

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)



117th MAINE LEGISLATURE

FIRST REGULAR SESSION-1995

Legislative Document

No. 633

H.P. 467

House of Representatives, February 23, 1995

An Act to Require Parental Notification for Minors Seeking Abortions.

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, BARTH of Bethel, BIGL of Bucksport, BIRNEY of Paris, BOUFFARD of Lewiston, BUNKER of Kossuth Township, CAMERON of Rumford, CAMPBELL of Holden, CHICK of Lebanon, CLARK of Millinocket, CLUKEY of Houlton, CROSS of Dover-Foxcroft, DESMOND of Mapleton, DEXTER of Kingfield, DiPIETRO of South Portland, DRISCOLL of Calais, DUNN of Gray, FARNUM of South Berwick, GOULD of Greenville, GUERRETTE of Pittston, HARTNETT of Freeport, HICHBORN of LaGrange, JONES of Pittsfield, JOY of Crystal, JOYCE of Biddeford, JOYNER of Hollis, KEANE of Old Town, KNEELAND of Easton, LANE of Enfield, LAYTON of Cherryfield, LIBBY of Kennebunk, LOOK of Jonesboro, LUMBRA of Bangor, LUTHER of Mexico, MADORE of Augusta, MARSHALL of Eliot, MERES of Norridgewock, MURPHY of Berwick, NASS of Acton, NICKERSON of Turner, O'NEAL of Limestone, PINKHAM of Lamoine, PLOWMAN of Hampden, POIRIER of Saco, POULIOT of Lewiston, REED of Dexter, RICE of South Bristol, ROBICHAUD of Caribou, SIMONEAU of Thomaston, SIROIS of Caribou, STEDMAN of Hartland, STROUT of Corinth, TRIPP of Topsham, TUFTS of Stockton Springs, TUTTLE of Sanford, TYLER of Windham, UNDERWOOD of Oxford, VIGUE of Winslow, WATERHOUSE of Bridgton, WHEELER of Bridgewater, YACKOBITZ of Hermon, Senators: BEGLEY of Lincoln, BERUBE of Androscoggin, CAREY of Kennebec, CASSIDY of Washington, HALL of Piscataquis, HANLEY of Oxford, HATHAWAY of York, KIEFFER of Aroostook, LORD of York, MICHAUD of Penobscot, PARADIS of Aroostook.

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

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

26 4. Trial court. "Trial court" means a District Court in whose district a pregnant woman 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 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.

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

30 **§8252. Judicial bypass; commencement of action**

32 1. Petition for authorization to consent. A pregnant woman who is unmarried, under 18 years of age and unemancipated and who

2 wishes to have an abortion without the notification of her
3 parent, must file a petition in a trial court, as defined in
4 section 8251, requesting the issuance of an order authorizing her
5 to consent to the performance or inducement of an abortion
6 without the notification of her parent.

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

9 A. A statement that the petitioner is pregnant;

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

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

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

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

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

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

26 **§8253. Procedural provisions**

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

2 order as if the court actually had issued an order under this
3 section authorizing the petitioner to consent to the performance
4 or inducement of an abortion without notification.

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

12 **§8254. Standards of review**

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

23 2. Allegation of abuse. If the petitioner makes only the
24 allegation set forth in section 8252, subsection 2, paragraph D,
25 subparagraph (2) and if the court finds, by clear and convincing
26 evidence, that there is evidence of a pattern of physical, sexual
27 or emotional abuse of the petitioner by a parent or that the
28 notification of the parent of the petitioner otherwise is not in
29 the best interest of the petitioner, the court shall issue an
30 order authorizing the petitioner to consent to the performance or
31 inducement of an abortion without the notification of her
32 parent. If the court does not make such a finding, it shall
33 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.

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

2 B. If the court pursuant to paragraph A does not make the
4 finding specified in subsection 1, it shall determine
6 whether it can make the finding specified in subsection 2
 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 petition.

