

MAINE STATE LEGISLATURE

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126th MAINE LEGISLATURE

FIRST REGULAR SESSION-2013

Legislative Document

No. 1339

H.P. 956

House of Representatives, April 4, 2013

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

Reference to the Committee on Judiciary suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative DAVIS of Sangerville.
Cosponsored by Senator THIBODEAU of Waldo and
Representatives: AYOTTE of Caswell, CRAFTS of Lisbon, ESPLING of New Gloucester,
LONG of Sherman, PEAVEY HASKELL of Milford, REED of Carmel, 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 X, §2, is repealed.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 an act is not an abortion if
17 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. "Coerce" means to restrict or to dominate the choice of a minor or incapacitated
22 person by restraint, force, threat of force or deprivation of food and shelter.

23 C. "Consent" means a written statement signed by a minor's parent or legal guardian,
24 by an incapacitated person's legal guardian or by an alternate person described in
25 subsection 4 declaring that the affiant has been informed that the minor or
26 incapacitated person intends to seek an abortion and that the affiant consents to the
27 abortion.

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

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

36 F. "Medical emergency" means a condition that, on the basis of a physician's good
37 faith clinical judgment, so complicates the medical condition of a pregnant woman as

1 to necessitate the immediate abortion of her pregnancy to avert her death or to avert
2 serious risk of substantial and irreversible impairment of a major bodily function.

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

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

11 I. "Physical abuse" means the intentional infliction of a physical injury on a minor or
12 incapacitated person by the parent or legal guardian of that minor or incapacitated
13 person.

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

16 K. "Sexual abuse" means a sexual act or sexual contact, as defined in Title 17-A,
17 section 251, committed against a minor or incapacitated person by an adult who is
18 related to the minor or incapacitated person within the 2nd degree of consanguinity as
19 described in Title 17-A, section 556, subsection 1-C or the legal guardian of the
20 minor or incapacitated person.

21 **2. Prohibitions; written consent required.** If a pregnant woman is a minor or is an
22 incapacitated person, a physician may not perform an abortion upon her unless:

23 A. In the case of a minor, the physician performing the abortion first obtains the
24 written consent of the minor and one of her parents or her legal guardian, except as
25 provided in subsections 4 and 5; or

26 B. In the case of an incapacitated person, the physician performing the abortion first
27 obtains the written consent of her legal guardian, except as provided in subsections 4
28 and 5.

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

31 **3. Proof of identification and relationship to pregnant woman.** The physician
32 performing the abortion shall obtain from the parent or legal guardian providing consent
33 pursuant to subsection 2:

34 A. Government-issued proof of the identity of the parent or legal guardian; and

35 B. Written documentation that establishes the person providing consent is the lawful
36 parent or legal guardian of the minor or the legal guardian of the incapacitated
37 person.

38 The physician shall retain a copy of the proof of identification and age obtained
39 pursuant to paragraph B for at least 5 years after the minor has attained 18 years of
40 age or 7 years following the abortion, whichever is longer.

1 A physician receiving alternate consent pursuant to subsection 4 shall include in the
2 medical record of the minor or incapacitated person an affidavit stating: "I, (name of
3 physician), certify that according to my best information and belief, a reasonable
4 person under similar circumstances would rely on the information presented by
5 (minor's or incapacitated person's name) and (parent's or legal guardian's name) as
6 sufficient evidence of identity."

7 **4. Alternate consent.** If a pregnant minor or incapacitated person declares in a
8 signed written statement that she is a victim of sexual abuse, neglect or physical abuse by
9 either of her parents or her legal guardian, the attending physician shall obtain the written
10 consent as described in subsection 6 from the minor, if applicable, and from a brother or
11 sister who is at least 21 years of age or from a stepparent or grandparent specified by the
12 minor or incapacitated person.

13 A. The physician who intends to perform the abortion must certify in the minor's or
14 incapacitated person's medical record that the physician has received the written
15 declaration of abuse or neglect.

16 B. The physician shall obtain government-issued proof of identity and age from the
17 person providing alternate consent under this subsection.

18 C. The physician shall retain a copy of the proof of identification and age obtained
19 pursuant to paragraph B for at least 5 years after the minor has attained 18 years of
20 age or 7 years following the abortion, whichever is longer.

