

MAINE STATE LEGISLATURE

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117th MAINE LEGISLATURE

FIRST REGULAR SESSION-1995

Legislative Document

No. 630

H.P. 464

House of Representatives, February 23, 1995

An Act to Require a 24-Hour Waiting Period before an Abortion May Be Performed.

Reference to the Committee on Judiciary suggested and ordered printed.

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

JOSEPH W. MAYO, Clerk

Presented by Representative AHEARNE of Madawaska.

Cosponsored by Representatives: BAILEY of Township 27, CLARK of Millinocket, CLUKEY of Houlton, DESMOND of Mapleton, DEXTER of Kingfield, DRISCOLL of Calais, DUNN of Gray, GOULD of Greenville, HICHBORN of LaGrange, JOY of Crystal, KEANE of Old Town, KNEELAND of Easton, LANE of Enfield, LAYTON of Cherryfield, LOOK of Jonesboro, LUMBRA of Bangor, LUTHER of Mexico, MADORE of Augusta, MARSHALL of Eliot, MERES of Norridgewock, MURPHY of Berwick, O'NEAL of Limestone, PLOWMAN of Hampden, POIRIER of Saco, ROBICHAUD of Caribou, ROSEBUSH of East Millinocket, SIMONEAU of Thomaston, SIROIS of Caribou, STEDMAN of Hartland, STROUT of Corinth, TRIPP of Topsham, TUFTS of Stockton Springs, UNDERWOOD of Oxford, VIGUE of Winslow, WHEELER of Bridgewater, Senators: BERUBE of Androscoggin, CAREY of Kennebec, CASSIDY of Washington, HALL of Piscataquis, HANLEY of Oxford, KIEFFER of Aroostook, LORD of York, MICHAUD of Penobscot, PARADIS of Aroostook.

2
3 **Be it enacted by the People of the State of Maine as follows:**

4 **Sec. 1. 22 MRSA §1598, sub-§1**, as amended by PL 1993, c. 61,
5 §2, is repealed and the following enacted in its place:

6 1. Policy. It is the public policy of the State that an
7 abortion after viability may be performed only when necessary to
8 preserve the life or health of the pregnant woman. It is also
9 the public policy that abortions may be performed only by a
10 physician.

11 **Sec. 2. 22 MRSA §1598, sub-§2, ¶A-1** is enacted to read:

12 A-1. "Medical emergency" means a condition that, on the
13 basis of the physician's good faith clinical judgment, so
14 complicates the medical condition of a pregnant woman as to
15 necessitate the immediate abortion of her pregnancy to avert
16 her death or for which a delay will create serious risk of
17 substantial and irreversible impairment of a major bodily
18 function.

19 **Sec. 3. 22 MRSA §1598, sub-§4**, as enacted by PL 1979, c. 405,
20 §2, is repealed and the following enacted in its place:

21 4. Abortions after viability; criminal liability. A person
22 who performs an abortion after viability commits a Class D crime
23 if:

24 A. That person knowingly disregards the viability of the
25 fetus; and

26 B. That person knows that the abortion is not necessary for
27 the preservation of the life or health of the pregnant woman.

28 **Sec. 4. 22 MRSA §1599-A**, as enacted by PL 1993, c. 61, §4, is
29 repealed.

30 **Sec. 5. 22 MRSA §§1599-B, 1599-C, 1599-D and 1599-E** are enacted
31 to read:

32 **§1599-B. Informed consent to abortion**

33 An abortion may not be performed or induced except with the
34 voluntary and informed consent of the pregnant woman upon whom
35 the abortion is to be performed or induced, obtained in
36 accordance with this section.

37 1. Standards for consent. Except in the case of a medical
38 emergency, consent to an abortion is voluntary and informed only
39 if before the consent is given, the physician who is to perform
40 the abortion or the referring physician, or a qualified physician
41 assistant, health care practitioner or technician to whom the
42 abortion is referred, obtains the consent of the pregnant woman
43 upon whom the abortion is to be performed or induced, in
44 accordance with this section.

