

MAINE STATE LEGISLATURE

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LAWS

OF THE

STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND FOURTEENTH LEGISLATURE

FIRST REGULAR SESSION

December 7, 1988 to July 1, 1989

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IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
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PUBLIC LAWS

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license granted ~~shall~~ may be assignable or transferable. State hospitals are not required to pay licensing fees.

Sec. 5. 22 MRSA §1817, as repealed and replaced by PL 1977, c. 694, §345, is amended to read:

§1817. Issuance of licenses

The department is authorized to issue licenses to operate hospitals, sanatoriums, convalescent homes, rest homes, nursing homes, ambulatory surgical facilities or other related institutions, which, after inspection, are found to comply with this chapter and any regulations adopted by the department. When any institution, upon inspection by the department, shall be found not to meet all requirements of this chapter or departmental regulations thereunder, the department is authorized to issue either a temporary license for a specified period not to exceed 90 days, during which time corrections specified by the department shall be made by the institution for compliance with this chapter and departmental regulations thereunder, if in the judgment of the commissioner the best interests of the public will be so served, or a conditional license setting forth conditions which shall be met by the institution to the satisfaction of the department. Failure of the institution to meet any of these conditions shall immediately void the conditional license by written notice thereof by the department to the conditional licensee or, if the licensee cannot be reached for personal service, by notice thereof left at the licensed premises. The fee for this temporary or conditional license shall be \$15 and shall be payable at the time of issuance of such a license. A new application for a regular license may be considered by the department if, when and after the conditions set forth by the department at the time of the issuance of this temporary or conditional license have been met and satisfactory evidence of this fact has been furnished to the department. The department may amend, modify or refuse to renew a license hereunder in conformity with the Maine Administrative Procedure Act, Title 5, chapter 375, or file a complaint with the Administrative Court requesting suspension or revocation of any license on any of the following grounds: Violation of this chapter or the rules and regulations issued pursuant thereto; permitting, aiding or abetting the commission of any illegal act in that institution; conduct of practices detrimental to the welfare of the patient; provided that whenever, on inspection by the department, conditions are found to exist which violate this chapter or departmental regulations issued thereunder which, in the opinion of the commissioner, immediately endanger the health or safety of patients, or both the health and safety, in any of the institutions or to such an extent as to create an emergency, the department by its duly authorized agents may, under the emergency provisions of Title 4, section 1153, request that the Administrative Court suspend or revoke the license.

See title page for effective date.

CHAPTER 573

H.P. 457 - L.D. 622

An Act to Require Parental Consent to a Minor's Abortion

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

Sec. 1. 4 MRSA §152, sub-§8 is enacted 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.

Sec. 2. 22 MRSA §1597-A is enacted to read:

§1597-A. Consent to a minor's decision to have an abortion

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

A. "Abortion" means the intentional interruption of a pregnancy by the application of external agents, whether chemical or physical, or the ingestion of chemical agents with an intention other than to produce a live birth or to remove a dead fetus.

B. "Counselor" means a person who is:

- (1) A psychiatrist;
- (2) A psychologist licensed under Title 32, chapter 56;
- (3) A social worker licensed under Title 32, chapter 83;
- (4) An ordained member of the clergy;
- (5) A physician's assistant registered by the Board of Registration in Medicine, Title 32, chapter 48;
- (6) A nurse practitioner registered by the Board of Registration in Medicine, Title 32, chapter 48;
- (7) A certified guidance counselor;
- (8) A registered professional nurse licensed under Title 32, chapter 31; or
- (9) A practical nurse licensed under Title 32, chapter 31.

C. "Minor" means a person who is less than 18 years of age.

2. Prohibitions; exceptions. Except as otherwise provided by law, no person may knowingly perform an abortion upon a pregnant minor unless:

A. The attending physician has received and will make part of the medical record the informed written consent of the minor and one parent, guardian or adult family member;

B. The attending physician has secured the informed written consent of the minor as prescribed in subsection 3 and the minor, under all the surrounding circumstances, is mentally and physically competent to give consent;

C. The minor has received the information and counseling required under subsection 4, has secured written verification of receiving the information and counseling and the attending physician has received and will make part of the medical record the informed written consent of the minor and the written verification of receiving information and counseling required under subsection 4; or

D. The Probate Court or District Court issues an order under subsection 6 on petition of the minor or the next friend of the minor for purposes of filing a petition for the minor, granting:

(1) To the minor majority rights for the sole purpose of consenting to the abortion and the attending physician has received the informed written consent of the minor; or

(2) To the minor consent to the abortion, when the court has given its informed written consent and the minor is having the abortion willingly, in compliance with subsection 7.

