

MAINE STATE LEGISLATURE

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L.D. 633

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MINORITY
JUDICIARY

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
117TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 467, L.D. 633, Bill, "An Act to Require Parental Notification for Minors Seeking Abortions"

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, as enacted by PL 1989, c. 573, §1, is amended 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~~ chapter 749.

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

CHAPTER 749

JUDICIAL REVIEW OF ABORTION FOR MINORS

§8251. Definitions

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

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

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

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

8 4. Trial court. "Trial court" means a District Court in
10 whose district a pregnant minor has her residence, a District
Court in whose district a hospital, clinic or other facility in
12 which an abortion would be performed or induced is located, a
Probate Court in whose county a pregnant minor has her residence
14 or a Probate Court in whose county a hospital, clinic or other
facility in which an abortion would be performed or induced is
16 located.

18 5. Unemancipated. "Unemancipated" means a minor who is
unmarried, is under 18 years of age, has not entered the Armed
20 Services of the United States, is not employed full time and is
not self-subsisting or otherwise independent from the care and
22 control of her parent.

24 §8252. Judicial bypass; commencement of action

26 1. Petition for authorization to consent. A pregnant
minor, who is unemancipated and who wishes to have an abortion
28 without the notification of her parent and who does not claim,
under subsection 2, paragraph D, abuse or neglect by her parent,
30 must file a petition in a trial court requesting the issuance of
an order authorizing her to consent to the performance or
32 inducement of an abortion without the notification of her parent.

34 2. Petition requirements. The petition must be made under
oath and must include the following:

36 A. A statement that the petitioner is pregnant;

38 B. A statement that the petitioner is unemancipated;

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

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

46 (1) That the petitioner is sufficiently mature and
48 well enough informed to intelligently decide whether to
have an abortion without the notification of her
50 parent; or

2 (2) That the notification of her parent is not in her
 best interest; and

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

8 §8253. Hearing; judgment; constructive order

10 The court shall fix a time for a hearing on any petition
12 filed under this chapter and shall keep a record of all testimony
 and other oral proceedings in the action. The court shall hear
14 and determine the action and may not refer any portion of it to a
 referee. The hearing must be held at the earliest possible time,
16 but not later than the 5th business day after the day that the
 petition is filed. The court shall enter judgment on the
18 petition immediately after the hearing is concluded. If the
 hearing required by this section is not held by the 5th business
20 day after the petition is filed, the failure to hold the hearing
 is deemed to be a constructive order of the court authorizing the
22 petitioner to consent to the performance or inducement of an
 abortion without the notification of her parent and the
24 petitioner and any other person may rely on the constructive
 order as if the court actually had issued an order under this
26 section authorizing the petitioner to consent.

28 §8254. Standards of review

30 1. Allegation of competence. If the petitioner makes the
 allegations in section 8252, subsection 2, paragraphs A, B and C
32 and paragraph D, subparagraph (1) and if the court finds, by
 clear and convincing evidence, that the petitioner is
34 sufficiently mature and well enough informed to decide
 intelligently whether to have an abortion, the court shall issue
36 an order authorizing the petitioner to consent to the performance
 or inducement of an abortion without the notification of her
38 parent. If the court does not make such a finding, the court
 shall dismiss the petition.

40 2. Allegation that notification not in the minor's best
 interest. If the petitioner makes the allegations in section
42 8252, subsection 2, paragraphs A, B and C and paragraph D,
 subparagraph (2) and if the court finds, by clear and convincing
44 evidence, that the notification of the parent of the petitioner
 is not in the best interest of the petitioner, the court shall
46 issue an order authorizing the petitioner to consent to the
 performance or inducement of an abortion without the notification
48 of her parent. If the court does not make such a finding, it
 shall dismiss the petition.

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2 3. Combined allegations. If the petitioner makes the
3 allegations in section 8252, subsection 2, paragraphs A, B and C
4 and paragraph D, subparagraphs (1) and (2), the court shall
5 proceed as follows.

6 A. The court first shall determine whether it can make the
7 finding specified in subsection 2, paragraph D, subparagraph
8 (1) and, if so, shall issue an order pursuant to that
9 subsection. If the court issues such an order, it may not
10 review the allegation made under section 8252, subsection 2,
11 paragraph D, subparagraph (2).

12 B. If the court pursuant to paragraph A does not make the
13 finding specified in subsection 2, paragraph D, subparagraph
14 (1), it shall determine whether it can make the finding
15 specified in subsection 2, paragraph D, subparagraph (2)
16 and, if so, shall issue an order pursuant to that subsection.

17 C. If the court does not make the finding specified in
18 subsection 2, paragraph D, subparagraph (1) or (2), it shall
19 dismiss the petition.

20 **§8255. Miscellaneous provisions**

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

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

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

33 4. Forms. The Supreme Judicial Court shall prescribe
34 petition and notice of appeal forms to be used by a petitioner
35 filing a petition under this chapter and by an appellant filing
36 an appeal. The clerk of each trial court shall furnish blank
37 copies of the forms, without charge, to any person who requests
38 them.

