

# MAINE STATE LEGISLATURE

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# 125th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2011

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Legislative Document

No. 1457

H.P. 1072

House of Representatives, April 12, 2011

### **An Act To Strengthen the Consent Laws for Abortions Performed on Minors and Incapacitated Persons**

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Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST  
Clerk

Presented by Representative CRAFTS of Lisbon.  
Cosponsored by Senator MASON of Androscoggin and  
Representatives: ESPLING of New Gloucester, GUERIN of Glenburn, MORISSETTE of  
Winslow, O'CONNOR of Berwick, PARKER of Veazie, SIROCKI of Scarborough, TURNER  
of Burlington.

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

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

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

7 **Sec. 2. 22 MRSA §1597-A**, as amended by PL 2003, c. 452, Pt. K, §11 and  
8 affected by Pt. X, §2, is repealed.

9 **Sec. 3. 22 MRSA §1597-B** is enacted to read:

10 **§1597-B. Consent for an abortion for a minor or incapacitated person**

11 **1. Definitions.** As used in this section, unless the context otherwise indicates, the  
12 following terms have the following meanings.

13 A. "Abortion" means the act of using or prescribing any instrument, medicine, drug  
14 or other substance, device or means with the intent to terminate a clinically  
15 diagnosable pregnancy with knowledge that the termination by such means will with  
16 reasonable likelihood cause the death of the fetus. Such use, prescription or means is  
17 not an abortion if done with the intent to:

18 (1) Save the life or preserve the health of a fetus;

19 (2) Remove a dead fetus caused by spontaneous abortion; or

20 (3) Remove an ectopic pregnancy.

21 B. "Coercion" means restricting or dominating the choice of a minor female by  
22 restraint, force, threat of force or deprivation of food and shelter.

23 C. "Consent" means a notarized written statement signed by a minor's parent or legal  
24 guardian or other alternate person described in subsection 3 declaring that the affiant  
25 has been informed that the minor or incapacitated person intends to seek an abortion  
26 and that the affiant consents to the abortion.

27 D. "Emancipated minor" means a person under 18 years of age who is or has been  
28 married or who has been legally emancipated under Title 15, section 3506-A.

29 E. "Incapacitated person" means a person who is impaired by reason of mental  
30 illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic  
31 intoxication or other cause except minority to the extent that the person lacks  
32 sufficient understanding or capacity to make or communicate responsible decisions  
33 concerning that person's person, and for which a guardian has been appointed under  
34 Title 18-A, Article 5.

35 F. "Medical emergency" means a condition that, on the basis of a physician's good  
36 faith clinical judgment, so complicates the medical condition of a pregnant woman as  
37 to necessitate the immediate abortion of her pregnancy to avert her death or to avert  
38 serious risk of substantial and irreversible impairment of a major bodily function.

1 G. "Minor" means a person who is less than 18 years of age and who is not an  
2 emancipated minor.

3 H. "Neglect" means the failure of a parent or legal guardian to supply a minor with  
4 necessary food, clothing, shelter or medical care when reasonably able to do so or the  
5 failure to protect a minor from conditions or actions that imminently and seriously  
6 endanger the minor's physical or mental health when reasonably able to do so.

7 I. "Physical abuse" means a physical injury intentionally inflicted by a parent or legal  
8 guardian on a minor.

9 J. "Physician" or "attending physician" means a person licensed to practice medicine  
10 in this State, including allopathic and osteopathic physicians.

11 K. "Sexual abuse" means a sexual act or sexual conduct, as defined in Title 17-A,  
12 section 251, committed against a minor by an adult who is related to the minor within  
13 the 2nd degree of consanguinity as described in Title 17-A, section 556, subsection  
14 1-C.

15 **2. Prohibitions.** If a pregnant woman is a minor or is an incapacitated person, a  
16 physician may not perform an abortion upon her unless:

17 A. In the case of a minor, the physician performing the abortion first obtains the  
18 notarized written consent of the minor and one of her parents or her legal guardian,  
19 except as provided in subsections 3 and 4; or

20 B. In the case of an incapacitated person, the physician performing the abortion first  
21 obtains the notarized written consent of her legal guardian, except as provided in  
22 subsections 3 and 4.

23 In deciding whether to grant such consent, the parent or legal guardian shall consider only  
24 the pregnant woman's best interests.

25 **3. Alternate consent.** If a pregnant minor or incapacitated person declares in a  
26 signed written statement that she is a victim of sexual abuse, neglect or physical abuse by  
27 either of her parents or her legal guardian, the attending physician shall obtain the  
28 notarized written consent from a brother or sister who is at least 21 years of age or from a  
29 stepparent or grandparent specified by the minor or incapacitated person. The physician  
30 who intends to perform the abortion must certify in the minor's or incapacitated person's  
31 medical record that the physician has received the written declaration of abuse or neglect.  
32 A physician relying in good faith on a written statement under this subsection is not  
33 civilly or criminally liable under this section for failing to obtain consent.

34 **4. Consent not required.** Consent under subsection 2 or 3 is not required if:

35 A. The attending physician certifies in the pregnant woman's medical record that a  
36 medical emergency exists and there is insufficient time to obtain the required  
37 consent; or

38 B. Consent is waived under subsection 7.

39 **5. Coercion prohibited.** A parent, legal guardian or other person may not coerce a  
40 minor or incapacitated person to have an abortion performed. If a minor or incapacitated

1 person is denied financial support by the minor's or incapacitated person's parent or  
2 guardian due to the minor's or incapacitated person's refusal to have an abortion  
3 performed, the minor or incapacitated person is deemed emancipated for the purposes of  
4 eligibility for public assistance benefits, except that the benefits may not be used to obtain  
5 an abortion.

