

## **IC 16-34-2**

### Chapter 2. Requirements for Performance of Abortion; Criminal Penalties

#### **IC 16-34-2-0.5**

##### **Medical emergency**

Sec 0.5. A medical emergency, for purposes of this chapter, does not include a patient's claim or diagnosis that the patient would engage in conduct that would result in the patient's death or substantial physical impairment. Under the circumstances described in this section and unless the following would pose a great risk of death or substantial physical impairment of the patient, the physician shall terminate the patient's pregnancy in a manner that, in a physician's reasonable medical judgment, would result in the best opportunity for the fetus to survive.

*As added by P.L.193-2011, SEC.7.*

#### **IC 16-34-2-1**

##### **Required circumstances of legal abortion**

Sec. 1. (a) Abortion shall in all instances be a criminal act, except when performed under the following circumstances:

(1) During the first trimester of pregnancy for reasons based upon the professional, medical judgment of the pregnant woman's physician if:

(A) the abortion is performed by the physician;

(B) the woman submitting to the abortion has filed her consent with her physician. However, if in the judgment of the physician the abortion is necessary to preserve the life of the woman, her consent is not required; and

(C) the woman submitting to the abortion has filed with her physician the written consent of her parent or legal guardian if required under section 4 of this chapter.

(2) After the first trimester of pregnancy and before the earlier of viability of the fetus or twenty (20) weeks of postfertilization age, for reasons based upon the professional, medical judgment of the pregnant woman's physician if:

(A) all the circumstances and provisions required for legal abortion during the first trimester are present and adhered to; and

(B) the abortion is performed in a hospital or ambulatory outpatient surgical center (as defined in IC 16-18-2-14).

(3) Except as provided in subsection (b), at the earlier of viability of the fetus or twenty (20) weeks of postfertilization age and any time after, for reasons based upon the professional, medical judgment of the pregnant woman's physician if:

(A) all the circumstances and provisions required for legal abortion before the earlier of viability of the fetus or twenty (20) weeks of postfertilization age are present and adhered to;

(B) the abortion is performed in compliance with section 3

of this chapter; and

(C) before the abortion the attending physician shall certify in writing to the hospital in which the abortion is to be performed, that in the attending physician's professional, medical judgment, after proper examination and review of the woman's history, the abortion is necessary to prevent a substantial permanent impairment of the life or physical health of the pregnant woman. All facts and reasons supporting the certification shall be set forth by the physician in writing and attached to the certificate.

(b) A person may not knowingly or intentionally perform a partial birth abortion unless a physician reasonably believes that:

- (1) performing the partial birth abortion is necessary to save the mother's life; and
- (2) no other medical procedure is sufficient to save the mother's life.

*As added by P.L.2-1993, SEC.17. Amended by P.L.145-1997, SEC.2; P.L.193-2011, SEC.8.*

#### **IC 16-34-2-1.1**

##### **Voluntary and informed consent required; viewing of fetal ultrasound and hearing auscultation of fetal heart tone**

Sec. 1.1. (a) An abortion shall not be performed except with the voluntary and informed consent of the pregnant woman upon whom the abortion is to be performed. Except in the case of a medical emergency, consent to an abortion is voluntary and informed only if the following conditions are met:

(1) At least eighteen (18) hours before the abortion and in the presence of the pregnant woman, the physician who is to perform the abortion, the referring physician or a physician assistant (as defined in IC 25-27.5-2-10), an advanced practice nurse (as defined in IC 25-23-1-1(b)), or a midwife (as defined in IC 34-18-2-19) to whom the responsibility has been delegated by the physician who is to perform the abortion or the referring physician has informed the pregnant woman orally and in writing of the following:

(A) The name of the physician performing the abortion, the physician's medical license number, and an emergency telephone number where the physician or the physician's designee may be contacted on a twenty-four (24) hour a day, seven (7) day a week basis.

(B) That follow-up care by the physician or the physician's designee (if the designee is licensed under IC 25-22.5) and is available on an appropriate and timely basis when clinically necessary.

(C) The nature of the proposed procedure.