3. Informed consent; disallowance of recovery. No physician may perform an abortion upon a minor unless, prior to performing the abortion, the attending physician received the informed written consent of the minor.

A. To ensure that the consent for an abortion is informed consent, the attending physician shall:

(1) Inform the minor in a manner which, in the physician's professional judgment, is not misleading and which will be understood by the patient, of at least the following:

(a) According to the physician's best judgment the minor is pregnant;

(b) The number of weeks of duration of the pregnancy; and

(c) The particular risks associated with the minor's pregnancy, the abortion technique that may be performed and the risks involved for both;

(2) Provide the information and counseling described in subsection 4 or refer the minor to a counselor who will provide the information and counseling described in subsection 4; and

(3) Determines whether the minor is, under all the surrounding circumstances, mentally and physically competent to give consent.

B. No recovery may be allowed against any physician upon the grounds that the abortion was rendered without the informed consent of the minor when:

(1) The physician, in obtaining the minor's consent, acted in accordance with the standards of practice among members of the same health care profession with similar training and experience situated in the same or similar communities; or

(2) The physician has received and acted in good faith on the informed written consent to the abortion given by the minor to a counselor.

4. Information and counseling for minors. The provision of information and counseling by any physician or counselor for any pregnant minor for decision making regarding pregnancy shall be in accordance with this subsection.

A. Any physician or counselor providing pregnancy information and counseling under this subsection shall, in a manner that will be understood by the minor:

(1) Explain that the information being given to the minor is being given objectively and is not intended to coerce, persuade or induce the minor to choose either to have an abortion or to carry the pregnancy to term;

(2) Explain that the minor may withdraw a decision to have an abortion at any time before the abortion is performed or may reconsider a decision not to have an abortion at any time within the time period during which an abortion may legally be performed;

(3) Clearly and fully explore with the minor the alternative choices available for managing the pregnancy, including:

(a) Carrying the pregnancy to term and keeping the child;

(b) Carrying the pregnancy to term and placing the child with a relative or with another family through foster care or adoption;

(c) The elements of prenatal and postnatal care; and

(d) Having an abortion;

(4) Explain that public and private agencies are available to provide birth control information and that a list of these agencies and the services available from each will be provided if the minor requests;

(5) Discuss the possibility of involving the minor's parents, guardian or other adult family members in the minor's decision making concerning the pregnancy and explore whether the minor believes that involvement would be in the minor's best interests; and

(6) Provide adequate opportunity for the minor to ask any questions concerning the pregnancy, abortion, child care and adoption, and provide the information the minor seeks or, if the person cannot provide the information, indicate where the minor can receive the information.

B. After the person provides the information and counseling to a minor as required by this subsection, that person shall have the minor sign and date a form stating that:

(1) The minor has received information on prenatal care and alternatives to abortion and that there are agencies that will provide assistance;

(2) The minor has received an explanation that the minor may withdraw an abortion decision or reconsider a decision to carry a pregnancy to term;

(3) The alternatives available for managing the pregnancy have been clearly and fully explored with the minor;

(4) The minor has received an explanation about agencies available to provide birth control information;

(5) The minor has discussed with the person providing the information and counseling the possibility of involving the minor's parents, guardian or other adult family members in the minor's decision making about the pregnancy;

(6) The reasons for not involving the minor's parents, guardian or other adult family members are put in writing on the form by the minor or the person providing the information and counseling; and

(7) The minor has been given an adequate opportunity to ask questions.

The person providing the information and counseling shall also sign and date the form, and include that person's address and telephone number. The person shall keep a copy for that person's files and shall give the form to the minor or, if the minor requests and if the person providing the information is not the attending physician, transmit the form to the minor's attending physician.

5. Presumption of validity of informed written consent; rebuttal. An informed consent which is evidenced in writing containing information and statements provided in subsection 4 and which is signed by the minor shall be presumed to be a valid informed consent. This presumption may be subject to rebuttal only upon proof that the informed consent was obtained through fraud, deception or misrepresentation of material fact.