8
10 **§8255. Miscellaneous provisions**

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

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

20 3. Confidentiality. Each hearing under this section must
22 be conducted in a manner that will preserve the anonymity of the
24 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.

26 4. Forms. The Supreme Judicial Court shall prescribe
28 petition and notice of appeal forms to be used by a petitioner
30 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.

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

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

44 **§8256. Appeals**

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

50 1. Docketing of appeal. Within 4 days after a notice of
 appeal is filed in an action arising under this chapter, the

2 clerk of the trial court shall deliver a copy of the notice of
3 appeal and the record on appeal to the clerk of the Supreme
4 Judicial Court named in the notice. Upon receipt of the notice
5 and record, the clerk of the Supreme Judicial Court shall place
6 the appeal on the docket of the court.

7 **2. Briefs and decision.** The appellant shall file her brief
8 within 4 days after the appeal is docketed. Unless the appellant
9 waives the right to oral argument, the Supreme Judicial Court
10 shall hear oral argument within 5 days after the appeal is
11 docketed. The Supreme Judicial Court shall enter judgment in the
12 appeal immediately after the oral argument or, if oral argument
13 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.

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

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

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

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

40 **CHAPTER 263-B**

41 **ABORTIONS**

2
4
6
8
10
12
14
16
18
20
22
24
26
28
30
32
34
36
38
40
42
44
46
48
50

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 c. 263-B, sub-c. II is enacted to read:

SUBCHAPTER II

ABORTIONS FOR MINORS

§1600. Definitions

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

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

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

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

4. Trial court. "Trial court" means a District Court in whose district a pregnant woman 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 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.

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

§1600-A. Parental consent required

A physician may not knowingly perform or induce an abortion 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-C 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;

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

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

26 **§1600-B. Coercion prohibited**

27 A parent, guardian or any other person may not coerce a
28 minor to have an abortion performed. If a minor is denied
29 financial support by the minor's parents, guardian or custodian
30 due to the minor's refusal to have an abortion performed, the
31 minor is deemed emancipated for the purposes of eligibility for
32 public-assistance benefits, except that such benefits may not be
33 used to obtain an abortion.
34

35 **§1600-C. Consent of specified relative**

36 If a pregnant woman who is unmarried, under 18 years of age
37 and unemancipated desires notification as to a person's intention
38 to perform or induce an abortion on the woman to be given to a
39 specified relative of the woman instead of to one of her parents,
40 the physician who intends to perform or induce the abortion shall
41 notify the specified relative instead of the parent for purposes
42 of section 1600-A, subsection 1 if all of the following apply:
43

44 1. Identification reviewed. The pregnant woman has
45 requested the physician to provide the notification to the
46 specified relative, has identified clearly the specified relative
47

2 and her relation to that person, and, if the specified relative
3 is a brother or sister, has indicated the age of the brother or
4 sister;

6 **2. Affidavit of pregnant woman required.** The pregnant
7 woman has:

8 A. Executed an affidavit stating that she is in fear of
9 physical, sexual or severe emotional abuse from her parent,
10 who otherwise would be notified under section 1600-A,
11 subsection 1 and that the fear is based on a pattern of
12 physical, sexual or severe emotional abuse of her exhibited
13 by that parent;

14 B. Filed the affidavit with the trial court that has
15 jurisdiction over the county or district in which the
16 pregnant woman has a residence or the trial court having
17 jurisdiction over the county or district in which the
18 hospital, clinic or other facility in which the abortion
19 would be performed or induced is located; and

20 C. Has given the court written notice of the name and
21 address of the physician who intends to perform or induce
22 the abortion;

23 **3. Affidavit of specified relative required.** The specified
24 relative has executed an affidavit stating that the woman has
25 reason to fear physical, sexual or severe emotional abuse from
26 the parent, who otherwise would be notified under section 1600-A,
27 subsection 1, based on a pattern of physical, sexual or severe
28 emotional abuse of her by that parent, and the pregnant woman or
29 the specified relative has filed with the trial court the
30 affidavit described in subsection 2; and

31 **4. Filing of affidavits.** The trial court in which the
32 affidavits described in subsections 2 and 3 were filed has
33 notified the physician that both of those affidavits have been
34 filed with the court.

