

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)



122nd MAINE LEGISLATURE

FIRST SPECIAL SESSION-2005

Legislative Document

No. 1575

H.P. 1112

House of Representatives, April 14, 2005

An Act To Require Parental Notification of Teenage Abortions

Reference to the Committee on Judiciary suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative DUPREY of Hampden.
Cosponsored by Senator SNOWE-MELLO of Androscoggin and
Representatives: CARR of Lincoln, CRESSEY of Cornish, HALL of Holden, HAMPER of
Oxford, JACKSON of Fort Kent, ROBINSON of Raymond, VAUGHAN of Durham.

2 **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,
8 concurrent with that of the Probate Court, to grant equitable
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. Court. "Court" means a District Court in whose district
24 a pregnant minor has her residence, a District Court in whose
26 district a hospital, clinic or other facility in which an
28 abortion might be performed or induced is located, a Probate
30 Court in whose county a pregnant minor has her residence or a
Probate Court in whose county a hospital, clinic or other
facility in which an abortion might be performed or induced is
located.

32 2. Parent. "Parent" means one of a pregnant minor's
parents or a pregnant minor's guardian or custodian.

34 3. Petitioner. "Petitioner" means an unemancipated pregnant
minor filing a petition under section 8402.

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

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

46 **§8402. Judicial bypass; commencement of action**

48 1. Petition for authorization to consent. An unemancipated
50 pregnant minor who wishes to have an abortion without the
notification of her parent shall file a petition in a court

2 requesting the issuance of an order authorizing her to consent to
3 the performance or inducement of an abortion without the
4 notification of her parent.

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

7 A. A statement that the petitioner is pregnant;

8 B. A statement that the petitioner is unemancipated;

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

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

12 (1) That the petitioner understands the risks and
13 consequences and is sufficiently mature and informed to
14 intelligently decide whether to have an abortion
15 without the notification of her parent; or

16 (2) That the petitioner's parent has engaged in a
17 pattern of physical or sexual abuse against her or that
18 the notification of her parent otherwise is not in her
19 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 or
28 sexual 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. All physical or sexual abuse
35 allegations must be referred to the Department of Health and
36 Human Services to be investigated. Referrals made under this
37 subsection must be kept anonymous.

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

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

2 subsection 1, it shall review the allegation made under
3 section 8402, subsection 2, paragraph D, subparagraph (2).

4 B. If the court pursuant to paragraph A does not make the
5 finding specified in subsection 1, it shall determine
6 whether it can make the finding specified in subsection 2
7 and, if so, shall issue an order pursuant to that
8 subsection. If the court does not make the finding
9 specified in subsection 2, the court shall dismiss the
10 petition. All physical or sexual abuse allegations must be
11 referred to the Department of Health and Human Services to
12 be investigated. Referrals made under this subsection must
13 be kept anonymous.

14 **§8405. Miscellaneous provisions**

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

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

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

27 4. Forms. The Supreme Judicial Court shall prescribe
28 petition and notice of appeal forms to be used by a petitioner
29 filing a petition under this chapter and by an appellant filing
30 an appeal under section 8406. The clerk of each trial court
31 shall furnish blank copies of the forms, without charge, to any
32 person who requests them.

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

37 **§8406. Appeal**

38 A petitioner whose petition under this chapter is dismissed
39 by the court may appeal in accordance 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

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's brief must be
8 filed within 4 days after the appeal is docketed. Unless the
9 appellant waives the right to oral argument, the Supreme Judicial
10 Court 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 under this
16 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 preserves the anonymity of the
35 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, as amended, is further amended by
40 repealing the chapter headnote and enacting the following in its
41 place:

42 **CHAPTER 263-B**

43 **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

SUBCHAPTER 1

ABORTIONS GENERALLY

Sec. 4. 22 MRSA §1597-A, as amended by PL 2003, c. 452, Pt. K, §11 and affected by Pt. X, §2, 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~~ subchapter 2. 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. 2 is enacted to read:

SUBCHAPTER 2

ABORTIONS FOR MINORS

§1600. Definitions

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

1. Counselor. "Counselor" means any of the following:

A. A psychiatrist;

B. A psychologist licensed under Title 32, chapter 56;

C. A social worker licensed under Title 32, chapter 83;

D. An ordained member of the clergy;

E. A physician's assistant registered by the Board of Licensure in Medicine under Title 32, chapter 48;

F. A nurse practitioner licensed under Title 32, chapter 31 and registered by the Board of Licensure in Medicine under Title 32, chapter 48;

G. A certified guidance counselor;

2 H. A registered professional nurse licensed under Title 32,
3 chapter 31; or

4 I. A practical nurse licensed under Title 32, chapter 31.

6 A counselor may not be a person who is employed by any person or
7 organization that either provides abortion services or makes
8 abortion referrals to a person or organization that provides
9 abortion services.

