

MAINE STATE LEGISLATURE

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

HOUSE 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 before the statement of fact 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;

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

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

(6) A certified guidance counselor;

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

(8) 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 minor is having the abortion willingly, in compliance with subsection 7.

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

1
3 A. To ensure that the consent for an abortion is informed consent, the attending physician shall:

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

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

17 (b) The number of weeks of duration of the
19 pregnancy; and

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

27 (2) Provide the information and counseling described
29 in subsection 4 or refer the minor to a counselor who
31 will provide the information and counseling described
33 in subsection 4; and

35 (3) Determines whether the minor is, under all the
37 surrounding circumstances, mentally and physically
39 competent to give consent.

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

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

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

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

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

(1) Explain that the information being given to the

1 minor is being given objectively and is not intended to
2 coerce, persuade or induce the minor to choose either
3 to have an abortion or to carry the pregnancy to term;

5 (2) Explain that the minor may withdraw a decision to
6 have an abortion at any time before the abortion is
7 performed or may reconsider a decision not to have an
8 abortion at any time within the time period during
9 which an abortion may legally be performed;

11 (3) Clearly and fully explore with the minor the
12 alternative choices available for managing the
13 pregnancy, including:

15 (a) Carrying the pregnancy to term and keeping
16 the child;

17 (b) Carrying the pregnancy to term and placing
18 the child with a relative or with another family
19 through foster care or adoption;

21 (c) The elements of prenatal and postnatal care;
22 and

25 (d) Having an abortion;

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

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

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

49 (1) The minor has received information on prenatal
50 care and alternatives to abortion and that there are
51 agencies that will provide assistance;

1
3 (2) The minor has received an explanation that the
5 minor may withdraw an abortion decision or reconsider a
7 decision to carry a pregnancy to term;

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

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

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

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

37 (7) The minor has been given an adequate opportunity
39 to ask questions.

41 The person providing the information and counseling shall
43 also sign and date the form, and include that person's
45 address and telephone number. The person shall keep a copy
47 for that person's files and shall give the form to the minor
49 or, if the minor requests and if the person providing the
51 information is not the attending physician, transmit the
53 form to the minor's attending physician.

55 5. Presumption of validity of informed written consent;
57 rebuttal. An informed consent which is evidenced in writing
59 containing information and statements provided in subsection 4
61 and which is signed by the minor shall be presumed to be a valid
63 informed consent. This presumption may be subject to rebuttal
65 only upon proof that the informed consent was obtained through
67 fraud, deception or misrepresentation of material fact.

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

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

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- 1 (1) The initials of the minor;
- 3 (2) The age of the minor;
- 5 (3) That the minor has been fully informed of the
7 risks and consequences of the abortion;
- 9 (4) That the minor is legally competent and has
11 sufficient intellectual capacity to consent to the
13 abortion;
- 15 (5) That, if the court does not grant the minor
17 majority rights for the purpose of consent to the
19 abortion, the court should find that the abortion is in
21 the best interest of the minor and give judicial
23 consent to the abortion;
- 25 (7) That, if the minor does not have private counsel
27 the court may appoint counsel.

29 The minor or the next friend shall sign the petition.

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

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

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

65 The hearing on the petition shall be held as soon as
67 possible within 5 days of the filing of the petition. The
69 court shall conduct the hearing in private with only the
71 minor, interested parties as determined by the court and
73 necessary court officers or personnel present. The record
75 of the hearing is not a public record.

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

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

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

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

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

23 F. The minor may appeal an order issued in accordance with
25 this section to the Superior Court. The notice of appeal
27 shall be filed within 72 hours from the date of issuance of
 the order. Any record on appeal shall be completed and the
 appeal shall be perfected within 5 days from the filing of
 notice to appeal. The Supreme Judicial Court shall, by
 court rule, provide for expedited appellate review of cases
 appealed under this section.

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

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

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

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

1

1989-90

1990-91

3

JUDICIAL DEPARTMENT

5

Indigent Defense

7

All Other

\$54,169

\$72,225

9

11 Provides funds for additional
requests for court appointed
counsel.

13

FISCAL NOTE

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17 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
19 can absorb those costs estimated to be \$4,185 in fiscal year
1989-90 and \$4,320 in fiscal year 1990-91.

21

23 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
25 Department, as justices may have to interrupt their schedules to
hear these petitions as expeditiously as possible, perhaps even
27 having to interrupt a jury trial if no other justice is
available. This time cannot be quantified; however, additional
29 costs would result in an amount which cannot be determined.'

31

STATEMENT OF FACT

33

This amendment incorporates the text of committee
amendment A with the following substantive changes:

35

37 1. Members of the clergy are removed from the definition of
counselor;

39

2. Petitions to the court must set forth that the minor is
legally competent; and

41

43 3. An appeal of a court order must be taken within 72 hours
of issuance.

Filed by Rep. Hastings of Bangor
Reproduced and distributed under the direction of the Clerk of the
House
5/5/89 (Filing No. H-149)