

MAINE STATE LEGISLATURE

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118th MAINE LEGISLATURE

FIRST REGULAR SESSION-1997

Legislative Document

No. 662

H.P. 491

House of Representatives, January 30, 1997

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: BOUFFARD of Lewiston, DESMOND of Mapleton,
GERRY of Auburn, KASPRZAK of Newport, KNEELAND of Easton, LANE of Enfield,
MERES of Norridgewock, WATERHOUSE of Bridgton.

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,
8 concurrent with that of the Probate Court, to grant equitable
relief in proceedings brought under Title 22, ~~section-1597-A~~ 14,
10 chapter 751.

12 Sec. 2. 14 MRSA c. 751 is enacted to read:

14 CHAPTER 751

16 JUDICIAL REVIEW OF ABORTION FOR MINORS

18 §8401. Definitions

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

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

24 2. Petitioner. "Petitioner" means a pregnant woman filing
26 a petition under section 8402.

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
Court in whose district a hospital, clinic or other facility in
36 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
38 facility in which an abortion would be performed or induced is
located.

40 5. Unemancipated. "Unemancipated" means a woman who is
42 unmarried, is under 18 years of age, is not in the Armed Forces
of the United States and is not employed full-time and
44 self-subsisting or otherwise independent from the care and
control of her parent.

46 §8402. Judicial bypass; commencement of action

48 1. Petition for authorization to consent. An unemancipated
50 pregnant woman who wishes to have an abortion without the

2 notification of her parent shall file a petition in a trial
3 court, as defined in section 8401, requesting the issuance of an
4 order authorizing her to consent to the performance or inducement
5 of an abortion without the notification of her parent.

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

8 A. A statement that the petitioner is pregnant;

9 B. A statement that the petitioner is 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 informed to intelligently decide whether to have an
15 abortion without the notification of her parent; or

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

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

23 **§8403. Procedural provisions**

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

2 or inducement of an abortion without the notification of her
3 parent.

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

12 **§8404. Standards of review**

14 1. Allegation of competence. If the petitioner makes only
15 the allegation set forth in section 8402, subsection 2, paragraph
16 D, subparagraph (1) and if the court finds, by clear and
17 convincing evidence, that the petitioner is sufficiently mature
18 and informed to decide intelligently whether to have an abortion,
19 the court shall issue an order authorizing the petitioner to
20 consent to the performance or inducement of an abortion without
21 the notification of her parent. If the court does not make such
22 a finding, the court shall dismiss the petition.

24 2. Allegation of abuse. If the petitioner makes only the
25 allegation set forth in section 8402, subsection 2, paragraph D,
26 subparagraph (2) and if the court finds, by clear and convincing
27 evidence, that there is evidence of a pattern of physical, sexual
28 or emotional abuse of the petitioner by a parent or that the
29 notification of the parent of the petitioner otherwise is not in
30 the best interest of the petitioner, the court shall issue an
31 order authorizing the petitioner to consent to the performance or
32 inducement of an abortion without the notification of her
33 parent. If the court does not make such a finding, the court
34 shall dismiss the petition.

36 3. Allegations of competence and abuse. If the petitioner
37 makes both of the allegations set forth in section 8402,
38 subsection 2, paragraph D, subparagraphs (1) and (2), the court
39 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 8402, subsection 2, paragraph D, 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 8402, subsection 2, paragraph D, subparagraph (2).
48

2 B. If the court pursuant to paragraph A does not make the
3 finding specified in subsection 1, it shall determine
4 whether it can make the finding specified in subsection 2
5 and, if so, shall issue an order pursuant to that
6 subsection. If the court does not make the finding
7 specified in subsection 2, the court shall dismiss the
8 petition.

9 **§8405. Miscellaneous provisions**

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

13 2. Notice of right to appeal. If the court dismisses the
14 petition, it immediately shall notify the petitioner that she has
15 a right to appeal pursuant to section 8406.

16 3. Confidentiality. Each hearing under section 8403 must
17 be conducted in a manner that will preserve the anonymity of the
18 petitioner. The petition and all other papers and records that
19 pertain to an action commenced under this chapter are
20 confidential and are not public records under Title 1, chapter 13
21 or any other provision of law.

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

28 5. Filing fee. A filing fee may not be required of and
29 court costs may not be assessed against a petitioner filing a
30 petition under section 8402 or an appellant filing an appeal
31 pursuant to section 8406.

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

36 **§8406. Appeal**

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

40 1. Docketing of appeal. Within 4 days after a notice of
41 appeal is filed in an action arising under this chapter, the
42 petitioner shall file a docketing statement with the clerk of the
43 trial court.