21 D. A physician receiving alternate consent pursuant to this subsection shall include
22 in the medical record of the minor or incapacitated person an affidavit stating: "I,
23 (name of physician), certify that according to my best information and belief, a
24 reasonable person under similar circumstances would rely on the information
25 presented by (minor's or incapacitated person's name) and (sibling's, stepparent's or
26 grandparent's name) as sufficient evidence of identity."

27 A physician relying in good faith on a written statement under this subsection is not
28 civily or criminally liable under this section for failing to obtain consent.

29 **5. Consent not required.** Consent under subsection 2 or 4 is not required if:

30 A. The attending physician certifies in the minor's or incapacitated person's medical
31 record that a medical emergency exists and there is insufficient time to obtain the
32 required consent; or

33 B. The consent requirement is waived under subsection 9.

34 **6. Disclosure and consent form.** A physician, using a form prescribed by the
35 department, shall obtain the consent required under subsection 2 or 4 prior to performing
36 an abortion on a minor or an incapacitated person.

37 A. The following conditions must be met in order for a form under this subsection to
38 be valid and the consent sufficient:

39 (1) The person providing consent under subsection 2 or 4 must initial each page
40 of the form indicating that the person has read and understands the information
41 included on that page;

1 (2) The person providing consent under subsection 2 or 4 must sign the last page
2 of the form in the presence of the physician performing the abortion or an
3 assistant of that physician;

4 (3) In the case of a minor, the minor must initial each list of risks and hazards as
5 described in paragraph B, subparagraph (4);

6 (4) In the case of a minor, the minor must sign the consent statement described
7 in paragraph B, subparagraph (6); and

8 (5) The physician must sign the declaration described in paragraph B,
9 subparagraph (7).

10 B. A form under this subsection must include, but is not limited to, the following:

11 (1) A description of the minor's or incapacitated person's rights, including her
12 right to informed consent;

13 (2) A description of the parent's or legal guardian's rights under the laws of this
14 State;

15 (3) A detailed description of the surgical or medical procedures that are planned
16 to be performed on the minor or incapacitated person;

17 (4) A detailed list of the risks and hazards related to the surgical or medical
18 procedures planned for the minor or incapacitated person, including, but not
19 limited to, the following:

20 (a) Risks and hazards of any surgical, medical or diagnostic procedure,
21 including potential for infection, blood clots in veins and lungs, hemorrhage,
22 allergic reactions or death;

23 (b) Risks and hazards of a surgical abortion, including, but not limited to,
24 hemorrhage, a hole in the uterus or uterine perforation or other damage to the
25 uterus, sterility, injury to the bowel or bladder, a hysterectomy as a result of
26 complication or injury during the procedure and failure to remove all
27 products of conception, which may result in an additional procedure;

28 (c) Risks and hazards of a medical or nonsurgical abortion, including, but
29 not limited to, hemorrhage, failure to remove all products of conception,
30 which may result in an additional procedure, sterility and possible
31 continuation of pregnancy; and

32 (d) Risks and hazards of the particular procedure planned for the minor or
33 incapacitated person, including, but not limited to, cramping of the uterus or
34 pelvic pain, infection of the uterus, fallopian tubes or ovaries, cervical
35 laceration, incompetent cervix and emergency treatment for any complication
36 under this subparagraph;

37 (5) A description of additional information that must be provided by the
38 physician to the minor or incapacitated person under the laws of this State,
39 including, but not limited to, the probable gestational age of the fetus, the risks
40 associated with continued pregnancy and the proposed abortion procedure and, at
41 the woman's request, alternatives to abortion and information about, and a list of,

1 public and private agencies that will provide assistance if the minor or
2 incapacitated person chooses to carry the pregnancy to term;

3 (6) In the case of a minor, a consent statement signed by the minor. The consent
4 statement must include, but is not limited to, the following statements that must
5 be individually initialed by the minor:

6 (a) The minor understands that the doctor is going to perform an abortion on
7 her that will result in the termination of her pregnancy;

8 (b) The minor is not being forced to have an abortion. She has the choice
9 not to have the abortion and may withdraw consent prior to the abortion;

10 (c) The minor gives her permission for the procedure;

11 (d) The minor understands that there are risks and hazards that could affect
12 her if she has the surgical or medical procedures planned for her;

13 (e) The minor has been given the opportunity to ask questions about her
14 condition, alternative forms of treatment, risk of nontreatment, the
15 procedures to be used and the risks and hazards involved;

