

HB 1181-FN - AS INTRODUCED

2022 SESSION

22-2088

05/08

HOUSE BILL ***1181-FN***

AN ACT allowing the biological father of an unborn child to petition the court for an injunction prohibiting the biological mother from having an abortion.

SPONSORS: Rep. Greeson, Graf. 16; Rep. Stapleton, Sull. 5

COMMITTEE: Judiciary

ANALYSIS

This bill allows the biological father of an unborn child to petition the court for an injunction prohibiting the biological mother from having an abortion.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears ~~[in brackets and struckthrough.]~~
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Two

AN ACT allowing the biological father of an unborn child to petition the court for an injunction prohibiting the biological mother from having an abortion.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 New Chapter; Petition for Injunction to Prohibit Abortion. Amend RSA by inserting after
2 chapter 546-C the following new chapter:

3 CHAPTER 546-D

4 PETITION FOR INJUNCTION TO PROHIBIT ABORTION

5 546-D:1 Petition for Injunction to Prohibit Abortion.

6 I. A person may petition the judicial branch family division to request an injunction to
7 prohibit a woman who is pregnant with the person's unborn child from obtaining an abortion.

8 II. Venue for a petition filed pursuant to this section is in the county in which the
9 respondent resides or, if the respondent is not a resident of this state, the county in which the
10 petitioner resides. The court shall cause a copy of the petition and notice of the date set for the
11 hearing on such petition to be served upon the respondent at least 5 days prior to such hearing.

12 III. To ensure that, if a petition is ultimately denied, the mother would still be able to
13 lawfully proceed with seeking an abortion at her discretion, a petition for injunction shall be filed
14 and injunction issued or rejected before reaching any established limitations in law, such as
15 prohibitions after a certain number of weeks of pregnancy.

16 IV. Within 14 days of the petition being filed, the court shall hold a hearing at which both
17 parties may present evidence. At a minimum, petitioner shall demonstrate that:

18 (a) The petitioner is the biological father of the respondent's unborn child; and

19 (b) There is a reasonable probability that the respondent will seek an abortion prior to
20 giving birth to the unborn child.

21 V. This section shall not require the petitioner to provide DNA evidence to prove that the
22 petitioner is the father of the respondent's unborn child.

23 (a) If the parties are not married, the petitioner shall execute a voluntary
24 acknowledgment of paternity that is not subject to being rescinded.

25 (1) The voluntary acknowledgment of paternity shall be proven by filing a certified
26 copy with the court.

27 (2) The voluntary acknowledgment of paternity may be executed without the
28 signature of the child's mother.

1 (3) A voluntary acknowledgment of paternity for the purpose of seeking an
2 injunction shall not result in the father's name, surname, or information being entered on the child's
3 birth certificate unless an injunction is issued.

4 (b) If the parties are married, the petitioner is automatically assumed to be the father.

5 (c) If the mother denies paternity asserted under subparagraphs (a) or (b), the petitioner
6 shall either withdraw the petition or seek DNA evidence to substantiate claim of paternity given the
7 following:

8 (1) Petitioner must declare intentions to obtain DNA paternity immediately.

9 (2) Petitioner assumes all costs associated with DNA paternity testing for both
10 himself and the mother.

11 (3) Petitioner must obtain and submit DNA test results to the court within 15 days
12 of declaring intent.

13 (4) DNA must be obtained, and testing performed, by a legally accredited DNA
14 testing facility whose credentials allow for the results to be accepted by the presiding court.

15 (5) Because of the non-invasive manner in which DNA is obtained, the mother must
16 submit to the DNA testing and shall not obtain an abortion during this time. She does not have to
17 report for testing at the same time as the father, but she does have to report to the same testing
18 location as the father, in order to protect chain of custody.

19 (6) If DNA evidence indicates petitioner is not the father, the petition shall be
20 immediately dismissed.

21 VI. An injunction issued pursuant to this section shall prohibit the mother from seeking or
22 obtaining an abortion.

23 VII.(a) If the mother has been served with a copy of the petition and notice of the hearing, a
24 temporary injunction is effective when entered. She may not obtain an abortion during this time. If
25 the petition for permanent injunction is denied, the temporary injunction is immediately lifted.

26 (b) For purposes of this section, an injunction is considered entered when signed by:

27 (1) The judge and all parties or counsel;

28 (2) The judge and one party or counsel, and contains a certificate of counsel that a
29 copy of the proposed order has been served on all other parties or counsel; or

30 (3) The judge, and contains a certificate of the clerk that a copy has been served on
31 all other parties or counsel.

32 (c)(1) Service upon a party or counsel must be made by delivering to the party or counsel
33 a copy of the injunction, or by the clerk mailing the injunction to the party's last known address. In
34 the event the party's last known address is unknown and cannot be ascertained upon diligent
35 inquiry, the certificate of service must so state.

36 (2) Service by mail is complete upon mailing. In order to complete service of process
37 in a timely manner on a party who lives outside the county where the order was issued, the clerk

1 may transmit the order to the sheriff in the appropriate county by facsimile or other electronic
2 transmission.

