

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)



118th MAINE LEGISLATURE

FIRST REGULAR SESSION-1997

Legislative Document

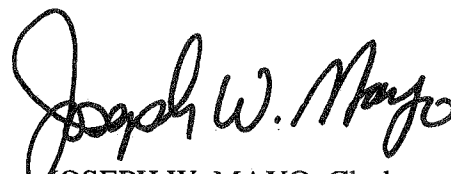
No. 661

H.P. 490

House of Representatives, January 30, 1997

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.


JOSEPH W. MAYO, Clerk

Presented by Representative AHEARNE of Madawaska.
Cosponsored by Representatives: BOUFFARD of Lewiston, DESMOND of Mapleton,
GERRY of Auburn, KASPRZAK of Newport, KNEELAND of Easton, LANE of Enfield,
VIGUE of Winslow, WATERHOUSE of Bridgton.

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

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4 §2, is repealed and the following enacted in its place:

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

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

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

22 **Sec. 3. 22 MRSA §1598, sub-§4**, as enacted by PL 1979, c. 405,
24 §2, is repealed and the following enacted in its place:

24 **4. Abortions after viability; criminal liability.** A person
26 who performs an abortion after viability commits a Class D crime
28 if:

30 **A.** That person knowingly disregards the viability of the
32 fetus; and

32 **B.** That person knows that the abortion is not necessary for
34 the preservation of the life or health of the pregnant woman.

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36 repealed.

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

42 **§1599-B. Informed consent to abortion**

44 An abortion may not be performed or induced except with the
46 voluntary and informed consent of the pregnant woman upon whom
48 the abortion is to be performed or induced, obtained in
50 accordance with this section.

48 **1. Standards for consent.** Except in the case of a medical
50 emergency, consent to an abortion is voluntary and informed only
52 if, before the consent is given, the physician who is to perform
the abortion or the referring physician, or a qualified physician
assistant, health care practitioner or technician to whom the

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

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

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

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

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

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

32 (1) The department publishes printed material that
33 describes the fetus and lists agencies that offer
34 alternatives to abortion, that she has a right to
35 review the printed material and that a copy must be
36 provided to her free of charge if she chooses to review
37 the material;

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

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

50 C. The information in paragraphs A and B must be provided
51 to the woman individually and in a private room
52 and in the presence of the physician performing the abortion.

2 to protect her privacy and maintain the confidentiality of
3 her decision and to ensure that the information focuses on
4 her 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 material described in section
8 1599-C. If the woman is unable to read the material, it
9 must be read to her. If the woman asks questions concerning
10 any of the information or material, answers must be provided
11 to her in her own language.

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

38
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 material:

45
46 1. **List of services.** Geographically indexed material
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 material 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 material must include
8 the following statement.

9
10 "There are many public and private agencies willing and able
11 to help you carry your child to term and to assist you and
12 your child after your child is born, whether you choose to
13 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
18 The material must include information on the availability of
19 medical assistance benefits for prenatal care, childbirth and
20 neonatal care and state that it is unlawful for any individual to
21 coerce a woman to undergo an abortion, that any physician who
22 performs an abortion without obtaining informed consent from that
23 woman or without according a private medical consultation may be
24 liable to her for damages in a civil court action, that the
25 father of a child is liable to assist in the support of that
26 child even in instances when the father has offered to pay for an
27 abortion and that the law permits adoptive parents to pay costs
28 of prenatal care, childbirth and neonatal care;

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

2 All material published pursuant to this section must be
easily comprehensible to the average reader.

4 **§1599-D. Civil penalties**

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

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

18 **3. Wrongful death.** Violation of this chapter provides a
basis for recovery for the woman for the death of her child under
20 laws governing wrongful death, whether the child was unborn but
viable at the time the abortion was performed or was born alive.

22 **§1599-E. Construction**

24 This chapter may not be construed to create or recognize a
26 right to abortion.

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

32 **SUMMARY**

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