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 on 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. Filing fee. A filing fee may not be required of and
15 court costs may not 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 judgment is deemed to be
22 a constructive order of the court authorizing the appellant to
23 consent to the performance or inducement of an abortion without
24 the notification of her parent and the appellant and any other
25 person may rely on the constructive order as if the court
26 actually had entered judgment under this section authorizing the
27 appellant to consent to the performance or inducement of an
28 abortion without the notification of her parent.

29 In the interest of justice, the Supreme Judicial Court, in an
30 appeal under this section, shall liberally modify or dispense
31 with the formal requirements that normally apply to the contents
32 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. The notice of appeal and all papers and
36 records that pertain to an appeal under this section are
37 confidential and are not public records under Title 1, chapter 13
38 or any other provision of law.

39 **Sec. 3. 22 MRSA c. 263-B, first 2 lines are repealed and the**
40 **following enacted in their place:**

41 **CHAPTER 263-B**

42 **ABORTIONS**

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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 Title 14, chapter 751. 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

§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 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.

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

7 §1600-A. Parental consent required

8
9 A physician may not knowingly perform or induce an abortion
10 for an unemancipated pregnant woman unless at least one of the
11 following applies.

12
13 1. Notice given. Subject to this section, the physician
14 has given at least 24 hours' actual notice, in person or by
15 telephone, to the woman's parent of the intention to perform or
16 induce the abortion, except that, if the pregnant woman has
17 requested that notice be given to a specified relative in
18 accordance with section 1600-C and if the physician is notified
19 by a court that affidavits described in section 1600-C have been
20 filed with that court, the 24 hours' actual notice described in
21 this section of the intention to perform or induce the abortion
22 must be given, in person or by telephone, to the specified
23 relative instead of to the parent.

24
25 2. Written consent. The pregnant woman's parent has
26 consented in writing to the performance or inducement of the
27 abortion.

28
29 3. Court order. A court pursuant to Title 14, chapter 751
30 issues an order authorizing the pregnant woman to consent to the
31 abortion without notification of her parent.

32
33 4. Constructive order. The failure to hold the hearing
34 referred to in subsection 3 is deemed to be a constructive order
35 of the court authorizing the pregnant woman to consent to the
36 performance or inducement of an abortion without the notification
37 of the pregnant woman's parent, and the pregnant woman and any
38 other person may rely on the constructive order as if the court
39 actually had issued an order under this section authorizing the
40 pregnant woman to consent to the performance or inducement of an
41 abortion without the notification of her parent pursuant to Title
42 14, section 8403, subsection 1 or Title 14, section 8406,
43 subsection 4.

44 §1600-B. Coercion prohibited

45
46 A parent or any other person may not coerce an unemancipated
47 pregnant woman to have an abortion performed or induced. If the
48 pregnant woman is denied financial support by her parent due to
49 her refusal to have an abortion performed or induced, the
50 parent or other person may not be held liable for the abortion.

2 pregnant woman is deemed emancipated for the purposes of
3 eligibility for public-assistance benefits, except that the
4 benefits may not be used to obtain an abortion.

6 **§1600-C. Consent of specified relative**

8 If an unemancipated pregnant woman desires notification of a
9 physician's intention to perform or induce an abortion on that
10 pregnant woman to be given to a specified relative instead of to
11 her parent, the physician who intends to perform or induce the
12 abortion shall notify the specified relative instead of the
13 parent for purposes of section 1600-A, subsection 1 if all of the
14 following apply.

16 1. Identification reviewed. The pregnant woman has
17 requested the physician to provide the notification to the
18 specified relative and has identified clearly the specified
19 relative and her relation to that person.

20 2. Affidavit of pregnant woman required. The pregnant
21 woman has:

22 A. Executed an affidavit stating that she is in fear of
23 physical, sexual or severe emotional abuse from her parent
24 who otherwise would be notified under section 1600-A,
25 subsection 1 and that the fear is based on a pattern of
26 physical, sexual or severe emotional abuse of her exhibited
27 by that parent;

28 B. Filed the affidavit with the trial court that has
29 jurisdiction over the county or district in which the
30 pregnant woman has a residence or the trial court having
31 jurisdiction over the county or district in which the
32 hospital, clinic or other facility in which the abortion
33 would be performed or induced is located; and

34 C. Given the court written notice of the name and address
35 of the physician who intends to perform or induce the
36 abortion.

