

MAINE STATE LEGISLATURE

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116th MAINE LEGISLATURE

FIRST REGULAR SESSION-1993

Legislative Document

No. 820

H.P. 605

House of Representatives, March 8, 1993

An Act to Ensure a Parent's Right to Know.

Received by the Clerk of the House on March 5, 1993. Referred to the Committee on Judiciary and 1200 ordered printed pursuant to Joint Rule 14.

A handwritten signature in cursive script that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative COFFMAN of Old Town.
Cosponsored by Senator PARADIS of Aroostook and
Representatives: AHEARNE of Madawaska, BRUNO of Raymond, CLARK of Millinocket,
DEXTER of Kingfield, GOULD of Greenville, JOY of Island Falls, KUTASI of Bridgton,
MARSHALL of Eliot, MARTIN of Van Buren, MICHAUD of East Millinocket, MURPHY of
Berwick, NICKERSON of Turner, PINETTE of Fort Kent, POULIOT of Lewiston, REED of
Dexter, VIGUE of Winslow, YOUNG of Limestone, Senators: CAREY of Kennebec, LUTHER
of Oxford.

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

2
4 Sec. 1. 4 MRSA §152, sub-§8, as enacted by PL 1989, c. 573, §1, is amended to read:

6 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~~ 14, chapter 749.

10 Sec. 2. 14 MRSA c. 749 is enacted to read:

12 CHAPTER 749

14 JUDICIAL REVIEW OF ABORTION FOR MINORS

16 §8251. Definitions

18 As used in this chapter, unless the context otherwise
20 indicates, the following terms have the following meanings.

22 1. Parent. "Parent" means one of a pregnant woman's
24 parents, or a guardian or custodian.

26 2. Petitioner. "Petitioner" means a pregnant woman filing
a petition under section 8252.

28 3. Physician. "Physician" means a person licensed under
30 Title 32, chapter 36 or 48 to practice medicine in the State as a
medical or osteopathic physician.

32 4. Trial court. "Trial court" means a District Court in
34 whose district a pregnant woman has her residence, a District
36 Court in whose district a hospital, clinic or other facility in
38 which an abortion would be performed or induced is located, a
Probate Court in whose county a pregnant woman has her residence
or a Probate Court in whose county a hospital, clinic or other
facility in which an abortion would be performed or induced is
located.

40 5. Unemancipated. "Unemancipated" means a woman who is
42 unmarried, under 18 years of age, has not entered the armed
44 services of the United States, has not become employed and
self-sustaining or has not otherwise become independent from the
care and control of her parent.

46 §8252. Judicial bypass; commencement of action

48 1. Petition for authorization to consent. A pregnant woman
50 who is unmarried, under 18 years of age and unemancipated and who
wishes to have an abortion without the notification of her
52 parent, must file a petition in a trial court, as defined in

2 section 8251, requesting the issuance of an order authorizing her
3 to consent to the performance or inducement of an abortion
4 without the notification of her parent.

5 2. Petition requirements. The petition must be made under
6 oath and must include all of the following:

7 A. A statement that the petitioner is pregnant;

8 B. A statement that the petitioner is unmarried, under 18
9 years of age and unemancipated;

10 C. A statement that the petitioner wishes to have an
11 abortion without the notification of her parent;

12 D. An allegation of one or both of the following:

13 (1) That the petitioner is sufficiently mature and
14 well enough informed to intelligently decide whether to
15 have an abortion without the notification of her
16 parent; or

17 (2) That her parent was engaged in a pattern of
18 physical, sexual or emotional abuse against her or that
19 the notification of her parent otherwise is not in her
20 best interest; and

21 E. A statement as to whether the petitioner has retained an
22 attorney and, if she has retained an attorney, the name,
23 address and telephone number of her attorney.