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

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2 6. Records; reports. The Supreme Judicial Court and the
3 Probate Courts shall report to the Bureau of Vital Statistics of
4 the Department of Human Services by each January 31st the
5 following statistics for petitions filed under this chapter in
6 District Court and Probate Court:

8 A. The number of petitions filed by district or county;

10 B. The number of hearings held on petitions filed under
11 this chapter by each judge; and

12 C. The number of petitions granted by each judge,
13 indicating whether the petition was granted under section
14 8254, subsection 1, 2 or 3.

16 The reports may not identify any minor by name, residence or any
17 other identifying information.

20 **§8256. Appeals**

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

26 1. Docketing of appeal. Within 4 days after a notice of
27 appeal is filed in an action arising under this chapter, the
28 clerk of the trial court shall deliver a copy of the notice of
29 appeal and the record on appeal to the clerk of the Supreme
30 Judicial Court named in the notice. Upon receipt of the notice
31 and record, the clerk of the Supreme Judicial Court shall place
32 the appeal on the docket of the court.

34 2. Briefs and decision. The appellant shall file her brief
35 within 4 days after the appeal is docketed. Unless the appellant
36 waives the right to oral argument, the Supreme Judicial Court
37 shall hear oral argument within 5 days after the appeal is
38 docketed. The Supreme Judicial Court shall enter judgment in the
39 appeal immediately after the oral argument or, if oral argument
40 has been waived, within 5 days after the appeal is docketed.

42 3. No filing fee. No filing fee may be required of, and no
43 court costs may be assessed against, an appellant who appeals
44 under this section.

46 4. Procedures; constructive order. Upon motion of the
47 appellant and for good cause shown, the Supreme Judicial Court
48 may shorten or extend any of the maximum times set forth in this
49 section. If judgment is not entered within 5 days after the
50 appeal is docketed, the failure to enter the judgment is deemed

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to be a constructive order of the court authorizing the appellant to consent to the performance or inducement of an abortion without the notification of a parent and the appellant and any other person may rely on the constructive order to the same extent as if the court actually had entered a judgment under this section authorizing the appellant to consent to the performance or inducement of an abortion without such notification.

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

5. Confidentiality. All proceedings under this section must be conducted in a manner that will preserve the anonymity of the appellant on appeal. All papers and records that pertain to an appeal under this section are confidential and are not public records under Title 1, chapter 13 or any other provision of law.

Sec. 3. 22 MRSA c. 263-B is amended by repealing the chapter headnote and enacting the following in its place:

CHAPTER 263-B

ABORTIONS

SUBCHAPTER I

ABORTIONS GENERALLY

Sec. 4. 22 MRSA §1597-A, as amended by PL 1993, c. 600, Pt. B, §21, is repealed.

Sec. 5. 22 MRSA §1598, sub-§1, as amended by PL 1993, c. 61, §2, is further amended to read:

1. Policy. It is the public policy of the State that the State not restrict a woman's exercise of her private decision to terminate a pregnancy before viability except as provided in ~~section 1597-A~~ subchapter II. After viability an abortion may be performed only when it is necessary to preserve the life or health of the mother. It is also the public policy of the State that all abortions may be performed only by a physician.

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

SUBCHAPTER II

ABORTIONS FOR MINORS

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§1600. Definitions

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

1. Counselor. "Counselor" means any of the following:

A. A psychiatrist;

B. A psychologist licensed under Title 32, chapter 56;

C. A social worker licensed under Title 32, chapter 83;

D. An ordained member of the clergy;

E. A physician's assistant registered by the Board of Licensure in Medicine, Title 32, chapter 48;

F. A nurse practitioner licensed under Title 32, chapter 31 and registered by the Board of Licensure in Medicine, Title 32, chapter 48;

G. A certified guidance counselor;

H. A registered professional nurse licensed under Title 32, chapter 31; or

I. A practical nurse licensed under Title 32, chapter 31.

The counselor may not be a person who is employed by any person or organization that either provides abortion services or makes abortion referrals to a person or organization that provides abortion services.

2. Parent. "Parent" means one of a pregnant minor's parents, or a guardian or custodian.

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

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

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2 5. Unemancipated. "Unemancipated" means a minor who is
3 unmarried, is under 18 years of age, has not entered the Armed
4 Services of the United States, is not employed full time and is
5 not self-subsisting or otherwise independent from the care and
6 control of her parent.

