

MAINE STATE LEGISLATURE

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119th MAINE LEGISLATURE

FIRST REGULAR SESSION-1999

Legislative Document

No. 137

H.P. 106

House of Representatives, January 11, 1999

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, DAVIS of Falmouth,
DESMOND of Mapleton, JOY of Crystal, TUTTLE of Sanford, WATERHOUSE of Bridgton,
WHEELER of Bridgewater, Senator: BERUBE of Androscoggin.

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

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~~ 14, chapter 751.

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

CHAPTER 751

JUDICIAL REVIEW OF ABORTION FOR MINORS

§8401. 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 woman's parents or a guardian or custodian.

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

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.

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, is under 18 years of age, is not in the Armed Forces of the United States and is not employed full time and self-subsisting or otherwise independent from the care and control of her parent.

§8402. Judicial bypass; commencement of action

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

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

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

A. A statement that the petitioner is pregnant;

B. A statement that the petitioner is unemancipated;

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

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

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

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

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

§8403. Procedural provisions

1. Hearing; judgment; constructive order. The court shall fix a time for a hearing on any petition filed under this chapter and shall keep a record of all testimony and other oral proceedings in the action. The court shall hear 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, but not later than the 5th business day after the day that the petition is filed. The court shall enter judgment on the petition immediately after the hearing is concluded. If the hearing required by this section is not held by the 5th business day after the petition is filed, the failure to hold the hearing is deemed to be a constructive order of the court authorizing the petitioner to consent to the performance or inducement of an abortion without the notification of her parent, and the petitioner and any other person may rely on the constructive order as if the court actually had issued an order under this section authorizing the petitioner to consent to the performance

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

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

§8404. Standards of review

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

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

3. Allegations of competence and abuse. If the petitioner makes both of the allegations set forth in section 8402, subsection 2, paragraph D, subparagraphs (1) and (2), the court shall proceed as follows.

A. The court first shall determine whether it can make the finding specified in subsection 1 and, if so, shall issue an order pursuant to that subsection. If the court issues such an order, it may not review the allegation made under section 8402, subsection 2, paragraph D, subparagraph (2). If the court does not make the finding specified in subsection 1, it shall review the allegation made under section 8402, subsection 2, paragraph D, 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
8 and, if so, shall issue an order pursuant to that
10 subsection. If the court does not make the finding
12 specified in subsection 2, the court shall dismiss the
14 petition.

16 **§8405. Miscellaneous provisions**

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

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

30 3. Confidentiality. Each hearing under section 8403 must
32 be conducted in a manner that will preserve the anonymity of the
34 petitioner. The petition and all other papers and records that
36 pertain to an action commenced under this chapter are
38 confidential and are not public records under Title 1, chapter 13
40 or any other provision of law.

42 4. Forms. The Supreme Judicial Court shall prescribe
44 petition and notice of appeal forms to be used by a petitioner
46 filing a petition under this section and by an appellant filing
48 an appeal. The clerk of each trial court shall furnish blank
50 copies of the forms, without charge, to any person who requests
 them.

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

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

§8406. Appeal

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

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

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

2. Briefs and decision. The appellant's brief must be filed within 4 days after the appeal is docketed. Unless the appellant waives the right to oral argument, the Supreme Judicial Court shall hear oral argument within 5 days after the appeal is docketed. The Supreme Judicial Court shall enter judgment on the appeal immediately after the oral argument or, if oral argument has been waived, within 5 days after the appeal is docketed.

3. Filing fee. A filing fee may not be required of and court costs may not be assessed against an appellant who appeals under this section.

4. Procedures; constructive order. Upon motion of the appellant and for good cause shown, the Supreme Judicial Court may shorten or extend any of the maximum times set forth in this section. If judgment is not entered within 5 days after the appeal is docketed, the failure to enter judgment is deemed 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 her parent and the appellant and any other person may rely on the constructive order as if the court actually had entered judgment under this section authorizing the appellant to consent to the performance or inducement of an abortion without the notification of her parent.

In the interest of justice, the Supreme Judicial Court, in an appeal under this section, shall liberally modify or dispense with the formal requirements that normally apply 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. The notice of appeal and 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

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

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

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

25 3. Court order. A court pursuant to Title 14, chapter 751
26 issues an order authorizing the pregnant woman to consent to the
27 abortion without notification of her parent.

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

39 **§1600-B. Coercion prohibited**

40 A parent or any other person may not coerce an unemancipated
41 pregnant woman to have an abortion performed or induced. If the
42 pregnant woman is denied financial support by her parent due to
43 her refusal to have an abortion performed or induced, the

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

§1600-C. Consent of specified relative

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

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

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

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

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

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

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

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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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 a 48-hour period, the abortion may be performed or
45 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
49 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.

§1600-E. Unlawful abortion

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

A physician who violates the provisions of this subchapter 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.

§1600-F. Violation; penalties

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

§1600-G. Affirmative defenses

1. **False, misleading or incorrect information.** It is an affirmative defense to a charge under section 1600-E that the pregnant woman provided the physician who performed or induced the abortion with false, misleading or incorrect information about the pregnant woman's age, marital status or emancipation, about the age of a brother or sister to whom the pregnant woman requested notice be given as a specified relative instead of the pregnant woman's parent or about the last known phone number and address of the pregnant woman's parent or the specified relative to whom the pregnant woman requested notice be given and that 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 brother or sister to whom she requested notice be given as a specified relative was not 21 years of age or that the last known phone number and address of the pregnant woman's parent or specified relative were incorrect.

2. **Immediate threat of serious risk.** It is an affirmative defense to a charge under section 1600-E that compliance with the 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.

SUMMARY

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

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

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.

This bill is modeled on the provisions of Ohio law.