16 (f) The minor has been given information required under the laws of this
17 State; and

18 (g) The minor has sufficient information to give informed consent;

19 (7) A physician declaration, signed by the physician performing the abortion,
20 stating that:

21 (a) The physician or the physician's assistant has explained the procedure
22 and the contents of the form under this subsection to the minor or
23 incapacitated person and the person providing consent under subsection 2 or
24 4 and has answered all questions asked by the minor or the person providing
25 consent pursuant to subsection 2 or 4; and

26 (b) To the best of the physician's knowledge, the minor or incapacitated
27 person and the person providing consent under subsection 2 or 4 have been
28 adequately informed and have consented to the procedure;

29 (8) A parental or alternative consent statement stating that the person providing
30 consent pursuant to subsection 2 or 4:

31 (a) Understands that the doctor signing the physician declaration described
32 in subparagraph (7) is going to perform an abortion on the minor or
33 incapacitated person that will terminate her pregnancy;

34 (b) Has had the opportunity to read the form under this subsection or the
35 form has been read to that person and that person has initialed each page;

36 (c) Has had the opportunity to ask the physician or the physician's assistant
37 questions about the information in the form under this subsection and the
38 surgical and medical procedures to be performed on the minor or
39 incapacitated person;

1 (d) Believes that the person providing consent has sufficient information to
2 give informed consent; and

3 (e) Affirms that, by signing the form under this subsection, the person is the
4 minor's or incapacitated person's father, mother, legal guardian, sibling,
5 grandparent or stepparent;

6 (9) A page for the signature of the person providing consent under subsection 2
7 or 4; and

8 (10) Any additional information that must be provided to a woman under the
9 laws of this State in order for a physician to obtain her informed consent prior to
10 performing an abortion.

11 **7. Coercion prohibited.** A parent, legal guardian or other person may not coerce a
12 minor or incapacitated person to have an abortion performed. If a minor or incapacitated
13 person is denied financial support by the minor's or incapacitated person's parent or
14 guardian due to the minor's or incapacitated person's refusal to have an abortion
15 performed, the minor or incapacitated person is deemed emancipated for the purposes of
16 eligibility for public assistance benefits, except that the benefits may not be used to obtain
17 an abortion.

18 **8. Reports.** A physician who performs one or more abortions under this section
19 during the previous month shall submit a report for that month to the department on a
20 form prescribed by the department. The report submitted by the physician may not
21 include patient names but must include:

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

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

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

26 D. The number of prior pregnancies and prior abortions of each minor or
27 incapacitated person.

28 The department shall compile the data on an annual basis and make the compilation
29 available to the public.

30 **9. Court order.** The Probate Court or District Court may issue an order for the
31 purpose of consenting to an abortion requested by a minor or incapacitated person under
32 the circumstances and procedures set out in this subsection. The requirements and
33 procedures under this subsection are available to minors and incapacitated persons
34 whether or not they are residents of this State.

35 A. The minor or incapacitated person may petition the Probate Court or the District
36 Court for a waiver of the consent requirement under subsection 2 or 4 and may
37 participate in proceedings on her own behalf. The petition must include a statement
38 that the petitioner is pregnant and is unemancipated. The petition must also include a
39 statement that consent has not been waived and that the petitioner wishes to have an
40 abortion without obtaining consent under subsection 2 or 4. The court may appoint a
41 guardian ad litem for the petitioner. A guardian ad litem appointed under this

1 paragraph shall act to maintain the confidentiality of the proceedings. The Probate
2 Court or the District Court shall advise the petitioner that she has a right to court-
3 appointed counsel and shall provide her with counsel upon her request.

4 B. Court proceedings under this subsection are confidential, and the court must
5 ensure the anonymity of the minor or incapacitated person. The court shall seal all
6 proceedings under this subsection. The minor or incapacitated person has the right to
7 file her petition in the Probate Court or District Court using a pseudonym or using her
8 initials. All documents related to the petition are confidential and may not be made
9 available to the public. The court shall give precedence over other pending matters to
10 proceedings under this subsection to the extent necessary to ensure that the court
11 reaches a decision promptly. At the hearing, the court shall hear evidence relating to
12 the emotional development, maturity, intellect and understanding of the petitioner.
13 The court shall rule and issue written findings of fact and conclusions of law within
14 48 hours of the time that the petition is filed, except that the 48-hour limitation may
15 be extended at the request of the petitioner. If the court fails to rule within the
16 48-hour period and an extension was not requested, the petition is deemed to have
17 been granted and the consent requirement is waived.

