

STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND TWENTY-THREE

H.P. 1082 - L.D. 1683

An Act to Provide for Civil Recovery Based on Nonconsensual Removal of or Tampering with a Condom and Considering Sexual Assault in Evaluating Parental Rights

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

Sec. 1. 14 MRSA c. 750 is enacted to read:

CHAPTER 750

CIVIL RECOVERY FOR NONCONSENSUAL REMOVAL OF OR TAMPERING WITH A CONDOM

§8305. Civil recovery for nonconsensual removal of or tampering with a condom

1. Definitions. As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

A. "Compensatory damages" includes, but is not limited to, past and future medical expenses, lost earnings, pain, suffering, mental anguish, emotional distress and loss of enjoyment of life.

B. "Sexual act" has the same meaning as in Title 17-A, section 251, subsection 1, paragraph C.

C. "Tamper" means to alter or use an item in a way that renders the item ineffective.

2. Civil action; relief. A person who engages in a consensual sexual act with another person with the understanding that a condom would be used during the sexual act may bring a civil action against the other person for actual damages, compensatory damages, punitive damages, injunctive relief, any combination of those or any other appropriate relief based on the nonconsensual removal of or tampering with a condom if the other person:

A. Knowingly removes or tampers with the condom;

B. Knowingly uses a damaged condom; or

C. Misrepresents the person's intentions to use a condom.

A prevailing plaintiff is entitled to an award of attorney's fees and costs.

3. Previous consent. Evidence of consent to engage in a previous sexual act without a condom does not by itself demonstrate consent for engaging in a subsequent sexual act without a condom.

4. No limitation. The provisions of this chapter may not be construed to prohibit or limit any other cause of action that a person may have against another person who performs an action described by subsection 2.

Sec. 2. 19-A MRSA §1653, sub-§6-D is enacted to read:

6-D. Considerations for cases in which a child is conceived as a result of sexual assault or nonconsensual removal of or tampering with a condom. The court shall establish conditions of parent-child contact in cases in which a child was conceived as a result of sexual assault as described in Title 17-A, chapter 11 or as a result of nonconsensual removal of or tampering with a condom as described in Title 14, section 8305, subsection 2 as follows.

A. In evaluating parental rights and responsibilities, the court shall evaluate the specific facts of the case to assess:

(1) Whether the sexual assault or nonconsensual removal of or tampering with a condom indicates that there may be safety concerns for the child;

(2) Whether it would be in the best interest of the child for the parent who committed sexual assault or nonconsensual removal of or tampering with a condom to receive any specific counseling or treatment; and

(3) Any effect contact between the parents would have on the parent who was a victim of sexual assault or nonconsensual removal of or tampering with a condom.

In response to this evaluation, the court shall order any conditions the court concludes are appropriate to meet the child's best interest while minimizing the effect on the parent who experienced the sexual assault or nonconsensual removal of or tampering with a condom. The court may order specific conditions, including but not limited to limiting the contact between the parents or limiting or putting specific conditions on parent-child contact, including supervision.

B. The court may not order a victim of sexual assault or nonconsensual removal of or tampering with a condom to attend counseling with the parent who has committed sexual assault or nonconsensual removal of or tampering with a condom.

Sec. 3. 19-A MRSA §4103, sub-§1, ¶B, as enacted by PL 2021, c. 647, Pt. A, §3 and affected by Pt. B, §65, is amended to read:

B. Who has been a victim of conduct:

(1) Described as stalking in Title 17-A, section 210-A;

(2) Constituting any crime described in Title 17-A, chapter 11;

(3) Described as unauthorized dissemination of certain private images in Title 17-A, section 511-A; or

(4) Described as aggravated sex trafficking or sex trafficking in Title 17-A, section 852 or 853, respectively; or

(5) Constituting a civil cause of action under Title 14, section 8305.

For purposes of this paragraph, the conduct need not have been perpetrated by a family or household member, a dating partner or an individual related by consanguinity or affinity;

Sec. 4. 19-A MRSA §4103, sub-§2, ¶B, as corrected by RR 2021, c. 2, Pt. A, §40, is amended by amending subparagraph (5) to read:

(5) Described as sexual exploitation of a minor or dissemination of sexually explicit material in Title 17-A, section 282 or 283, respectively; ~~or~~

Sec. 5. 19-A MRSA §4103, sub-§2, ¶B, as corrected by RR 2021, c. 2, Pt. A, §40, is amended by amending subparagraph (6) to read:

(6) Described as harassment by telephone or by electronic communication device in Title 17-A, section 506, subsection 1, paragraph A-1 or A-2; ~~or~~

Sec. 6. 19-A MRSA §4103, sub-§2, ¶B, as corrected by RR 2021, c. 2, Pt. A, §40, is amended by enacting a new subparagraph (7) to read:

(7) Constituting a civil cause of action under Title 14, section 8305.