

## Miscarriage Burial Laws

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### Issue

Describe laws in Connecticut and other states regarding the disposition of miscarriage remains.

### Summary

The National Institutes of Health [estimates](#) that 15 to 20 percent of known pregnancies in the United States result in miscarriage. Generally, a miscarriage refers to the unexpected loss of a fetus before the 20<sup>th</sup> week of pregnancy; loss after this time period is considered a stillbirth. Miscarriage rates can be challenging to determine as most states, including Connecticut, only require data reporting and collection for stillbirths and not miscarriages. Additionally, miscarriages may occur in the early stages of pregnancy, before the pregnancy is known.

When a miscarriage occurs, health care facilities generally dispose of the remains as medical waste. However, some parents have expressed the desire to control the disposition of fetal remains and choose to bury or cremate them. It appears that most states, including Connecticut, do not have laws addressing the issue, although health care facilities or state agencies may adopt related policies. States that do have such laws either require health care facilities to notify parents of their ability to bury or cremate their miscarried fetus or reference parents' ability to do so.

Notification requirements vary across states. Some states, such as Massachusetts and Illinois, require health care facilities to notify only one parent, whereas other states, such as Michigan, require both parents to be notified. Additionally, some states, such as Massachusetts, require health care facilities to inform parents of the availability of counseling regarding the fetal death.

## **Connecticut**

Connecticut law does not address a parent's ability to direct the final disposition of the remains of a miscarriage or stillbirth. According to the Department of Public Health, health care providers and facilities must report stillbirths and abortions to the department, but are not required to report miscarriages. For stillbirths, the state issues a fetal death certificate and, upon a parent's written request, a ["certificate of stillbirth."](#)

## **Examples of States' Laws on Miscarriage Burial Notification**

### ***Illinois***

Illinois law requires a hospital that has custody of a miscarried fetus to notify the mother of her right to arrange for its burial or cremation. The notification may include other disposition options, such as a ceremony, certificate, or common burial or cremation. The law requires the Department of Public Health to develop notification forms for hospitals to provide to mothers.

If the mother chooses to arrange for the burial or cremation of the fetus, the disposition is subject to the laws and rules that apply to stillbirths. The mother must make this choice in writing and within 24 hours after the hospital notifies her of her right to arrange for the disposition of the fetus ([210 ILCS § 85/11.4](#)).

### ***Massachusetts***

Massachusetts law requires a parent to direct the disposition of their fetal remains, which may include burial, entombment, or cremation. If the parent does not choose any of the options, the fetal remains must be disposed of in a manner that does not create a public health hazard by (1) the hospital or (2) in cases where a fetal death occurs without medical attendance or from violence or unnatural causes, the medical examiner. The law defines a fetal death as a death prior to the complete expulsion or extraction from the mother, irrespective of the pregnancy's duration. (It does not include abortion.)

Before the disposition of a miscarried fetus, the law requires the hospital to ensure the parent is informed of his or her right to direct the disposition of the remains. The hospital must also notify the parent (1) in writing of its policy on the disposition of fetal remains and (2) of the availability of a chaplain for counseling ([Mass. Gen. Laws ch. 111, § 202](#)).

## ***Michigan***

Michigan law requires a funeral director or person assuming responsibility for the final disposition of fetal remains, including miscarriages, to obtain written authorization from both parents, or just the mother, if she is unmarried. The authorization may allow the fetal remains to be buried, cremated, or incinerated by a funeral director, health care facility where the fetus was miscarried, or an institution or agency authorized to accept donated fetal remains. If the fetal remains are cremated, the county medical examiner must sign the authorization.

Additionally, the law specifies that a religious service or ceremony is not required as part of the final disposition of the fetal remains. After the final disposition, the funeral director or health care facility must keep the required disposition permit for at least seven years.

The law applies to the final disposition of a dead fetus, regardless of the pregnancy's duration ([Mich. Comp. Laws Ann. § 333.2848](#)).

## **Examples of States' Laws Referencing Miscarriage Burials**

### ***Colorado***

Colorado law specifically provides that in every instance of fetal death, the pregnant woman has the option of treating the remains pursuant to the state's mortuary laws (e.g., burial or cremation).

For every fetal death, the law requires the health care provider, upon request of the pregnant woman, to release to the woman or her designee the remains for final disposition in accordance with applicable law. The request must be made before or immediately following the expulsion or extraction of the fetal remains. The law specifies that these provisions do not require health care providers to maintain or preserve the fetal remains unless such a timely request is made to do so.

These provisions do not prohibit a health care provider from conducting or acquiring medical tests on the fetal remains prior to release. If a test is conducted and the health care provider receives a request for the remains, the provider must release the remains to the pregnant woman or her designee, where medically permissible and otherwise permitted by law.

The law provides that a health care provider is immune from civil or criminal liability as to any actions taken in good faith compliance with these provisions. The provider may also require a release of liability before releasing such remains ([Colo. Rev. Stat. Ann. § 25-2-110.5](#)).

## ***Maine***

Maine regulations require appropriate local officials to issue a burial-transit permit for disposition of the remains of a fetus of less than 20 weeks' gestation if (1) the facility (e.g., a hospital) presents a statement indicating that the parents request a burial or other disposition outside of the facility and (2) the required miscarriage report has been filed. The statement must name the person who will be responsible for the disposition and must contain that person's signature ([10-146 Me. Code. R. Ch. 1, § 7](#)).

Under Maine law, the attending physician must report on miscarriages (i.e., lost pregnancies of less than 20 weeks' gestation) to the state Department of Health and Human Services, no later than 10 days after the end of the month when the miscarriage occurs. The department must take the necessary steps to ensure the confidentiality of the patient's or physician's identity ([Me. Rev. Stat. Ann. title 22, § 1596](#)).

## ***Oregon***

Oregon law specifically provides that, upon request of a parent or the parent's authorized representative, an appropriate official may issue a disposition permit for a fetus that is not reportable as a fetal death ([Or. Rev. Stat. Ann. § 432.158](#)).

(The law requires reports of fetal deaths of 350 grams or more or, if the weight is unknown, of 20 or more completed weeks of gestation; see [Or. Rev. Stat. Ann. § 432.143](#)).

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