18 C. If the court finds by clear and convincing evidence that a petitioner under this
19 subsection is both sufficiently mature and well-informed to decide whether to have an
20 abortion, the court shall issue an order authorizing the petitioner to consent to the
21 abortion without the consent of a parent or guardian and the court shall execute the
22 required forms. If the court does not make the finding required in this paragraph or
23 paragraph D, it shall dismiss the petition.

24 D. If the court finds by clear and convincing evidence that there is a pattern of
25 physical abuse, sexual abuse or neglect of a petitioner under this subsection by one or
26 both of her parents or her guardian or that the notification of a parent or guardian is
27 not in the best interest of the petitioner, the court shall issue an order authorizing the
28 petitioner to consent to the abortion without the consent of a parent or guardian. If
29 the court does not make a finding specified in this paragraph or paragraph C, it shall
30 dismiss the petition.

31 E. The court shall issue written and specific factual findings and conclusions of law
32 supporting its decision under this subsection and shall order that a confidential record
33 of the evidence and the court's findings and conclusions be maintained.

34 F. An expedited confidential appeal is available as the Supreme Judicial Court
35 provides by rule to any minor or incapacitated person to whom the Probate Court or
36 District Court denies a waiver of consent under this subsection. An order authorizing
37 an abortion without consent is not subject to appeal.

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

41 **10. Appeal.** A minor or incapacitated person may appeal an order issued in
42 accordance with subsection 9 to the Superior Court. The notice of appeal must be filed
43 within 24 hours from the date of issuance of the order. A record of appeal must be
44 completed and the appeal must be perfected within 5 days from the filing of notice to

1 appeal. The Supreme Judicial Court shall, by court rule, provide for expedited appellate
2 review of cases appealed under this subsection.

3 **11. Violation; penalties.** The following penalties apply to violations of this section.

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

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

10 **12. Construction.** This section may not be construed as creating or recognizing a
11 right to abortion. This section may not be construed to make lawful an abortion that is
12 otherwise unlawful.

13 **13. Severability.** In the event that any provision of this section is held invalid or
14 unenforceable by its terms, or as applied to any person or circumstance, that provision
15 must be construed so as to give it the maximum effect permitted by law, unless such a
16 holding is one of complete invalidity or unenforceability, in which event that provision is
17 deemed severable and may not affect the remainder of this section or the application of
18 the provision to other persons not similarly situated or to other, dissimilar circumstances.

19 **14. Rights of intervention.** The Legislature, by joint order, may appoint one or
20 more of its members who sponsored or cosponsored legislation proposing this section as
21 a matter of right and in their official capacities to intervene to defend this section in any
22 case in which this section's constitutionality is challenged.

23 **Sec. 4. 22 MRSA §1598, sub-§1,** as amended by PL 1993, c. 61, §2, is further
24 amended to read:

25 **1. Policy.** It is the public policy of the State that the State not restrict a woman's
26 exercise of her private decision to terminate a pregnancy before viability except as
27 provided in section ~~1597-A~~ 1597-B. After viability an abortion may be performed only
28 when it is necessary to preserve the life or health of the mother. It is also the public policy
29 of the State that ~~all abortions~~ an abortion may be performed only by a physician.

30 SUMMARY

31 This bill repeals the current law concerning consent for a minor's abortion.

32 This bill requires the written consent of a parent or legal guardian before an abortion
33 may be performed on a minor or an incapacitated person. Consent may be given in certain
34 circumstances by a brother or sister who is at least 21 years of age or by a stepparent or a
35 grandparent. Consent is not required in a medical emergency. The Probate Court or
36 District Court may issue an order for the purpose of consenting to the abortion in 2
37 circumstances. First, the court may waive the need for 3rd-party consent if it finds by
38 clear and convincing evidence that the petitioner is both sufficiently mature and
39 well-informed to decide whether to have an abortion. Second, the court may waive the

1 need for 3rd-party consent if the court finds by clear and convincing evidence that there is
2 a pattern of physical or sexual abuse or neglect of the petitioner by one or both of her
3 parents or her guardian or that notification of a parent or guardian is not in the best
4 interests of the petitioner.