



Lawyering for Reproductive Justice

HB 626: Pregnant Person's Freedom Act

Position: Support

If/When/How: Lawyering for Reproductive Justice urges the Health & Government Operations Committee to support HB 626, the Pregnant Person's Freedom Act. As hostility toward reproductive freedom escalates across the country, there has been an increase in misuses of criminal laws to punish people for the outcomes of their pregnancies. HB 626 would allow Marylanders to be assured that they will not be criminally investigated or punished for having an abortion or experiencing a pregnancy loss, permitting them to seek medical care without hesitation. It also protects Marylanders who assist others in exercising their right to reproductive freedom from being subject to harassing civil suits or criminal prosecutions emerging from states seeking to strip people of their reproductive autonomy.

If/When/How is a national non-profit that organizes the legal profession and transforms law and policy to ensure that everyone can self-determine their reproductive lives with dignity and free from coercion or punishment. A critical aspect of our work to realize reproductive justice for everyone is halting the criminalization of people who self-manage abortions or experience pregnancy losses. Through the legal advocacy and support we provide, we bear witness to the devastation that occurs in people's lives when they are dragged through legal proceedings based on their pregnancy outcomes.

Across the country, since *Roe v. Wade* was decided, more than 1200 people have been criminally prosecuted or otherwise deprived of their liberty based on their pregnancy. Some experienced a miscarriage or stillbirth. Others self-managed an abortion, seeking care outside the formal health care system when clinic-based abortion was inaccessible. All of them were subject to degrading and humiliating legal investigations that turned their lives upside-down, turning their private health information into evidence, separating them from their families, and making them pariahs in their communities.

These prosecutions occur even in states where access to abortion is protected.

In New York, a woman was charged with manslaughter after she was involved in a tragic car accident and her baby, delivered by emergency premature cesarean surgery due to the woman's extensive injuries, died shortly after birth. She faced a sentence of up to nine years in prison before New York's highest court overturned her

conviction, acknowledging that prosecutors had misused the law and that people may not be prosecuted for experiencing a pregnancy loss.¹

In California, at least two women have been charged with feticide after experiencing stillbirths that the prosecutor alleged were due to their use of a criminalized drug. Even though California law, like Maryland's, forbids criminalizing harm to a fetus based on acts or omissions of the pregnant individual, they were charged by the prosecutor and urged by their defense attorney to plead guilty in hopes of a lenient sentence. *They pleaded guilty to a crime that doesn't exist.* One of them is currently serving an 11-year sentence because of her stillbirth. These misuses of the law prompted the California Office of the Attorney General to issue its first-ever Legal Alert, putting prosecutors on notice that such charges are unlawful.²

Maryland must take proactive steps to ensure that people are not criminalized for abortions or pregnancy losses, and send a clear signal in the law – to prosecutors and defense attorneys alike – that it is inappropriate and unlawful to charge people with a crime based on their reproductive health outcomes.

Marylanders who support people who need abortions are also at risk.

Maryland has a long history of protecting reproductive freedom, and for being a haven state for those unable to access abortion care where they live. But within the last year, lawmakers in states hostile to abortion rights have shown that they will not be satisfied with restricting the rights of people within their borders, and have started passing laws that permit civil lawsuits and even criminal penalties against people who “aid or abet” abortions. This could include abortion funds, which help people living in poverty fund their abortions, or practical support networks, which help people travel to Maryland to seek abortion care.

These actions could also potentially ensnare people who support their loved ones, like a Pennsylvania mother who was prosecuted after helping her daughter have a safe self-managed abortion with pills they ordered on the internet.³ Although the abortion was successful and without complication, and the woman did not know a prescription was needed to order the medications, she was sentenced to 9-18 months in jail for “abortion consultation” and “practicing pharmacy without a license.”

¹ *People v. Jorgensen*, 41 N.E.3d 778, 781–82 (N.Y. 2015).

² Yesenia Amaro, *California AG Reinforces Pregnant Women Can't Be Charged with Murder for Pregnancy Loss*, Fresno Bee, Jan. 6, 2022, <https://www.fresnobee.com/news/california/article257107307.html>.

³ Emily Bazelon, *A Mother in Jail for Helping Her Daughter Have an Abortion*, N.Y. Times Mag. (Sept. 22, 2014), <https://www.nytimes.com/2014/09/22/magazine/a-mother-in-jail-for-helping-her-daughter-have-an-abortion.html>.

Criminalization of people for ending their own pregnancies hurts people, their families and communities, and undermines public health and the rule of law.

Criminalizing people for their pregnancy outcomes is dangerous and unsupported in the law. Among its many harms, this misuse of the criminal legal system disproportionately harms people of color, immigrants, people living in poverty, and others at the intersections of those identities and experiences, who are more likely to be criminalized for their pregnancy outcomes. Misusing the law to punish people for their pregnancy outcomes also violates human and constitutional rights, and undermines the rule of law. That's why groups like the American Bar Association oppose the criminalization of people for self-managed abortion or for experiencing pregnancy loss.⁴

Such criminalization also undermines public health. When getting medical care means risking criminal punishment, people are less likely to seek medical care when they need it. That's why groups like the American Medical Association,⁵ the American College of Obstetricians and Gynecologists,⁶ and the American Public Health Association⁷ oppose the criminalization of people for self-managed abortion or for other pregnancy outcomes.

No one should be criminalized for ending their own pregnancy, for experiencing a pregnancy loss, or for helping someone access reproductive health care. HB 626 would help ensure that all Marylanders are free from criminalization of their reproductive lives. We urge you to support the bill.

⁴ American Bar Association, *Resolution 107A* (Feb. 22, 2021), <https://www.americanbar.org/content/dam/aba/directories/policy/midyear-2021/107a-midyear-2021.pdf>.

⁵ Am. Med. Ass'n, *Oppose the Criminalization of Self-Induced Abortion H-5.980* (2018), <http://policysearch.ama-assn.org/policyfinder/detail/abortion?uri=%2FAMADoc%2FHOD.xml-H-5.980.xml>. See also Physicians for Reprod. Health, *Self-Managed Abortion Statement 7* (Nov. 2018), <http://prh.org/wp-content/uploads/2018/12/Self-Managed-Abortion-Position-Statement-2018.pdf> ("No person should be subject to legal action for decisions they make about ending a pregnancy.").

⁶ Am. Coll. of Obstetricians & Gynecologists, *Statement of Policy: Opposition to Criminalization of Individuals During Pregnancy and the Postpartum Period* (2020), <https://www.acog.org/clinical-information/policy-and-position-statements/statements-of-policy/2020/opposition-criminalization-of-individuals-pregnancy-and-postpartum-period>; Am. Coll. of Obstetricians & Gynecologists, *Decriminalization of Self-Induced Abortion: Position Statement* (Dec. 2017), <https://www.acog.org/clinical-information/policy-and-position-statements/position-statements/2017/decriminalization-of-self-induced-abortion>.

⁷ Am. Pub. Health Ass'n, *Policy No. 20217: Decriminalization of and Support for Self-Managed Abortion*, Oct. 26, 2021, <https://www.apha.org/Policies-and-Advocacy/Public-Health-Policy-Statements/Policy-Database/2022/01/07/Decriminalization-of-and-Support-for-Self-Managed-Abortion>.