3 (3) All mailing shall be certified to prove date of mailing.

4 (d) Notwithstanding when an injunction is considered entered under this paragraph, if
5 the court finds that the protection of the petitioner's unborn child so requires, the court may order,
6 in the manner provided by law or rule, that the injunction take effect immediately.

7 VIII. Upon violation of an injunction issued pursuant to this section, the court may hold the
8 respondent in civil or criminal contempt.

9 IX. Failure to Appear.

10 (a) If the mother does not appear at the hearing, the injunction shall be granted unless
11 otherwise prohibited by this statute.

12 (b) If the father does not appear, the injunction shall be denied.

13 546-D:2 Grounds for Denial of Petition.

14 I. The court shall deny the petition for injunction if one or more of the following is true:

15 (a) If the pregnancy is the result of rape which the mother has claimed prior to petition
16 for injunction.

17 (b) If the father is currently imprisoned for any other crimes.

18 (c) If the father has been convicted of previous sexual crimes or violent crimes against
19 any person, or crimes against children.

20 (d) If the pregnancy is the result of incest.

21 (1) If incest is claimed, DNA testing must be conducted at the expense of the person
22 making the claim of incest to determine if the child is the result of an incestuous relationship.

23 (A) DNA testing must occur within 10 days.

24 (B) Both parties must submit to DNA testing.

25 (2) If testing refutes incest, the injunction shall be issued unless one of the other
26 reasons for denial applies.

27 (e) If the father violates any restraining orders imposed upon him by any court during
28 the processing of the petition,

29 (f) If the father is arrested for any violent crimes, sexual crimes, or crimes against a
30 child during the processing of the petition.

31 II. The court shall rescind an injunction if:

32 (a) The father is arrested for any violent crime, sexual crime, or crime against a child; or

33 (b) The father violates any restraining orders imposed upon him by any court.

34 III. Denial of a petition must be done in a timely manner so as to ensure the mother has
35 ample time to obtain a legal abortion, if she desires to do so.

1 IV. If a petition is rescinded and it is past any legally imposed viability limits, the court may
2 grant the mother permission to obtain an abortion, if she chooses to do so. All costs for this
3 procedure shall be paid by the father.

4 546-D:3 Injunction.

5 I. If an injunction is issued under this chapter, the father shall:

6 (a) Accept all prenatal medical expenses, including prenatal vitamins and medication,
7 not covered by the mother's insurance, Medicare, or Medicaid up to and including birth.

8 (b) Provide the mother with \$250 per month for the duration of pregnancy for the
9 purpose of proper and adequate nutrition.

10 (c) Obey any other instructions given him by the court.

11 II. If an injunction is issued under this chapter, the mother shall:

12 (a) Not obtain an abortion.

13 (b) Attend all appropriate medical appointments to promote and ensure a safe and
14 healthy pregnancy. The mother may attend medical appointments without the father and may
15 attend the physician of her choice. The mother must follow the medical advice of her physician to
16 ensure a safe and healthy pregnancy.

17 546-D:4 Emergency Petition; Restraining Order.

18 I. If the mother's physician determines that the pregnancy poses imminent threat to the life
19 of the mother, the mother may file an emergency petition to rescind the injunction. Certified
20 documentation by the physician recommending an abortion must accompany the emergency petition.
21 The court shall grant the emergency petition if the pregnancy poses imminent threat to the life of
22 the mother.

23 II. The mother may request, and the court may issue, a restraining order against the father
24 with whatever conditions the court deems appropriate to ensure the safety of the mother. Any
25 violations by the father shall result in the injunction being rescinded.

26 2 Effective Date. This act shall take effect January 1, 2023.

**HB 1181-FN- FISCAL NOTE
AS INTRODUCED**

AN ACT allowing the biological father of an unborn child to petition the court for an injunction prohibiting the biological mother from having an abortion.

FISCAL IMPACT: State County Local None

STATE:	Estimated Increase / (Decrease)			
	FY 2022	FY 2023	FY 2024	FY 2025
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
Funding Source:	<input checked="" type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/> Other

METHODOLOGY:

This bill allows the biological father of an unborn child to petition the court for an injunction prohibiting the biological mother from having an abortion.

The Judicial Branch indicates the fiscal impact of this bill is indeterminable. This bill would create a new chapter, RSA 546-C, authorizing the biological father of an unborn child to request an injunction to prohibit a woman who is pregnant with the person’s unborn child from obtaining an abortion. Petitions would be filed in Circuit Court, Family Division in the county in which the respondent resides or, if not a resident, the county in which the petitioner resides and would be required to be heard and ruled upon on an expedited basis. The Judicial Branch has no information upon which to estimate how many petitions could be filed under this bill and therefore cannot determine the fiscal impact on judicial resources.

If the court is required to make service of the petition and it is made by the sheriff, the fee for service is established by RSA 104:31. The fiscal impact due to increases in the amount paid to sheriffs for service is indeterminable because the Judicial Branch is unable to determine the number of petitions that will require service.

AGENCIES CONTACTED:

Judicial Branch