(D) Objective scientific information of the risks of and alternatives to the procedure, including:

- (i) the risk of infection and hemorrhage;
- (ii) the potential danger to a subsequent pregnancy; and

- (iii) the potential danger of infertility.
  - (E) That human physical life begins when a human ovum is fertilized by a human sperm.
  - (F) The probable gestational age of the fetus at the time the abortion is to be performed, including:
    - (i) a picture or drawing of a fetus;
    - (ii) the dimensions of a fetus; and
    - (iii) relevant information on the potential survival of an unborn fetus;at this stage of development.
  - (G) That objective scientific information shows that a fetus can feel pain at or before twenty (20) weeks of postfertilization age.
  - (H) The medical risks associated with carrying the fetus to term.
  - (I) The availability of fetal ultrasound imaging and auscultation of fetal heart tone services to enable the pregnant woman to view the image and hear the heartbeat of the fetus and how to obtain access to these services.
  - (J) That the pregnancy of a child less than fifteen (15) years of age may constitute child abuse under Indiana law if the act included an adult and must be reported to the department of child services or the local law enforcement agency under IC 31-33-5.
- (2) At least eighteen (18) hours before the abortion, the pregnant woman will be informed orally and in writing of the following:
- (A) That medical assistance benefits may be available for prenatal care, childbirth, and neonatal care from the county office of the division of family resources.
  - (B) That the father of the unborn fetus is legally required to assist in the support of the child. In the case of rape, the information required under this clause may be omitted.
  - (C) That adoption alternatives are available and that adoptive parents may legally pay the costs of prenatal care, childbirth, and neonatal care.
  - (D) That there are physical risks to the pregnant woman in having an abortion, both during the abortion procedure and after.
  - (E) That Indiana has enacted the safe haven law under IC 31-34-2.5.
  - (F) The:
    - (i) Internet web site address of the state department of health's web site; and
    - (ii) description of the information that will be provided on the web site and that are;described in section 1.5 of this chapter.
- (3) The pregnant woman certifies in writing, before the abortion is performed, that:
- (A) the information required by subdivisions (1) and (2) has

been provided to the pregnant woman;  
(B) the pregnant woman has been offered the opportunity to view the fetal ultrasound imaging and hear the auscultation of the fetal heart tone if the fetal heart tone is audible and that the woman has:

- (i) viewed or refused to view the offered fetal ultrasound imaging; and
- (ii) listened to or refused to listen to the offered auscultation of the fetal heart tone if the fetal heart tone is audible; and

(C) the pregnant woman has been given a written copy of the printed materials described in section 1.5 of this chapter.

(b) Before an abortion is performed, the pregnant woman shall view the fetal ultrasound imaging and hear the auscultation of the fetal heart tone if the fetal heart tone is audible unless the pregnant woman certifies in writing, before the abortion is performed, that the pregnant woman does not want to view the fetal ultrasound imaging. *As added by P.L.187-1995, SEC.4. Amended by P.L.1-1998, SEC.118; P.L.36-2005, SEC.1; P.L.146-2008, SEC.444; P.L.44-2009, SEC.32; P.L.193-2011, SEC.9.*

#### **IC 16-34-2-1.2**

##### **Physician's duty to inform women in medical emergency of necessity for abortion**

Sec. 1.2. When a medical emergency compels the performance of an abortion, the physician who will perform the abortion shall inform the woman, before the abortion if possible, of the medical indications supporting the physician's judgment that an abortion is necessary to avert:

- (1) the woman's death; or
- (2) a substantial and irreversible impairment of a major bodily function.

*As added by P.L.187-1995, SEC.5.*

#### **IC 16-34-2-1.5**

##### **Posting of web site links to materials; consultation with 211 service providers and Indiana utility regulatory commission**

Sec. 1.5. (a) The state department shall post Internet web site links concerning materials described in this section on the state department's Internet web site.

