

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SIXTH LEGISLATURE

Legislative Document

No. 1824

H. P. 1373

House of Representatives, April 3, 1973

Referred to the Committee on Judiciary. Sent up for concurrence and ordered printed.

E. LOUISE LINCOLN, Clerk

Presented by Mr. Dunleavy of Presque Isle.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-THREE

AN ACT to Prevent Criminal Abortion Practices.

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

R. S., T. 17, c. 4, additional. Title 17 of the Revised Statutes is amended by adding a new chapter 4 to read as follows:

CHAPTER 4

ABORTION

§ 71. Definitions

As used in this chapter, unless the context otherwise indicates, the following words shall have the following meanings.

1. **Abortion.** "Abortion" is any act, procedure or use of any instrument, medicine, drug or other means, supplied for, administered to or prescribed for a pregnant woman by any person, including the pregnant woman herself, with either the intent or result of producing the miscarriage of said pregnant woman or terminating the unborn life with which she is pregnant.

2. **Conception.** "Conception" is the union of a human sperm and a human ovum.

3. **Consent.** "Consent" with reference to a pregnant woman, her parents and the man by whom said pregnant woman became pregnant, means written agreement to submit to an abortion only after the consenting party has had a full explanation of the details, effect and consequences of the abortion procedure upon both the mother and the unborn life with which she is pregnant, as evidenced by the signature of the consenting party on a writ-

ten form of explanation and consent to be promulgated by the State Department of Health and Welfare. A person who is non compos mentis cannot consent.

4. Hospital. "Hospital" shall mean only those institutions licensed and accredited as hospitals as provided by law in the State of Maine, and in addition to said licensing and accreditation any institution to be defined and recognized as a hospital for purposes of this chapter to qualify for performing abortions shall maintain a department and staff for obstetrics and shall also maintain intensive care facilities, equipment and staff for intensive care and treatment of pregnant women and newborn persons.

5. Live born and live birth. "Live born" and "live birth" 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.

6. Physician. "Physician" is any person licensed to practice medicine in this State as provided by law, and who satisfies the staff requirements of the hospital where the abortion is performed, in those cases requiring that it be performed in a hospital, and any other requirements in respect of training or experience which the hospital staff or administration may establish by rule or regulation.

7. Pregnant. "Pregnant" is the term to define a woman who has unborn life within her reproductive organs as a result of conception.

8. Trimester. "Trimester" is any one of 3 equal periods of time of the normal gestation period of the pregnant woman in question derived by dividing such period of gestation into 3 equal parts, each to be designated as the first trimester, 2nd trimester and 3rd trimester, respectively.

9. Unborn life. "Unborn life" in that special form of human life that comes into existence at the moment of conception and exists in the womb of its mother during its human gestation period.

§ 72. Criminal abortion; physicians and hospitals

Whoever knowingly performs, counsels, undergoes or assists in an abortion which is not performed by a duly licensed physician in a hospital shall be punished by a fine of not more than \$1,000 and by imprisonment for not more than 11 months. If an abortion is performed during the first trimester of pregnancy, that fact shall be prima facie evidence that a violation of this section has occurred unless said abortion was performed by a duly licensed physician in a hospital.

§ 73. —consent needed

Whoever knowingly performs, counsels, undergoes or assists in an abortion where the woman upon whom the abortion is being performed has not consented in writing thereto, and if said woman is a minor where her living

parents or persons standing in loco parentis have not also so consented, shall be punished by a fine of not more than \$1,000 and by imprisonment for not more than 11 months unless proceeding without said consent was necessary to save the life of the pregnant woman concerned. This written consent shall be filed with the State Department of Health and Welfare.

§ 74. —consent of father

Whoever knowingly performs, counsels, undergoes or assists in an abortion where the father of the unborn life, being known to said person, has not consented to said abortion as provided in this chapter, shall be punished by a fine of not more than \$1,000 and by imprisonment for not more than 11 months unless proceeding without said consent was necessary to save the life of the pregnant woman concerned.

§ 75. —physician's certificate

Whoever, being a physician, knowingly performs, counsels or assists in an abortion during the 3rd trimester of pregnancy without having first certified in writing to the hospital in which the abortion is to be performed, that in his best medical judgment, after proper examination, review of history, and such consultation as may be required by good medical practice or the hospital administration, the abortion is necessary to preserve the life, now or in the foreseeable future, of the pregnant woman shall be punished by a fine of not more than \$5,000 and by imprisonment for not more than 5 years. This section shall not apply where immediate emergency action was necessary to save the life of the pregnant woman.

§ 76. —waiting period

Whoever, except when necessary to save the life of the pregnant woman, knowingly performs, counsels, undergoes or assists in an abortion which occurs less than 24 hours after the signing of the written consent by the required consenting parties shall be punished by a fine of not more than \$1,000 and by imprisonment for not more than 11 months.

§ 77. —recording health data

Whoever, being a physician, knowingly performs, counsels or assists in an abortion without compiling a full report on said abortion within 24 hours after completion of the procedure and filing said report within 72 hours after completion of the report with the Maine Department of Health and Welfare shall be punished by a fine of not more than \$1,000 and by imprisonment for not more than 3 months. Such report shall include, but not be limited to, the following:

1. The age, marital status and state and county of residence of the woman who is aborted;
2. The place where the abortion is performed;
3. The full name and address of the physicians performing or assisting in the abortion;

4. The marital status and state and county of residence of the father, if known;
5. Medical reasons for the abortion;
6. Medical procedures employed to administer the abortion;
7. The length of the aborted fetus;
8. The weight of the aborted fetus;
9. The mother's obstetrical history including dates of other abortions, if any.

§ 78. Experimentation with live born persons

Whoever knowingly performs, counsels or assists in any scientific, laboratory or research experimentation or study upon any live born person, except to preserve and protect the life or health of said live born person, shall be punished by a fine of not more than \$5,000 and by imprisonment for not more than 5 years.

§ 79. Live born persons entitled to medical care

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.

STATEMENT OF FACT

The protection of the health and life of all pregnant women in Maine and that of the unborn life with which they are pregnant is a vital state interest. The place where an abortion is performed should be able to meet any emergency which might arise, which is the reason for restricting the procedure to hospitals. Informed consent before a procedure so psychologically and physically traumatic as abortion is in keeping with sound medical practice. A father's paternal rights should be recognized and protected. Minors should not be pressured into abortions they don't want. Detailed reporting on abortions will assure compliance with laws to protect pregnant women and assist scientific advancement in fetalogy and maternity. Experiments on living human beings is a practice to be prohibited and severe criminal sanction should attend any abuse.