7 **§1600-A. Parental notification required; exceptions**

8
9 1. Prerequisites to abortion. A physician may not
10 knowingly perform or induce an abortion for a pregnant minor who
11 is unemancipated unless one of the following applies:

12
13 A. The physician has given a 24-hour notice, in person or
14 by telephone, to the minor's parent, of the intention to
15 perform or induce the abortion and an adult accompanies the
16 minor to the office of the physician at the time of the
17 abortion;

18
19 B. The pregnant minor claims she has been subjected to
20 abuse or neglect such that notification of the minor's
21 parent is not in the minor's best interest and the minor's
22 counselor accompanies the minor to the office of the
23 physician at the time of the abortion. The physician must
24 report the claim of abuse or neglect as required under Title
25 22, section 4011; or

26
27 C. A trial court has issued an order under Title 14,
28 section 8254 authorizing the minor to consent to the
29 abortion and an adult accompanies the minor to the office of
30 the physician at the time of the abortion, or a trial court,
31 by its inaction, constructively has authorized the pregnant
32 minor to consent to the abortion without notification of her
33 parent pursuant to Title 14, section 8253, subsection 1 or
34 Title 14, section 8256, subsection 4.

35 **§1600-B. Coercion prohibited**

36
37 A parent, guardian or any other person may not coerce a
38 minor to have an abortion performed. If a minor is denied
39 financial support by the minor's parents due to the minor's
40 refusal to have an abortion performed, the minor is deemed
41 emancipated for the purposes of eligibility for public-assistance
42 benefits, except that those benefits may not be used to obtain an
43 abortion.

44
45 **§1600-C. Documentation; notice**

46
47 If section 1600-A, subsection 1, paragraphs B and C do not
48 apply and if the parent can not be reached after a reasonable
49 effort, a physician may not perform or induce an abortion without
50 giving at least 48 hours' constructive notice to one of the

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2 minor's parents by both certified and ordinary mail sent to the
3 last known address of the parent. The 48-hour period begins when
4 the certified mail notice is received and signed for by the
5 parent. If a parent of the pregnant minor is not reached within
6 the 48-hour period, the abortion may be performed or induced even
7 if the certified mail notice is not received.

8 If a parent who has been notified clearly and unequivocally
9 expresses a decision not to consult with the pregnant minor
10 before the pregnant minor's abortion, then the abortion may be
11 performed or induced without any further waiting period.'

12
13 Further amend the bill by inserting at the end before the
14 statement of fact the following:

15 **FISCAL NOTE**

16
17 Probate Courts will incur additional costs to record certain
18 proceedings, report to the Office of Data, Research and Vital
19 Statistics of the Department of Human Services and develop,
20 produce and distribute certain forms. These additional
21 requirements on the Probate Courts, which are a county government
22 operation, represent a state mandate pursuant to the Constitution
23 of Maine. The additional local costs are not expected to be
24 significant. General Fund appropriations will be required to
25 fund at least 90% of the additional costs unless a mandate
26 preamble is added to the bill and 2/3 of the members of each
27 House vote to exempt this mandate from the funding requirement.

28
29 The Judicial Department will also incur some minor
30 additional costs to record proceedings, report to the Office of
31 Data, Research and Vital Statistics of the Department of Human
32 Services and develop, produce and distribute certain forms.
33 These costs can be absorbed within the department's existing
34 budgeted resources.

35
36 The elimination of filing fees for certain court cases will
37 reduce General Fund revenue by minor amounts.

38
39 The additional costs associated with the statistical data
40 can be absorbed by the Office of Data, Research and Vital
41 Statistics of the Department of Human Services utilizing existing
42 budgeted resources.

43
44 This bill may reduce prosecutions for Class D crimes. If
45 jail sentences are reduced, the savings to the counties are
46 estimated to be \$83.22 per day per prisoner. These savings do
47 not affect reimbursement by the State. The reduction in the
48 number of prosecutions that would have resulted in a jail

COMMITTEE AMENDMENT

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2 sentence and the resulting savings to the county jail system are
3 expected to be insignificant.

4 The Judicial Department may realize some minor
5 administrative savings from reductions of workload,
6 administrative costs and indigent defense costs associated with
7 the minimal number of cases that will no longer be filed in the
8 court system. Reductions in the collection of fines may decrease
9 General Fund revenue by minor amounts.'

12 STATEMENT OF FACT

14 This amendment replaces the bill.

16 This amendment provides 3 prerequisites before an abortion
17 may be performed or induced on a pregnant minor:

18 1. The physician must, at least 24 hours before performing
19 or inducing an abortion, notify the pregnant minor's parent by
20 telephone or in person that the minor is pregnant and wants an
21 abortion. An adult must accompany the minor to the physician's
22 office at the time of the abortion;

24 2. The pregnant minor alleges abuse or neglect such that
25 notifying the minor's parent is not in the minor's best
26 interest. The minor must then be accompanied by an adult
27 counselor to the physician's office; or

30 3. The minor has been authorized by the District Court or
31 the Probate Court to consent to the abortion without parental
32 notification. An adult must accompany the minor to the
33 physician's office at the time of the abortion.

34 This amendment maintains most of the judicial bypass option
35 proposed in the original bill, but does not require an allegation
36 of abuse.

38