2 responsibility has been delegated by either physician, orally
4 informs the pregnant woman of the nature of the proposed
6 procedure or treatment and of those risks and alternatives to the
8 procedure or treatment that a reasonable patient would consider
material to the decision whether to undergo the abortion, and the
pregnant woman certifies in writing before the abortion that she
has been provided with that information. The following elements
of notice and consent are required by this section.

10 A. At least 24 hours before the abortion, the physician who
12 is to perform the abortion or the referring physician shall
orally and in person inform the pregnant woman of:

14 (1) The nature of the proposed procedure or treatment
16 and of those risks and alternatives to the procedure or
18 treatment that a reasonable patient would consider
material to the decision of whether to undergo the
abortion;

20 (2) The probable gestational age of the fetus at the
22 time the abortion is to be performed; and

24 (3) The medical risks associated with carrying the
fetus to term.

26 B. At least 24 hours before the abortion, the physician who
28 is to perform the abortion or the referring physician, or a
30 qualified physician assistant, health care practitioner,
32 technician or social worker to whom the responsibility has
been delegated by either physician, shall inform the
pregnant woman that:

34 (1) The Department of Human Services publishes printed
36 materials that describe the fetus and list agencies
38 that offer alternatives to abortion, that she has a
right to review the printed materials and that a copy
will be provided to her free of charge if she chooses
to review them;

40 (2) Medical assistance benefits may be available for
42 prenatal care, childbirth and neonatal care, and that
44 more detailed information on the availability of that
assistance is contained in the printed materials
published by the Department of Human Services; and

46 (3) The father of the fetus is liable to assist in the
48 support of her child, after birth, even when he has
50 offered to pay for the abortion. In the case of rape,
this information may be omitted.

52 C. The information in subsection 1, paragraphs A and B must
be provided to the woman individually and in a private room

2 to protect her privacy and maintain the confidentiality of
3 her decision, to ensure that the information focuses on her
4 individual circumstances and that she has an adequate
5 opportunity to ask questions.

6 D. At least 24 hours before the abortion, the woman must be
7 given a copy of the printed materials described in section
8 1599-C. If the woman is unable to read the materials,
9 they must be read to her. If the woman asks questions
10 concerning any of the information or materials, answers must
11 be provided to her in her own language.

12 E. The woman must certify in writing on a form provided by
13 the department, prior to the abortion, that the information
14 required to be provided under paragraphs A, B and D has been
15 provided. All physicians who perform abortions shall report
16 the total number of certifications received monthly to the
17 department. The department shall make the number of
18 certificates received available to the public on an annual
19 basis.

20
21
22 **2. Violations; penalties.** A physician who violates the
23 provisions of this section commits unprofessional conduct and the
24 physician's license to practice is subject to suspension or
25 revocation in accordance with procedures provided under Title 32,
26 chapter 36, subchapter V or Title 32, chapter 48, subchapter II.
27 In addition, a physician who performs or induces an abortion
28 without first obtaining the certification required by subsection
29 1, paragraph D or with knowledge or reason to know that the
30 informed consent of the pregnant woman has not been obtained
31 commits a Class E crime for the first offense and a Class D crime
32 for each subsequent offense. It is a defense to any action for
33 violation of this section based on a failure to furnish the
34 information required by subsection 1, paragraphs A or B if the
35 physician can demonstrate, by a preponderance of the evidence,
36 that the physician reasonably believed that furnishing the
37 information would have resulted in a severely adverse effect on
38 the physical or mental health of the pregnant woman.