24 **§8253. Procedural provisions**

25 1. Hearing; judgment; constructive order. The court shall
26 fix a time for a hearing on any petition filed under this chapter
27 and shall keep a record of all testimony and other oral
28 proceedings in the action. The court shall hear and determine
29 the action and may not refer any portion of it to a referee. The
30 hearing must be held at the earliest possible time, but not later
31 than the 5th business day after the day that the petition is
32 filed. The court shall enter judgment on the petition
33 immediately after the hearing is concluded. If the hearing
34 required by this section is not held by the 5th business day
35 after the petition is filed, the failure to hold the hearing is
36 deemed to be a constructive order of the court authorizing the
37 petitioner to consent to the performance or inducement of an
38 abortion without the notification of her parent and the
39 petitioner and any other person may rely on the constructive
40 order as if the court actually had issued an order under this
41 section authorizing the petitioner to consent to the performance
42 or inducement of an abortion without notification.

2 2. Guardian ad litem. The court shall appoint a guardian
3 ad litem to protect the interests of the petitioner at the
4 hearing that is held pursuant to this section. If the petitioner
5 has not retained an attorney, the court shall appoint an attorney
6 to represent her. If the guardian ad litem is an attorney
7 admitted to practice law in the State, the court may appoint the
8 guardian ad litem to serve also as the petitioner's attorney.

10 §8254. Standards of review

12 1. Allegation of competence. If the petitioner makes only
13 the allegation set forth in section 8252, subsection 2, paragraph
14 D, subparagraph (1) and if the court finds, by clear and
15 convincing evidence, that the petitioner is sufficiently mature
16 and well enough informed to decide intelligently whether to have
17 an abortion, the court shall issue an order authorizing the
18 petitioner to consent to the performance or inducement of an
19 abortion without the notification of her parent. If the court
20 does not make such a finding, the court shall dismiss the
21 petition.

22 2. Allegation of abuse. If the petitioner makes only the
23 allegation set forth in section 8252, subsection 2, paragraph D,
24 subparagraph (2) and if the court finds, by clear and convincing
25 evidence, that there is evidence of a pattern of physical, sexual
26 or emotional abuse of the petitioner by a parent or that the
27 notification of the parent of the petitioner otherwise is not in
28 the best interest of the petitioner, the court shall issue an
29 order authorizing the petitioner to consent to the performance or
30 inducement of an abortion without the notification of her
31 parent. If the court does not make such a finding, it shall
32 dismiss the petition.

34 3. Allegations of competence and abuse. If the petitioner
35 makes both of the allegations set forth in section 8252,
36 subsection 2, paragraph D, subparagraphs (1) and (2), the court
37 shall proceed as follows.

40 A. The court first shall determine whether it can make the
41 finding specified in subsection 1 and, if so, shall issue an
42 order pursuant to that subsection. If the court issues such
43 an order, it may not review the allegation made under
44 section 8252, subsection 2, paragraph A, subparagraph (2).
45 If the court does not make the finding specified in
46 subsection 1, it shall review the allegation made under
47 section 8252, subsection 2, paragraph A, subparagraph (2).

48 B. If the court pursuant to paragraph A does not make the
49 finding specified in subsection 1, it shall determine
50 whether the petitioner is sufficiently mature and well enough

2 whether it can make the finding specified in subsection 2
4 and, if so, shall issue an order pursuant to that
 subsection. If the court does not make the finding
 specified in subsection 2, it shall dismiss the complaint.

6 **§8255. Miscellaneous provisions**

8 1. Notice prohibited. The court may not notify the parent
10 of the petitioner that she is pregnant or that she wants to have
 an abortion.

12 2. Notice of right to appeal. If the court dismisses the
14 petition, it immediately shall notify the petitioner that she has
 a right to appeal pursuant to section 8256.

16 3. Confidentiality. Each hearing under this section must
18 be conducted in a manner that will preserve the anonymity of the
20 petitioner. The petition and all other papers and records that
 pertain to an action commenced under this chapter are
 confidential and are not public records under Title 1, chapter 13
 or any other provision of law.

22 4. Forms. The Supreme Judicial Court shall prescribe
24 petition and notice of appeal forms to be used by a petitioner
26 filing a petition under this section and by an appellant filing
 an appeal. The clerk of each trial court shall furnish blank
 copies of the forms, without charge, to any person who requests
 them.

