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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**

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 X, §2, is repealed.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 civily 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.