35 **5. Reports.** A monthly report indicating the number of
36 notices issued under this law, and the number of times in which
37 exceptions were made to the notice requirement under this
38 section, as well as the type of exception must be filed with the
39 Department of Human Services on forms prescribed by the
40 department. A patient's name is not to be used on the forms. A
41 compilation of the data reported must be made by the Department
42 of Human Services on an annual basis and must be available to the
43 public.

44 **§1600-D. Documentation; notice**

2 If an affidavit described in section 1600-C, subsection 2
4 and an affidavit described in section 1600-C, subsection 3 are
6 filed with a trial court and the court has been provided with
8 written notice of the name and address of the physician who
10 intends to perform or induce an abortion for the pregnant woman
 to whom the affidavits pertain, the court promptly shall notify
 the physician who intends to perform or induce the abortion that
 the affidavits have been filed. The notice to the physician must
 be given in person or by telephone.

12 **1. Failure of notice.** If section 1600-C, subsections 2, 3
14 and 4 do not apply and if the parent can not be reached for
16 purposes of section 1600-A, subsection 1 after a reasonable
18 effort or if notification is to be given to a specified relative
20 under that subsection and the specified relative can not be
22 reached for purposes of section 1600-A, subsection 1 after a
24 reasonable effort, a physician may not perform or induce an
26 abortion without giving at least 48 hours' constructive notice to
28 one of the woman's parents by both certified and ordinary mail
30 sent to the last known address of the parent, guardian or
32 custodian or, if notification for purposes of section 1600-C is
 to be given to a specified relative, without giving at least 48
 hours' constructive notice to that specified relative by both
 certified and ordinary mail sent to the last known address of
 that specified relative. The 48-hour period begins when the
 certified mail notice is received and signed for by the parent.
 If a parent of the pregnant woman or the specified relative, if
 notification under section 1600-C is to be given to a specified
 relative, is not reached within the 48-hour period, the abortion
 may be performed or induced even if the certified mail notice is
 not received.

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

40 **§1600-E. Violation; penalties**

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

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

2 **§1600-F. Violation; penalties**

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

8 **§1600-G. Affirmative defenses**

10 **1. False, misleading or incorrect information.** It is an
12 affirmative defense to a charge under section 1600-E that the
14 pregnant woman provided the physician who performed or induced
16 the abortion with false, misleading or incorrect information
18 about the pregnant woman's age, marital status or emancipation,
20 about the age of a brother or sister to whom the pregnant woman
22 requested notice be given as a specified relative instead of the
24 pregnant woman's parent or about the last known address of the
26 pregnant woman's parent or specified relative to whom the pregnant woman
28 requested notice be given and the physician who
performed or induced the abortion did not otherwise have
reasonable cause to believe that the pregnant woman was under 18
years of age, unmarried or unemancipated, that the age of a
brother or sister to whom she requested notice be given as a
specified relative instead of the pregnant woman's parent was not
21 years of age or that the last known address of the pregnant
woman's parent or specified relative to whom the pregnant woman
requested notice be given was incorrect.

30 **2. Immediate threat of serious risk.** It is an affirmative
32 defense to a charge under section 1600-E that compliance with the
34 requirements of section 1600-A was not possible because an
immediate threat of serious risk to the life or physical health
of the pregnant woman from the continuation of the pregnancy
created an emergency necessitating the immediate performance or
inducement of an abortion.

38 **STATEMENT OF FACT**

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

44 The bill requires that notification be provided to one
46 parent or when the minor is in fear of physical, sexual or
48 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.

2 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.

4 This bill is modeled on the provisions of Ohio law.
6