30 5. No filing fee. No filing fee may be required of, and no
32 court costs may be assessed against, a petitioner filing a
 petition under this section or an appellant filing an appeal
 pursuant to section 8256.

34 6. Presumed unemancipated. For purposes of prosecutions
36 for a violation of Title, 22, section 1600-A, it is a rebuttable
38 presumption that a woman who is unmarried and under 18 years of
 age is unemancipated.

40 **§8256. Appeals**

42 A petitioner whose petition under this chapter is dismissed
44 by the Probate Court or District Court may appeal in accordance
 with this section.

46 1. Docketing of appeal. Within 4 days after a notice of
48 appeal is filed in an action arising under this chapter, the
 clerk of the trial court shall deliver a copy of the notice of
 appeal and the record on appeal to the clerk of the Supreme

2 Judicial Court named in the notice. Upon receipt of the notice
3 and record, the clerk of the Supreme Judicial Court shall place
4 the appeal on the docket of the court.

6 2. Briefs and decision. The appellant shall file her brief
7 within 4 days after the appeal is docketed. Unless the appellant
8 waives the right to oral argument, the Supreme Judicial Court
9 shall hear oral argument within 5 days after the appeal is
10 docketed. The Supreme Judicial Court shall enter judgment in the
11 appeal immediately after the oral argument or, if oral argument
12 has been waived, within 5 days after the appeal is docketed.

14 3. No filing fee. No filing fee may be required of, and no
15 court costs may be assessed against, an appellant who appeals
16 under this section.

18 4. Procedures; constructive order. Upon motion of the
19 appellant and for good cause shown, the Supreme Judicial Court
20 may shorten or extend any of the maximum times set forth in this
21 section. If judgment is not entered within 5 days after the
22 appeal is docketed, the failure to enter the judgment is deemed
23 to be a constructive order of the court authorizing the appellant
24 to consent to the performance or inducement of an abortion
25 without the notification of a parent and the appellant and any
26 other person may rely on the constructive order to the same
27 extent as if the court actually had entered a judgment under this
28 section authorizing the appellant to consent to the performance
29 or inducement of an abortion without such notification.

30 In the interest of justice, the Supreme Judicial Court, in an
31 appeal in accordance with this section, shall liberally modify or
32 dispense with the formal requirements that normally apply as to
33 the contents and form of an appellant's brief.

36 5. Confidentiality. All proceedings under this section
37 must be conducted in a manner that will preserve the anonymity of
38 the appellant on appeal. All papers and records that pertain to
39 an appeal under this section are confidential and are not public
40 records under Title 1, chapter 3 or any other provision of law.

42 Sec. 3. 22 MRSA c. 263-B, first two lines are repealed and the
43 following enacted in their place:

44 CHAPTER 263-B

46 ABORTIONS

48 SUBCHAPTER I

50 ABORTIONS GENERALLY

2 Sec. 4. 22 MRSA §1597, as enacted by PL 1979, c. 413, is
repealed.

4 Sec. 5. 22 MRSA §1597-A, as enacted by PL 1989, c. 573, §2,
6 is repealed.

8 Sec. 6. 22 MRSA c. 263-B, sub-c. II is enacted to read:

10 SUBCHAPTER II

12 ABORTIONS FOR MINORS

14 §1600. Definitions

16 As used in this subchapter, unless the context otherwise
18 indicates, the following terms have the following meanings.

20 1. Parent. "Parent" means one of a pregnant woman's
parents, or a guardian or custodian.

22 2. Physician. "Physician" means a person licensed under
24 Title 32, chapter 36 or 48 to practice medicine in the State as a
medical or osteopathic physician.

26 3. Specified relative. "Specified relative" means a
28 brother or sister of a pregnant woman who is 21 years of age or
older, or a stepparent or grandparent of a pregnant woman.

30 4. Trial court. "Trial court" means a District Court in
32 whose district a pregnant woman has her residence, a District
Court in whose district a hospital, clinic or other facility in
34 which an abortion would be performed or induced is located, a
Probate Court in whose county a pregnant woman has her residence
36 or a Probate Court in whose county a hospital, clinic or other
facility in which an abortion would be performed or induced is
38 located.