6 **6. Reports.** A physician who performs one or more abortions under this section  
7 during the previous month shall submit a monthly report to the department on a form  
8 prescribed by the department. The department shall report a compilation of the data on  
9 an annual basis and make the compilation available to the public. The monthly report  
10 submitted by the physician must include:

11 A. The number of consents obtained under this section;

12 B. The number of times in which exceptions were made to the consent requirement  
13 under this section and the type of exception;

14 C. The ages of the minors or incapacitated persons; and

15 D. The number of prior pregnancies and prior abortions of each minor or  
16 incapacitated person.

17 Patient names may not be included on the forms.

18 **7. Court order.** The Probate Court or District Court may issue an order for the  
19 purpose of consenting to the abortion by a minor or incapacitated person under the  
20 following circumstances and procedures. The requirements and procedures under this  
21 subsection are available to minors and incapacitated persons whether or not they are  
22 residents of this State.

23 A. The minor or incapacitated person may petition the Probate Court or the District  
24 Court for a waiver of the consent requirement under subsection 2 or 3 and may  
25 participate in proceedings on her own behalf. The petition must include a statement  
26 that the petitioner is pregnant and is unemancipated. The petition must also include a  
27 statement that consent has not been waived and that the petitioner wishes to have an  
28 abortion without obtaining consent under subsection 2 or 3. The court may appoint a  
29 guardian ad litem for the petitioner. A guardian ad litem appointed under this  
30 subsection shall act to maintain the confidentiality of the proceedings. The Probate  
31 Court or the District Court shall advise the petitioner that she has a right to court-  
32 appointed counsel and shall provide her with counsel upon her request.

33 B. Court proceedings under this subsection are confidential and the court must  
34 ensure the anonymity of the minor or incapacitated person. The court shall seal all  
35 proceedings under this subsection. The minor or incapacitated person has the right to  
36 file her petition in the Probate Court or District Court using a pseudonym or using her  
37 initials. All documents related to the petition are confidential and may not be made  
38 available to the public. The court shall give precedence over other pending matters to  
39 proceedings under this subsection to the extent necessary to ensure that the court  
40 reaches a decision promptly. The court shall rule and issue written findings of fact  
41 and conclusions of law within 48 hours of the time that the petition is filed, except  
42 that the 48-hour limitation may be extended at the request of the minor or  
43 incapacitated person. If the court fails to rule within the 48-hour period and an

1 extension was not requested, the petition is deemed to have been granted and the  
2 consent requirement is waived.

3 C. If the court finds by clear and convincing evidence that the petitioner is both  
4 sufficiently mature and well-informed to decide whether to have an abortion, the  
5 court shall issue an order authorizing the petitioner to consent to the abortion without  
6 the consent of a parent or guardian and the court shall execute the required forms. If  
7 the court does not make the finding required in this paragraph or paragraph D, it shall  
8 dismiss the petition.

9 D. If the court finds by clear and convincing evidence that there is a pattern of  
10 physical abuse, sexual abuse or neglect of the petitioner by one or both of her parents  
11 or her guardian or that the notification of a parent or guardian is not in the best  
12 interest of the petitioner, the court shall issue an order authorizing the petitioner to  
13 consent to the abortion without the consent of a parent or guardian. If the court does  
14 not make a finding specified in this paragraph or paragraph C, it shall dismiss the  
15 petition.

16 E. The court shall issue written and specific factual findings and conclusions of law  
17 supporting its decision under this subsection and shall order that a confidential record  
18 of the evidence and the court's findings and conclusions be maintained. At the  
19 hearing, the court shall hear evidence relating to the emotional development,  
20 maturity, intellect and understanding of the petitioner.

21 F. An expedited confidential appeal is available as the Supreme Judicial Court  
22 provides by rule to any minor or incapacitated person to whom the Probate Court or  
23 District Court denies a waiver of consent. An order authorizing an abortion without  
24 consent is not subject to appeal.

25 G. The Probate Court and the District Court may not charge filing fees for a petition  
26 filed under this subsection. The Supreme Judicial Court may not charge a filing fee  
27 for an appeal under this subsection.

28 **8. Appeal.** A minor or incapacitated person may appeal an order issued in  
29 accordance with this section to the Superior Court. The notice of appeal must be filed  
30 within 24 hours from the date of issuance of the order. A record of appeal must be  
31 completed and the appeal must be perfected within 5 days from the filing of notice to  
32 appeal. The Supreme Judicial Court shall, by court rule, provide for expedited appellate  
33 review of cases appealed under this subsection.

34 **9. Violation; penalties.** The following penalties apply to violations of this section.

35 A. A person may not intentionally perform an abortion with knowledge that, or with  
36 reckless disregard as to whether, the performance of the abortion is in violation of  
37 this section. A person who violates this paragraph commits a Class D crime.

38 B. An attending physician may not knowingly fail to perform an action required by  
39 this section. A person who violates this paragraph commits a civil violation for  
40 which a fine of not more than \$1,000 may be adjudged for each violation.