(b) The state department shall post Internet web site links relating to materials that include the following:

- (1) Objective scientific information concerning the probable anatomical and physiological characteristics of a fetus every two (2) weeks of gestational age, including the following:
  - (A) Realistic pictures in color for each age of the fetus, including the dimensions of the fetus.
  - (B) Whether there is any possibility of the fetus surviving outside the womb.
- (2) Objective scientific information concerning the medical

risks associated with each abortion procedure, including the following:

- (A) The risks of infection and hemorrhaging.
  - (B) The potential danger:
    - (i) to a subsequent pregnancy; or
    - (ii) of infertility.
  - (3) Information concerning the medical risks associated with carrying the child to term.
  - (4) Information that medical assistance benefits may be available for prenatal care, childbirth, and neonatal care.
  - (5) Information that the biological father is liable for assistance in support of the child, regardless of whether the biological father has offered to pay for an abortion.
  - (6) Information regarding telephone 211 dialing code services for accessing human services as described in IC 8-1-19.5, and the types of services that are available through this service.
- (c) In complying with subsection (b)(6), the state department shall consult with the recognized 211 service providers and the Indiana utility regulatory commission as required by IC 8-1-19.5-9.  
*As added by P.L.193-2011, SEC.10.*

#### **IC 16-34-2-2**

##### **Responsibilities of attending physician; determination of postfertilization age; disciplinary action for violation**

Sec. 2. (a) It shall be the responsibility of the attending physician to do the following:

- (1) Determine in accordance with accepted medical standards the postfertilization age of the fetus and which trimester the pregnant woman receiving the abortion is in.
  - (2) Determine whether the fetus is viable.
  - (3) Certify that determination as part of any written reports required of the attending physician by the state department or the facility in which the abortion is performed.
- (b) In making a determination under this section of the postfertilization age of the fetus, the attending physician shall do the following:
- (1) Question the patient concerning the date of fertilization.
  - (2) Perform or cause to be performed medical examinations and tests that a reasonably prudent physician would conduct to accurately diagnose the postfertilization age of the fetus.
- (c) Except in the case of a medical emergency (as described in section 0.5 of this chapter), a physician that violates this section is subject to disciplinary action under IC 25-1-9.  
*As added by P.L.2-1993, SEC.17. Amended by P.L.193-2011, SEC.11.*

#### **IC 16-34-2-3**

##### **Conditions for abortion after viability or 20 weeks; attendance of physician for preservation of life and health of viable unborn child; certificates of birth or death; offense for violation; ward**

Sec. 3. (a) All abortions performed on and after the earlier of the time a fetus is viable or the time the postfertilization age of the fetus is at least twenty (20) weeks shall be:

- (1) governed by section 1(a)(3) and 1(b) of this chapter;
- (2) performed in a hospital having premature birth intensive care units, unless compliance with this requirement would result in an increased risk to the life or health of the mother; and
- (3) performed in the presence of a second physician as provided in subsection (b).

(b) An abortion may be performed after the earlier of the time a fetus is viable or the time the postfertilization age of the fetus is at least twenty (20) weeks only if there is in attendance a physician, other than the physician performing the abortion, who shall take control of and provide immediate care for a child born alive as a result of the abortion. During the performance of the abortion, the physician performing the abortion, and after the abortion, the physician required by this subsection to be in attendance, shall take all reasonable steps in keeping with good medical practice, consistent with the procedure used, to preserve the life and health of the viable unborn child. However, this subsection does not apply if compliance would result in an increased risk to the life or health of the mother.

(c) Any fetus born alive shall be treated as a person under the law, and a birth certificate shall be issued certifying the child's birth even though the child may subsequently die, in which event a death certificate shall be issued. 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 persons to Indiana laws governing homicide, manslaughter, and civil liability for wrongful death and medical malpractice.

(d) If, before the abortion, the mother, and if married, her husband, has or have stated in writing that she does or they do not wish to keep the child in the event that the abortion results in a live birth, and this writing is not retracted before the abortion, the child, if born alive, shall immediately upon birth become a ward of the department of child services.

*As added by P.L.2-1993, SEC.17. Amended by P.L.4-1993, SEC.243; P.L.5-1993, SEC.256; P.L.145-1997, SEC.3; P.L.146-2008, SEC.445; P.L.193-2011, SEC.12.*

#### **IC 16-34-2-4**

##### **Written consent of parent or guardian of unemancipated pregnant woman under 18 years of age; conditions of waiver; representation by attorney; appeal; confidential records; emergency abortions**

Sec. 4. (a) No physician shall perform an abortion on an unemancipated pregnant woman less than eighteen (18) years of age without first having obtained the written consent of one (1) of the parents or the legal guardian of the minor pregnant woman.