39
40 **§1599-C. Printed information required**

41
42 The department shall publish and make available within 60
43 days of the effective date of this section the following printed
44 materials:

45
46 **1. List of services.** Geographically indexed materials
47 designed to inform a pregnant woman of public and private
48 agencies and services available to assist a woman through
49 pregnancy and childbirth and while the child is dependent,
50 including but not limited to adoption agencies, which must
51 include a comprehensive list of the agencies available, a
52 description of the services those agencies offer and a

2 description of the manner, including telephone numbers, in which
3 the agencies may be contacted or, at the option of the
4 department, printed materials including a toll-free, 24-hour
5 telephone number that may be called to obtain such a list and a
6 description of agencies in the locality of the caller and the
7 services offered by those agencies. The materials must include
8 the following statement.

9
10 "There are many public and private agencies willing and able
11 to help you to carry your child to term, and to assist you
12 and your child after your child is born, whether you choose
13 to keep your child or to place your child for adoption. The
14 Maine Department of Human Services strongly urges you to
15 contact the department before making a final decision about
16 abortion."

17 The materials must include information on the availability of
18 medical assistance benefits for prenatal care, childbirth and
19 neonatal care and state that it is unlawful for any individual to
20 coerce a woman to undergo an abortion, that any physician who
21 performs an abortion without obtaining informed consent from that
22 woman or without according a private medical consultation may be
23 liable to her for damages in a civil court action, that the
24 father of a child is liable to assist in the support of that
25 child even in instances when the father has offered to pay for an
26 abortion and that the law permits adoptive parents to pay costs
27 of prenatal care, childbirth and neonatal care;

28
29 **2. Characteristics of a fetus.** Materials designed to
30 inform a pregnant woman of the probable anatomical and
31 physiological characteristics of a fetus at 2-week gestational
32 increments from fertilization to full term, including pictures
33 representing the development of a fetus at 2-week gestation
34 increments and any relevant information on the possibility of the
35 survival of the fetus. The pictures or drawings must contain the
36 dimensions of the fetus and be realistic and appropriate for the
37 woman's stage of pregnancy. The materials must be objective,
38 nonjudgmental and designed to convey only accurate scientific
39 information about the fetus at the various gestational ages. The
40 material must also contain objective information describing the
41 methods of abortion procedures commonly employed, the medical
42 risks commonly associated with each procedure, the possible
43 detrimental psychological effects of abortion, the medical risks
44 commonly associated with each procedure and the medical risks
45 commonly associated with carrying a fetus to term; and

46
47 **3. Certification form.** A certification form to be used by
48 the physician or the physician's agent under section 1599-B,
49 subsection 1, paragraph E that lists all the items of information
50 that must be given to a woman by the physician or the physician's
51 agent.

52

2 All materials published pursuant to this section must be
3 prepared in a manner that is easily comprehensible to the average
4 reader.

6 **§1599-D. Civil penalties**

8 1. Civil malpractice action. Any institutional violation
9 of this chapter is admissible in a civil suit as prima facie
10 evidence of a failure to obtain an informed consent. When
11 requested, the court shall allow a woman to proceed using solely
12 her initials or a pseudonym and may close any proceedings in the
13 case and enter other protective orders to preserve the privacy of
14 the woman upon whom the abortion was performed.

16 2. Medical malpractice. Violation of this chapter provides
17 a basis for professional disciplinary action under laws governing
18 medical malpractice.

20 3. Wrongful death. Violation of this chapter provides a
21 basis for recovery for the woman for the death of her unborn
22 child under laws governing wrongful death, whether or not the
23 unborn child was viable at the time the abortion was performed or
24 was born alive.

26 **§1599-E. Construction**

28 This chapter may not be construed to create or recognize a
29 right to abortion.

30 It is not the intent of this chapter to make lawful an
31 abortion that is currently unlawful.

34 **STATEMENT OF FACT**

36 This bill repeals existing standards for informed consent
37 and replaces them with a provision modeled after the Pennsylvania
38 statute held constitutional in Planned Parenthood of Southeastern
39 Pennsylvania v. Casey, ___U.S.___, 112 S.Ct. 2791, 120 L.Ed.2d 674
40 (1992).