6. Court order concerning consent to abortion. The court may issue an order for the purpose of consenting to the abortion by the minor under the following circumstances and procedures.

A. The minor or next friend of the minor for the purposes of filing a petition may make an application to the Probate Court or District Court which shall assist the minor or next friend in preparing the petition. The minor or the next friend of the minor shall file a petition setting forth:

(1) The initials of the minor;

(2) The age of the minor;

(3) That the minor has been fully informed of the risks and consequences of the abortion;

(4) That the minor is of sound mind and has sufficient intellectual capacity to consent to the abortion;

(5) That, if the court does not grant the minor majority rights for the purpose of consent to the abortion, the court should find that the abortion is in the best interest of the minor and give judicial consent to the abortion;

(7) That, if the minor does not have private counsel, that the court may appoint counsel.

The minor or the next friend shall sign the petition.

B. The petition is a confidential record and the court files on the petition shall be impounded.

C. A hearing on the merits of the petition shall be held as soon as possible within 5 days of the filing of the petition. If any party is unable to afford counsel, the court shall appoint counsel at least 24 hours

before the time of the hearing. At the hearing, the court shall hear evidence relating to:

- (1) The emotional development, maturity, intellect and understanding of the minor;
- (2) The nature, possible consequences and alternatives to the abortion; and
- (3) Any other evidence that the court may find useful in determining whether the minor should be granted majority rights for the purpose of consenting to the abortion or whether the abortion is in the best interest of the minor.

The hearing on the petition shall be held as soon as possible within 5 days of the filing of the petition. The court shall conduct the hearing in private with only the minor, interested parties as determined by the court and necessary court officers or personnel present. The record of the hearing is not a public record.

D. In the decree, the court shall for good cause:

- (1) Grant the petition for majority rights for the sole purpose of consenting to the abortion;
- (2) Find the abortion to be in the best interest of the minor and give judicial consent to the abortion, setting forth the grounds for the finding; or
- (3) Deny the petition only if the court finds that the minor is not mature enough to make her own decision and that the abortion is not in her best interest.

E. If the petition is allowed, the informed consent of the minor, pursuant to a court grant of majority rights or the judicial consent, shall bar an action by the parent or guardian of the minor on the grounds of battery of the minor by those performing the abortion. The immunity granted shall only extend to the performance of the abortion and any necessary accompanying services which are performed in a competent manner.

F. The minor may appeal an order issued in accordance with this section to the Superior Court. The notice of appeal shall be filed within 24 hours from the date of issuance of the order. Any record on appeal shall be completed and the appeal shall be perfected within 5 days from the filing of notice to appeal. The Supreme Judicial Court shall, by court rule, provide for expedited appellate review of cases appealed under this section.

7. Abortion performed against the minor's will. No abortion may be performed on any minor against her will, except that an abortion may be performed against the will of

a minor pursuant to a court order described in subsection 6 that the abortion is necessary to preserve the life of the minor.

8. Violation; penalties. Any person who knowingly performs or aids in the performance of an abortion in violation of this section commits a Class D crime. Any attending physician or counselor who knowingly fails to perform any action required by this section commits a civil violation for which a forfeiture of not more than \$1,000 may be adjudged for each violation.

9. Nonseverability. In the event that any portion of this section is held invalid, it is the intent of the Legislature that this entire section shall be invalid.

Sec. 3. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

	1989-90	1990-91
JUDICIAL DEPARTMENT		
Indigent Defense		
All Other	\$19,069	\$25,425
Provides funds for additional requests for court appointed counsel.		

See title page for effective date.

CHAPTER 574

H.P. 1144 - L.D. 1587

An Act to Establish Greater Communication in the Rule-making Process and to Provide Better Standards for the Adoption of Rules

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

Sec. 1. 5 MRSA §8002, sub-§9, 1A, as amended by PL 1979, c. 425, §3, is further amended to read:

A. "Rule" means the whole or any part of every regulation, standard, code, statement of policy, or other agency statement of general applicability, including the amendment, suspension or repeal of any prior rule, that is or is intended to be judicially enforceable and implements, interprets or makes specific the law administered by the agency, or describes the procedures or practices of the agency. ~~All rules promulgated after July 1, 1979, shall, to the maximum extent feasible, as determined by the affected agency, use plain and clear English, which can be readily understood by the public.~~