(b) A minor:

- (1) who objects to having to obtain the written consent of her parent or legal guardian under this section; or

(2) whose parent or legal guardian refuses to consent to an abortion;

may petition, on her own behalf or by next friend, the juvenile court in the county in which the pregnant woman resides or in which the abortion is to be performed, for a waiver of the parental consent requirement under subsection (a). A next friend may not be a physician or provider of abortion services, representative of the physician or provider, or other person that may receive a direct financial benefit from the performance of an abortion.

(c) A physician who feels that compliance with the parental consent requirement in subsection (a) would have an adverse effect on the welfare of the pregnant minor or on her pregnancy may petition the juvenile court within twenty-four (24) hours of the abortion request for a waiver of the parental consent requirement under subsection (a).

(d) The juvenile court must rule on a petition filed by a pregnant minor under subsection (b) or by her physician under subsection (c) within forty-eight (48) hours of the filing of the petition. Before ruling on the petition, the court shall consider the concerns expressed by the pregnant minor and her physician. The requirement of parental consent under this section shall be waived by the juvenile court if the court finds that the minor is mature enough to make the abortion decision independently or that an abortion would be in the minor's best interests.

(e) Unless the juvenile court finds that the pregnant minor is already represented by an attorney, the juvenile court shall appoint an attorney to represent the pregnant minor in a waiver proceeding brought by the minor under subsection (b) and on any appeals. The cost of legal representation appointed for the minor under this section shall be paid by the county.

(f) A minor or her physician who desires to appeal an adverse judgment of the juvenile court in a waiver proceeding under subsection (b) or (c) is entitled to an expedited appeal, under rules to be adopted by the supreme court.

(g) All records of the juvenile court and of the supreme court or the court of appeals that are made as a result of proceedings conducted under this section are confidential.

(h) A minor who initiates legal proceedings under this section is exempt from the payment of filing fees.

(i) This section shall not apply where there is an emergency need for a medical procedure to be performed such that continuation of the pregnancy provides an immediate threat and grave risk to the life or health of the pregnant woman and the attending physician so certifies in writing.

*As added by P.L.2-1993, SEC.17. Amended by P.L.193-2011, SEC.13.*

#### **IC 16-34-2-4.5**

**Requirement for admitting privileges or agreement; notification to patient of hospital and access to follow-up care**

Sec. 4.5. (a) A physician may not perform an abortion unless the physician:

- (1) has admitting privileges at a hospital located in the county where abortions are provided or a contiguous county; or
- (2) has entered into an agreement with a physician who has admitting privileges at a hospital in the county or contiguous county concerning the management of possible complications of the services provided.

(b) A physician who performs an abortion shall notify the patient of the location of the hospital at which the physician or a physician with whom the physician has entered into an agreement under subsection (a)(2) has admitting privileges and where the patient may receive follow-up care by the physician if complications arise.

*As added by P.L.193-2011, SEC.14.*

### **IC 16-34-2-5 Version a**

#### **Forms to be completed by physician; offenses**

*Note: This version of section amended by P.L.74-2011, SEC.1. See also following version of this section amended by P.L.193-2011, SEC.15.*

Sec. 5. (a) Every medical facility where abortions may be performed shall be supplied with forms drafted by the state department, the purpose and function of which shall be the improvement of maternal health and life through the compilation of relevant maternal life and health factors and data, and a further purpose and function shall be to monitor all abortions performed in Indiana to assure the abortions are done only under the authorized provisions of the law. Such forms shall include, among other things, the following:

- (1) The age of the woman who is aborted.
- (2) The place where the abortion is performed.
- (3) The full name and address of the physicians performing the abortion.
- (4) The name of the father if known.
- (5) The age of the father, or the approximate age of the father if the father's age is unknown.
- (6) If after viability, the medical reason for the abortion.
- (7) The medical procedure employed to administer the abortion.
- (8) The mother's obstetrical history, including dates of other abortions, if any.
- (9) The results of pathological examinations if performed.
- (10) Information as to whether the fetus was delivered alive.
- (11) Records of all maternal deaths occurring within the health facility where the abortion was performed.
- (12) The date of the pregnancy termination.
- (13) The date the form was received by the state department.