40 5. Unemancipated. "Unemancipated" means a woman who is
42 unmarried, under 18 years of age, has not entered the armed
services of the United States, has not become employed and
44 self-subsisting or has not otherwise become independent from the
care and control of her parent.

46 §1600-A. Parental consent required

48 A physician may not knowingly perform or induce an abortion
50 for a pregnant woman who is unmarried, under 18 years of age and
unemancipated unless at least one of the following applies:

2 1. Notice given. Subject to this section, the physician
3 has given at least 24 hours' actual notice, in person or by
4 telephone, to the woman's parent, as to the intention to perform
5 or induce the abortion, except that if the pregnant woman has
6 requested, in accordance with this section, that notice be given
7 to a specified relative of the pregnant woman who is 21 years of
8 age or older, and if the person is notified by a court that
9 affidavits described in section 1600-B have been filed with that
10 court, the 24 hours' actual notice described in this section as
11 to the intention to perform or induce the abortion must be given,
12 in person or by telephone, to the specified relative instead of
13 to the parent;

14 2. Written consent. The pregnant woman's parent has
15 consented in writing to the performance or inducement of the
16 abortion;

18 3. Court order. A court pursuant to Title 14, chapter 749
19 issues an order authorizing the pregnant woman to consent to the
20 abortion without notification of her parent; or

22 4. Constructive order. A court, by its inaction,
23 constructively has authorized the pregnant woman to consent to
24 the abortion without notification of her parent pursuant to Title
25 14, section 8253, subsection 1 or Title 14, section 8256,
26 subsection 4.

28 **§1600-B. Consent of specified relative**

30 If a pregnant woman who is unmarried, under 18 years of age
31 and unemancipated desires notification as to a person's intention
32 to perform or induce an abortion on the woman to be given to a
33 specified relative of the woman instead of to one of her parents,
34 the physician who intends to perform or induce the abortion shall
35 notify the specified relative instead of the parent for purposes
36 of section 1600-A, subsection 1 if all of the following apply:

38 1. Identification reviewed. The pregnant woman has
39 requested the physician to provide the notification to the
40 specified relative, has identified clearly the specified relative
41 and her relation to that person, and, if the specified relative
42 is a brother or sister, has indicated the age of the brother or
43 sister;

44 2. Affidavit of pregnant woman required. The pregnant
45 woman has:

48 A. Executed an affidavit stating that she is in fear of
49 physical sexual or severe emotional abuse from her parent,
50 who otherwise would be notified under section 1600-A,

2 subsection 1 and that the fear is based on a pattern of
3 physical, sexual or severe emotional abuse of her exhibited
4 by that parent;

5 B. Filed the affidavit with the trial court that has
6 jurisdiction over the county or district in which the
7 pregnant woman has a residence or the trial court having
8 jurisdiction over the county or district in which the
9 hospital, clinic or other facility in which the abortion
10 would be performed or induced is located; and

11 C. Has given the court written notice of the name and
12 address of the physician who intends to perform or induce
13 the abortion;

14
15 3. Affidavit of specified relative required. The specified
16 relative has executed an affidavit stating that the woman has
17 reason to fear physical, sexual or severe emotional abuse from
18 the parent, who otherwise would be notified under section 1600-A,
19 subsection 1, based on a pattern of physical, sexual or severe
20 emotional abuse of her by that parent, and the pregnant woman or
21 the specified relative has filed with the trial court the
22 affidavit described in subsection 2; and

23
24 4. Filing of affidavits. The trial court in which the
25 affidavits described in subsections 2 and 3 were filed has
26 notified the physician that both of those affidavits have been
27 filed with the court.

28
29 **§1600-C. Documentation; notice**

30
31 If an affidavit described in section 1600-B, subsection 2
32 and an affidavit described in section 1600-B, subsection 3 are
33 filed with a trial court and the court has been provided with
34 written notice of the name and address of the physician who
35 intends to perform or induce an abortion for the pregnant woman
36 to whom the affidavits pertain, the court promptly shall notify
37 the physician who intends to perform or induce the abortion that
38 the affidavits have been filed. The notice to the physician must
39 be given in person or by telephone.