37 3. Affidavit of specified relative required. The specified
38 relative has executed an affidavit stating that the pregnant
39 woman has reason to fear physical, sexual or severe emotional
40 abuse from the parent who otherwise would be notified under
41 section 1600-A, subsection 1 based on a pattern of physical,
42 sexual or severe emotional abuse of her by that parent and the
43 pregnant woman has filed with the trial court the affidavit
44 described in subsection 2.

2 4. Filing of affidavits. The trial court in which the
3 affidavits described in subsections 2 and 3 were filed has
4 notified the physician that both affidavits have been filed with
5 the court.

6 A physician shall file a monthly report indicating the
7 number of notices issued under this subchapter and the number of
8 times in which exceptions were made to the notice requirement
9 under this section, as well as the type of exception, with the
10 department on forms prescribed by the department. A patient's
11 name may not be used on the forms. A compilation of the data
12 reported must be made by the department on an annual basis and
13 must be available to the public.

14 **§1600-D. Documentation; notice**

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16
17 If an affidavit described in section 1600-C, subsection 2
18 and an affidavit described in section 1600-C, subsection 3 are
19 filed with a trial court and the court has been provided with
20 written notice of the name and address of the physician who
21 intends to perform or induce an abortion for the pregnant woman
22 to whom the affidavits pertain, the court promptly shall notify
23 the physician who intends to perform or induce the abortion that
24 the affidavits have been filed. The notice to the physician must
25 be given in person or by telephone.

26
27 1. Failure of notice. If the parent can not be reached for
28 purposes of section 1600-A, subsection 1 after a reasonable
29 effort or if notification is to be given to a specified relative
30 under section 1600-C and the specified relative can not be
31 reached for purposes of section 1600-A, subsection 1 after a
32 reasonable effort, a physician may not perform or induce an
33 abortion without giving at least 48 hours' constructive notice to
34 the parent by both certified and ordinary mail sent to the last
35 known address of the parent or, if notification for purposes of
36 section 1600-C is to be given to a specified relative, without
37 giving at least 48 hours' constructive notice to that specified
38 relative by both certified and ordinary mail sent to the last
39 known address of that specified relative. The 48-hour period
40 begins when the certified mail notice is received and signed for
41 by the parent or the specified relative. If the parent of the
42 pregnant woman or the specified relative, if notification under
43 section 1600-C is to be given to a specified relative, is not
44 reached within the 48-hour period, the abortion may be performed
45 or induced even if the certified mail notice is not received.

46
47 If the parent or the specified relative who has been notified in
48 accordance with section 1600-C clearly and unequivocally
expresses a decision not to consult with the pregnant woman

2 before the pregnant woman's abortion, then the abortion may be
3 performed or induced without any further waiting period.

4 **§1600-E. Unlawful abortion**

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

10
11 A physician who violates the provisions of this subchapter
12 commits unprofessional conduct, and the physician's license to
13 practice is subject to suspension or revocation in accordance
14 with the procedures provided under Title 32, chapter 36,
15 subchapter V or Title 32, chapter 48, subchapter II.

16 **§1600-F. Violation; penalties**

17
18 A person who violates the provisions of this subchapter is
19 liable to the pregnant woman and the pregnant woman's parent for
20 civil compensatory and punitive damages.

21 **§1600-G. Affirmative defenses**

22
23 **1. False, misleading or incorrect information.** It is an
24 affirmative defense to a charge under section 1600-E that the
25 pregnant woman provided the physician who performed or induced
26 the abortion with false, misleading or incorrect information
27 about the pregnant woman's age, marital status or emancipation,
28 about the age of a brother or sister to whom the pregnant woman
29 requested notice be given as a specified relative instead of the
30 pregnant woman's parent or about the last known phone number and
31 address of the pregnant woman's parent or the specified relative
32 to whom the pregnant woman requested notice be given and the
33 physician who performed or induced the abortion did not otherwise
34 have reasonable cause to believe that the pregnant woman was
35 under 18 years of age, unmarried or unemancipated, that the age
36 of a brother or sister to whom she requested notice be given as a
37 specified relative was not 21 years of age or that the last known
38 phone number and address of the pregnant woman's parent or
39 specified relative were incorrect.

40
41 **2. Immediate threat of serious risk.** It is an affirmative
42 defense to a charge under section 1600-E that compliance with the
43 requirements of section 1600-A was not possible because an
44 immediate threat of serious risk to the life or physical health
45 of the pregnant woman from the continuation of the pregnancy
46 created an emergency necessitating the immediate performance or
47 inducement of an abortion.

50

SUMMARY

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

6
8 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
10 be a grandparent, a stepparent or a sister or brother who is 21
years of age or older.

12
14 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.

16
 This bill is modeled on the provisions of Ohio law.