10 2. Parent. "Parent" means one of a pregnant minor's
12 parents or a pregnant minor's guardian or custodian.

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

18 4. Trial court. "Trial court" means a District Court in
19 whose district a pregnant minor has her residence, a District
20 Court in whose district a hospital, clinic or other facility in
21 which an abortion might be performed or induced is located, a
22 Probate Court in whose county a pregnant minor has her residence
23 or a Probate Court in whose county a hospital, clinic or other
24 facility in which an abortion might be performed or induced is
25 located.

26 5. Unemancipated. "Unemancipated" means unmarried, under
28 18 years of age, not in the Armed Forces of the United States and
29 not employed full time, not self-subsisting or not otherwise
30 independent from the care and control of a parent.

32 **§1600-A. Parental notification required; exceptions**

34 1. Prerequisites to abortion. A physician may not
35 knowingly perform or induce an abortion for a pregnant minor who
36 is unemancipated unless one of the following applies:

38 A. The physician has given a 24-hour notice, in person or
39 by telephone, to the minor's parent of the intention to
40 perform or induce the abortion and an adult accompanies the
41 minor to the office of the physician at the time of the
42 abortion;

44 B. A trial court has issued an order under Title 14,
45 section 8404 authorizing the minor to consent to the
46 abortion and an adult accompanies the minor to the office of
47 the physician at the time of the abortion, or a trial court,
48 by its inaction, constructively has authorized the pregnant
49 minor to consent to the abortion without notification of her
50 parent pursuant to Title 14, section 8403, subsection 1 or

2 Title 14, section 8406, subsection 4 and an adult
4 accompanies the minor to the office of the physician at the
6 time of the abortion; or

8 C. A medical emergency exists such that the pregnant
10 minor's life is in danger if the abortion is not performed
12 sooner than allowable under this section or section 1600-C.

14 2. Presumed unemancipated. For purposes of prosecutions
16 for a violation of this section, it is a rebuttable presumption
18 that a woman who is unmarried and under 18 years of age is
20 unemancipated.

14 **§1600-B. Coercion prohibited**

16 A parent or any other person may not coerce a minor to have
18 an abortion performed or induced. If a minor is denied financial
20 support by the minor's parents due to the minor's refusal to have
22 an abortion, the minor is deemed emancipated for the purposes of
24 eligibility for public-assistance benefits, except that those
26 benefits may not be used to obtain an abortion.

24 **§1600-C. Documentation; notice**

26 If section 1600-A, subsection 1, paragraphs B and C do not
28 apply and if the parent cannot be reached in person or by
30 telephone after a reasonable effort, a physician may not perform
32 or induce an abortion without giving at least 48 hours'
34 constructive notice to one of the minor's parents by both
36 certified and ordinary mail sent to the last known address of the
38 parent. The 48-hour period begins when the certified mail notice
40 is received and signed for by the parent. If a parent of the
42 pregnant minor is not reached within a 48-hour period, the
44 abortion may be performed or induced even if the certified mail
46 notice is not received.

48 If a parent who has been notified expresses clearly and
50 unequivocally a decision not to consult with the pregnant minor
52 before the pregnant minor's abortion, then the abortion may be
54 performed or induced without any further waiting period.

42 **SUMMARY**

44 This bill requires parental notification before an abortion
46 is performed or induced on a pregnant minor. There is an
48 exception for a medical emergency in which the pregnant minor's
50 life is in danger. The bill provides a definition of "counselor"
52 that ensures that the counselor has no affiliation with an

2 organization that makes abortion referrals or provides abortion
services.

4 The bill also allows for alternative procedures whereby the
minor has court approval for the proposed abortion and
6 establishes the procedures for judicial review and appeals.