(b) The form provided for in subsection (a) shall be completed by the physician performing the abortion and shall be transmitted to the state department not later than July 30 for each abortion performed in the first six (6) months of that year and not later than January 30

for each abortion performed for the last six (6) months of the preceding year. However, if an abortion is performed on a female who is less than fourteen (14) years of age, the physician performing the abortion shall transmit the form to the state department of health and the department of child services within three (3) days after the abortion is performed.

(c) The dates in subsection (a)(12) and (a)(13) may not be redacted for any use of the form.

(d) Each failure to file the completed form on time as required under this section is a Class B misdemeanor.

*As added by P.L.2-1993, SEC.17. Amended by P.L.74-2011, SEC.1.*

#### **IC 16-34-2-5 Version b**

##### **Forms for monitoring abortions; information requirements; completion by physician; compilation of annual public report**

*Note: This version of section amended by P.L.193-2011, SEC.15. See also preceding version of this section amended by P.L.74-2011, SEC.1.*

Sec. 5. (a) Every medical facility where abortions may be performed shall be supplied with forms drafted by the state department, the purpose and function of which shall be the improvement of maternal health and life through the compilation of relevant maternal life and health factors and data, and a further purpose and function shall be to monitor all abortions performed in Indiana to assure the abortions are done only under the authorized provisions of the law. Such forms shall include, among other things, the following:

- (1) The age of the woman who is aborted.
- (2) The place where the abortion is performed.
- (3) The full name and address of the physicians performing the abortion.
- (4) The name of the father if known.
- (5) The postfertilization age of the fetus, the manner in which the postfertilization age was determined, and if after the earlier of the time the fetus obtains viability or the time the postfertilization age of the fetus is at least twenty (20) weeks, the medical reason for the abortion.
- (6) The medical procedure employed to administer the abortion, and if the medical procedure performed on a fetus who is viable or has a postfertilization age of at least twenty (20) weeks:
  - (A) whether the method of abortion used was a method, that in the reasonable judgment of a physician, would provide the best opportunity for the fetus to survive; and
  - (B) the basis for the determination that the pregnant woman had a condition described in this chapter that required the abortion to avert the death of or serious impairment to the pregnant woman.
- (7) The mother's obstetrical history, including dates of other abortions, if any.
- (8) The results of pathological examinations if performed.

(9) Information as to whether the fetus was delivered alive.

(10) Records of all maternal deaths occurring within the health facility where the abortion was performed.

(b) The form provided for in subsection (a) shall be completed by the physician performing the abortion and shall be transmitted to the state department not later than July 30 for each abortion performed in the first six (6) months of that year and not later than January 30 for each abortion performed for the last six (6) months of the preceding year. Each failure to file the form on time as required is a Class B misdemeanor.

(c) Not later than June 30 of each year, the state department shall compile a public report providing the following:

(1) Statistics for the previous calendar year from the information submitted under this section.

(2) Statistics for previous calendar years compiled by the state department under this subsection, with updated information for the calendar year that was submitted to the state department after the compilation of the statistics.

The state department shall ensure that no identifying information of a pregnant woman is contained in the report.

*As added by P.L.2-1993, SEC.17. Amended by P.L.193-2011, SEC.15.*

#### **IC 16-34-2-6**

##### **Experiments performed on aborted fetus prohibited**

Sec. 6. No experiments except pathological examinations may be conducted on any fetus aborted under this chapter, nor may any fetus so aborted be transported out of Indiana for experimental purposes. A person who conducts such an experiment or so transports such a fetus commits a Class A misdemeanor.

*As added by P.L.2-1993, SEC.17.*

#### **IC 16-34-2-7**

##### **Performance of unlawful abortion; offense**

Sec. 7. (a) Except as provided in subsections (b) and (c), a person who knowingly or intentionally performs an abortion not expressly provided for in this chapter commits a Class C felony.

(b) A physician who performs an abortion intentionally or knowingly in violation of section 1(a)(1)(C) or 4 of this chapter commits a Class A misdemeanor.

(c) A person who knowingly or intentionally performs an abortion in violation of section 1.1 of this chapter commits a Class A infraction.

(d) A woman upon whom a partial birth abortion is performed may not be prosecuted for violating or conspiring to violate section 1(b) of this chapter.

*As added by P.L.2-1993, SEC.17. Amended by P.L.187-1995, SEC.6; P.L.145-1997, SEC.4.*