

MAINE STATE LEGISLATURE

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120th MAINE LEGISLATURE

FIRST REGULAR SESSION-2001

Legislative Document

No. 1494

H.P. 1125

House of Representatives, March 8, 2001

An Act to Require Parental Notification of Abortion.

Reference to the Committee on Judiciary suggested and ordered printed.

Millicent M. MacFarland

MILLICENT M. MacFARLAND, Clerk

Presented by Representative MacDOUGALL of North Berwick.
Cosponsored by Representative CRESSEY of Baldwin, Senator DAVIS of Piscataquis and
Representatives: DAVIS of Falmouth, FOSTER of Gray, KASPRZAK of Newport,
MENDROS of Lewiston, SHIELDS of Auburn, SNOWE-MELLO of Poland,
WATERHOUSE of Bridgton, Senator: YOUNGBLOOD of Penobscot.

2
3 **Be it enacted by the People of the State of Maine as follows:**

4 **Sec. 1. 4 MRSA §152, sub-§8,** as amended by PL 1999, c. 547,
Pt. B, §5 and affected by §80, is further amended to read:

6 **8. Consent to minor's abortion.** Original jurisdiction,
concurrent with that of the Probate Court, to grant equitable
8 relief in proceedings brought under Title 22, ~~section 1597-A 14,~~
chapter 751;

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

12 **CHAPTER 751**

14 **JUDICIAL REVIEW OF ABORTION FOR MINORS**

16 **§8401. Definitions**

18 As used in this chapter, unless the context otherwise
20 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 a
26 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
38 or a Probate Court in whose county a hospital, clinic or other
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
44 of the United States and is not employed full time and
self-subsisting or otherwise independent from the care and
46 control of her parent.

48 **§8402. Judicial bypass; commencement of action**

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

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

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

14 A. A statement that the petitioner is pregnant;

16 B. A statement that the petitioner is unemancipated;

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

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

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

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

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

34 §8403. Procedural provisions

36 1. Hearing; judgment; constructive order. The court shall
38 fix a time for a hearing on any petition filed under this chapter
40 and shall keep a record of all testimony and other oral
42 proceedings in the action. The court shall hear and determine
44 the action and may not refer any portion of it to a referee. The
46 hearing must be held at the earliest possible time, but not later
48 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

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.

11 **§8404. Standards of review**

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

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

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

36 A. The court first shall determine whether it can make the
37 finding specified in subsection 1 and, if so, shall issue an
38 order pursuant to that subsection. If the court issues such
39 an order, it may not review the allegation made under
40 section 8402, subsection 2, paragraph D, subparagraph (2).
41 If the court does not make the finding specified in
42 subsection 1, it shall review the allegation made under
43 section 8402, subsection 2, paragraph D, subparagraph (2).

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.

10 **§8405. Miscellaneous provisions**

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

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

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

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

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

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

42 **§8406. Appeal**

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

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

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

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

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

32 4. Procedures; constructive order. Upon motion of the
34 appellant and for good cause shown, the Supreme Judicial Court
36 may shorten or extend any of the maximum times set forth in this
38 section. If judgment is not entered within 5 days after the
40 appeal is docketed, the failure to enter judgment is deemed to be
42 a constructive order of the court authorizing the appellant to
44 consent to the performance or inducement of an abortion without
46 the notification of her parent and the appellant and any other
48 person may rely on the constructive order as if the court
50 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
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 pursuant to Title 14, section 8403 is deemed to be a constructive
35 order of the court authorizing the pregnant woman to consent to
36 the performance or inducement of an abortion without the
37 notification of the pregnant woman's parent, and the pregnant
38 woman and any other person may rely on the constructive order as
39 if the court actually had issued an order under this section
40 authorizing the pregnant woman to consent to the performance or
41 inducement of an abortion without the notification of her parent
42 pursuant to Title 14, section 8403, subsection 1 or Title 14,
43 section 8406, 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 is liable for the cost of 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 that notification
9 of a physician's intention to perform or induce an abortion on
10 that pregnant woman be given to a specified relative instead of
11 to 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 that the physician provide 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 exhibited by that
27 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 by that parent and the pregnant
43 woman has filed with the trial court the affidavit described in
44 subsection 2; and

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

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 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
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 that 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
36 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.