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

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

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:

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~~1597-B;

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 X, §2, is repealed.

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

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

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

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

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

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

(3) Remove an ectopic pregnancy.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. Alternate consent. If a pregnant minor or incapacitated person declares in a signed written statement that she is a victim of sexual abuse, neglect or physical abuse by either of her parents or her legal guardian, the attending physician shall obtain the notarized written consent from a brother or sister who is at least 21 years of age or from a stepparent or grandparent specified by the minor or incapacitated

person. The physician who intends to perform the abortion must certify in the minor's or incapacitated person's medical record that the physician has received the written declaration of abuse or neglect. A physician relying in good faith on a written statement under this subsection is not civilly or criminally liable under this section for failing to obtain consent.

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

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

B. Consent is waived under subsection 7.

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

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

A. The number of consents obtained under this section;

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

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

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

Patient names may not be included on the forms.

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

A. The minor or incapacitated person may petition the Probate Court or the District Court for a waiver of the consent requirement under subsection 2 or 3 and may participate in proceedings on her own behalf. The petition must include a statement that the petitioner is pregnant and is unemancipated. The petition must also include a statement that consent has not been waived and that the petitioner wishes to have an abortion without obtaining consent under subsection 2 or 3. The court may appoint a guardian ad litem for the petitioner. A guardian ad litem appointed under

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

B. Court proceedings under this subsection are confidential and the court must ensure the anonymity of the minor or incapacitated person. The court shall seal all proceedings under this subsection. The minor or incapacitated person has the right to file her petition in the Probate Court or District Court using a pseudonym or using her initials. All documents related to the petition are confidential and may not be made available to the public. The court shall give precedence over other pending matters to proceedings under this subsection to the extent necessary to ensure that the court reaches a decision promptly. The court shall rule and issue written findings of fact and conclusions of law within 48 hours of the time that the petition is filed, except that the 48-hour limitation may be extended at the request of the minor or incapacitated person. If the court fails to rule within the 48-hour period and an extension was not requested, the petition is deemed to have been granted and the consent requirement is waived.

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

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

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

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

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

8. Appeal. A minor or incapacitated person may appeal an order issued in accordance with this section to the Superior Court. The notice of appeal must be filed within 24 hours from the date of issuance of the order. A record of appeal must be completed and the appeal must 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 subsection.

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

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

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

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

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

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

Sec. 4. 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-A1597-B. 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.

SUMMARY

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

This bill requires the notarized written consent of a parent or legal guardian before an abortion may be performed on a minor or an incapacitated person. Consent may be given in certain circumstances by a brother or sister who is at least 21 years of age or by a stepparent or a grandparent. Consent is not required in a medical emergency. The Probate Court or District Court may issue an order for the purpose of consenting to the abortion in 2 circumstances. First, the court may waive the need for parental consent if it finds by clear and convincing evidence that the petitioner is both sufficiently mature and well-informed to decide whether to have an abortion. Second, the court may waive the need for parental consent if the court finds by clear and convincing evidence that there is a pattern of physical or sexual abuse or neglect of the petitioner by one or both of her parents or her guardian, or that notification of a parent or guardian is not in the best interests of the petitioner.