40
41 1. Failure of notice. If section 1600-B, subsections 2, 3
42 and 4 do not apply and if the parent can not be reached for
43 purposes of section 1600-A, subsection 1 after a reasonable
44 effort or if notification is to be given to a specified relative
45 under that division and the specified relative can not be reached
46 for purposes of section 1600-A, subsection 1 after a reasonable
47 effort, a physician may not perform or induce an abortion without
48 giving at least 48 hours' constructive notice to one of the
49 woman's parents by both certified and ordinary mail sent to the
50

2 last known address of the parent, guardian or custodian or, if
4 notification for purposes of section 1600-B is to be given to a
6 specified relative, without giving at least 48 hours'
8 constructive notice to that specified relative by both certified
10 and ordinary mail sent to the last known address of that
12 specified relative. The 48-hour period begins when the certified
14 mail notice is mailed. If a parent of the pregnant woman or the
16 specified relative, if notification under section 1600-B is to be
18 given to a specified relative, is not reached within the 48-hour
20 period, the abortion may be performed or induced even if the
22 certified mail notice is not received.

24 If a parent or a specified relative who has been notified in
26 accordance with section 1600-B clearly and unequivocally
28 expresses a decision not to consult with the pregnant woman
30 before the pregnant woman's abortion, then the abortion may be
32 performed or induced without any further waiting period.

34 §1600-D. Violation; penalties

36 A physician who violates section 1600-A commits unlawful
38 abortion, which is a Class D crime. If the offender previously
40 has been convicted of a violation of section 1600-A, unlawful
42 abortion is a Class C crime.

44 A physician who violates the provisions of this chapter
46 commits unprofessional conduct and the physician's license to
48 practice is subject to suspension or revocation in accordance
50 with the procedures provided under Title 32, chapter 36,
52 subchapter V or Title 32, chapter 48, subchapter II.

54 §1600-E. Violation; penalties

56 A person who violates the provisions of this subchapter is
58 liable to the pregnant woman and the pregnant woman's parent for
60 civil compensatory and punitive damages.

62 §1600-F. Affirmative defenses

64 1. False, misleading or incorrect information. It is an
66 affirmative defense to a charge under section 1600-D that the
68 pregnant woman provided the physician who performed or induced
70 the abortion with false, misleading or incorrect information
72 about the pregnant woman's age, marital status or emancipation,
74 about the age of a brother or sister to whom the pregnant woman
76 requested notice be given as a specified relative instead of the
78 pregnant woman's parent or about the last known address of the
80 pregnant woman's parent or specified relative to whom the
82 pregnant woman requested notice be given and the physician who
84 performed or induced the abortion did not otherwise have

2 reasonable cause to believe that the pregnant woman was under 18
4 years of age, unmarried or unemancipated, that the age of a
6 brother or sister to whom she requested notice be given as a
8 specified relative instead of the pregnant woman's parent was not
10 21 years of age or that the last known address of the pregnant
12 woman's parent or specified relative to whom the pregnant woman
14 requested notice be given was incorrect.

16
18 2. Immediate threat of serious risk. It is an affirmative
20 defense to a charge under section 1600-D that compliance with the
22 requirements of section 1600-A was not possible because an
24 immediate threat of serious risk to the life or physical health
26 of the pregnant woman from the continuation of the pregnancy
28 created an emergency necessitating the immediate performance or
30 inducement of an abortion.

32 STATEMENT OF FACT

34 This bill requires parental notification before an abortion is performed or induced on a pregnant minor.

The bill requires that notification be provided to one parent or when the minor is in fear of physical, sexual or emotional abuse from a parent, to a specified relative, who may be a grandparent, stepparent or a sister or brother who is 21 years of age or older.

The bill also allows for alternative procedures whereby the minor may seek court approval for the proposed abortion and establishes the procedures for judicial review and appeals.

This bill is modeled on the provisions of Ohio law.