortion may legally be performed;

23           3. The physician or counselor shall clearly and fully  
25           explore with the minor the alternative choices available for  
          managing the pregnancy, including:

27           A. Carrying the pregnancy to term and keeping the child;

29           B. Carrying the pregnancy to term and placing the child  
31           with a relative or with another family through foster care  
          or adoption;

33           C. The elements of prenatal and postnatal care; and

35           D. Having an abortion;

37           4. The physician or counselor shall explain that public and  
39           private agencies are available to provide birth control  
41           information and that a list of these agencies and the services  
          available from each will be provided if the minor requests;

43           5. The physician or counselor shall discuss the possibility  
45           of involving the minor's parents, guardian or other adult family  
47           members in the minor's decision making concerning the pregnancy  
          and explore whether the minor believes that involvement would be  
          in the minor's best interest; and

49           6. The physician or the counselor shall provide adequate  
51           opportunity for the minor to ask any questions concerning the  
          pregnancy, abortion, child care and adoption, and shall provide  
          the information the minor seeks or, if the person cannot provide

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1 the information, indicate where the minor can receive the  
information.

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5 If the minor chooses to go to court rather than follow any  
of the other 3 options, the minor or the minor's next friend may  
7 file a petition in either the Probate Court or District Court.  
The next friend of the minor is there only to aid the minor in  
9 filing the petition with the court, and will not represent the  
minor or the minor's best interest. The physician or counselor  
may serve as the next friend of the minor.

11

13 The petition may be filed in Probate Court or District  
Court. The informal nature and accessibility of the Probate  
15 Court, and the expertise the probate judges have in dealing with  
the best interests of minors, make the Probate Court an obvious  
17 forum for the hearing and decision. Because of the part-time  
nature of the Probate Court, however, the District Court is also  
a proper forum to ensure that the minor will always be able to  
19 file the petition and receive a hearing within 5 days. Section 1  
of the bill amends the jurisdiction of the District Court to  
21 include actions under the consent provisions.

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The court will hear evidence on at least the minimum listed  
factors. The court has 4 options.

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27 1. The court can deny the petition, thereby refusing  
consent to the abortion.

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31 2. The court can determine that the minor is sufficiently  
mature, at least in regards to the pregnancy and request for the  
abortion. The court would then grant the minor majority rights  
33 for the sole purpose of consenting to the abortion. The minor  
would then be the one providing the consent.

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37 3. The court can determine that the minor is not  
sufficiently mature to make her own decision, but that the  
abortion is in the best interest of the minor. The court would  
then provide judicial consent to the abortion.

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41 4. The court can determine that an abortion is necessary to  
save the life of the minor, and can give consent to the abortion  
even without the minor's consent.

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45 Any person who knowingly performs or aids in the performance  
of an abortion contrary to this law commits a Class D crime. Any  
47 physician or counselor who knowingly fails to perform any  
required action, such as not providing the required information,  
commits a civil violation and is subject to a forfeiture of up to  
49 \$1,000.

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The amendment includes a nonseverability clause which  
provides that if any part of the Maine Revised Statutes, Title

COMMITTEE AMENDMENT "A" to H.P. 457, L.D. 622

1 22, section 1597-A is ruled invalid by a court, the entire  
section will be invalid.

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5 An appropriation and fiscal note are also added. The  
appropriation is necessary to pay for court appointed counsel  
when appropriate. The basis for this need is due to the fact  
7 that it is highly unlikely that a minor seeking judicial consent  
for an abortion would have the financial resources to retain  
9 counsel, as well as the possibility that many parents or  
guardians could not afford counsel and therefore would be  
11 eligible for court appointed counsel.

Reported by the Majority of the Committee on Judiciary  
Reproduced and distributed under the direction of the Clerk of the  
House  
5/1/89

(Filing No. H-127)