

Maine

22 MRS § 1594. Failure to preserve life of live born person

Whenever an abortion procedure results in a live birth, failure to take all reasonable steps, in keeping with good medical practice, to preserve the life and health of the live born person shall subject the responsible party or parties to Maine law governing homicide, manslaughter and civil liability for wrongful death and medical malpractice.

§ 1595. Live born and live birth, defined

Live born" and "live birth," as used in this chapter, shall mean a product of conception after complete expulsion or extraction from its mother, irrespective of the duration of pregnancy, which breathes or shows any other evidence of life such as beating of the heart, pulsation of the umbilical cord or definite movement of voluntary muscles, whether or not the umbilical cord has been cut or the placenta is attached. Each product of such a birth is considered live born and fully recognized as a human person under Maine law. [PL 1977, c. 696, §186 (NEW).]

SECTION HISTORY

PL 1977, c. 696, §186 (NEW)

§ 1596. Abortion and miscarriage data

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, regardless of the length of gestation.

B. "Miscarriage" means an interruption of a pregnancy other than as provided in paragraph A of a fetus of less than 20 weeks gestation.

C. "Health care professional" means a physician or physician assistant licensed under Title 32, chapter 36 or 48 or a person licensed under Title 32, chapter 31 to practice as an advanced practice registered nurse.

2. Abortion reports. A report of each abortion performed must be made to the Department of Health and Human Services on forms prescribed by the department. These report forms may not identify the patient by name or otherwise and must contain only the information requested on the United States Standard Report of Induced Termination of Pregnancy, published by the National Center for Health Statistics, dated January 1978, or any more recent revision of a standard report form.

The form containing that information and data must be prepared and signed by the health care professional who performed the abortion and transmitted to the department not later than 10 days following the end of the month in which the abortion is performed.

A health care professional who reports data on an abortion pursuant to this section is immune from any criminal liability for that abortion under section 1598.

3. Miscarriage reports. A report of each miscarriage must be made by the health care professional in attendance at or after the occurrence of the miscarriage to the Department of Health and Human Services on forms prescribed by the department. These report forms must contain all of the applicable information required on the certificate of fetal death in current use.

The report form must be prepared and signed by the health care professional in attendance at or after the occurrence of the miscarriage and transmitted to the department not later than 10 days following the end of the month in which the miscarriage occurs.

The identity of any patient or health care professional reporting pursuant to this section is confidential and the department shall take the steps necessary to ensure the confidentiality of the identity of patients or health care professionals reporting pursuant to this section.

22 MRS § 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 assistant licensed by the Board of Licensure in Medicine, Title 32, chapter 48;
- (6) A nurse practitioner registered by the Board of Licensure 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, a health care professional, as defined in section 1596, subsection 1, paragraph C, may not knowingly perform an abortion upon a pregnant minor unless:

A. The health care professional 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 health care professional 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, the minor has secured written verification of receiving the information and counseling and the health care professional 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 health care professional 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. A health care professional, as defined in section 1596, subsection 1, paragraph C, may not perform an abortion upon a minor unless, prior to performing the abortion, that health care professional has received the informed written consent of the minor.

A. To ensure that the consent for an abortion is informed consent, the health care professional who will perform the abortion shall:

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

- (a) According to the health care professional'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. Recovery is not allowed against any health care professional upon the grounds that the abortion was rendered without the informed consent of the minor when:

- (1) The health care professional, 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 health care professional 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 health care professional, as defined in section 1596, subsection 1, paragraph C, or counselor for any pregnant minor for decision making regarding pregnancy must be in accordance with this subsection.

A. Any health care professional 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 health care professional performing the abortion, transmit the form to the health care professional performing the abortion.

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;
- (6) 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. Violations; penalties. The following penalties apply to violations of this section.

- A.** A person may not knowingly perform or aid in the performance of an abortion in violation of this section. A person who violates this paragraph commits a Class D crime.
- B.** A health care professional, as defined in section 1596, subsection 1, paragraph C, or counselor may not knowingly fail to perform any 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.

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.

22 MRS § 1598. Abortions

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-A. 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 health care professional, as defined in section 1596, subsection 1, paragraph C.

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

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

B. "Viability" means the state of fetal development when the life of the fetus may be continued indefinitely outside the womb by natural or artificial life-supportive systems.

3. Persons who may perform abortions; penalties.

A. Only a person licensed under Title 32, chapter 36 or 48 to practice in the State as an osteopathic or medical physician or physician assistant or a person licensed under Title 32, chapter 31 to practice in the State as an advanced practice registered nurse may perform an abortion on another person.

B. Any person not so licensed who knowingly performs an abortion on another person or any person who knowingly assists a nonlicensed person to perform an abortion on another person is guilty of a Class C crime.

4. Abortions after viability; criminal liability. A person who performs an abortion after viability is guilty of a Class D crime if:

A. He knowingly disregarded the viability of the fetus; and

B. He knew that the abortion was not necessary for the preservation of the life or health of the mother.

§ 1599-A. Informed consent to abortion

1. Consent by the woman. A health care professional, as defined in section 1596, subsection 1, paragraph C, may not perform an abortion unless, prior to the performance, the health care professional certifies in writing that the woman gave her informed written consent, freely and without coercion.

2. Informed consent. To ensure that the consent for an abortion is truly informed consent, the health care professional, as defined in section 1596, subsection 1, paragraph C, shall inform the woman, in a manner that in the health care professional's professional judgment is not misleading and that will be understood by the patient, of at least the following:

A. According to the health care professional's best judgment she is pregnant;

B. The number of weeks elapsed from the probable time of the conception;

C. The particular risks associated with her own pregnancy and the abortion technique to be performed; and

D. At the woman's request, alternatives to abortion such as childbirth and adoption and information concerning public and private agencies that will provide the woman with economic and other assistance to carry the fetus to term, including, if the woman so requests, a list of these agencies and the services available from each.