



HB0626 Pregnant Person's Freedom Act

Presented to Hon. Shane Pendergrass and Members of the House Health & Government Operations Committee

March 11, 2022 1:00 p.m.

POSITION: SUPPORT

The People's Commission to Decriminalize Maryland **urges the House Health & Government Operations Committee a favorable report on HB0626 – Pregnant Person's Freedom Act**, sponsored by Delegate Nicole Williams.

Maryland is among best-practice states with respect to its feticide law, including an explicit recognition that the murder and manslaughter provisions are inapplicable to an act or omission of a pregnant person with respect to a fetus they are carrying. However, given the renewed hostility toward abortion rights in neighboring states, the proliferation of arrests across the country of people for acts or omissions during pregnancy believed to have caused a risk to fetal health, and the anticipated increase of people turning to self-managed abortion as abortion pills become more available and abortion clinics are shuttered, states that intend to be abortion "safe zones" must ensure that people are safe from arrest for their reproductive decisions and experiences.

The threat of criminalization of abortion and pregnancy is not relegated to "red states" or those with little access to abortion and should be actively safeguarded against by states seeking to be leaders on reproductive rights and justice. HB0626 seeks to create clarifications in MD Criminal Law § 2-103, providing an opportunity to strengthen the protections Maryland already affords to pregnant people. Passage of HB0626 will send a clear signal to law enforcement and prosecutors that nobody should be punished for having an abortion, losing a pregnancy, or suffering a perinatal infant loss based on actions taken or failed to have been taken during pregnancy.

Since the 1973 *Roe v. Wade* ruling, there have been several hundred individuals across our nation who have been subjected to criminal investigation, arrest, prosecution, and/or conviction of pregnancy loss or threat of pregnancy loss – and those are instances that are actually known to researchers as the number may be in the thousands. These situations have involved instances of individuals who have experienced miscarriage or stillbirths, defended themselves against forced C-sections, have been suspected of taking legal or illegal substances while pregnant, experienced a physical accident that threatened or ended the pregnancy, survived domestic violence, did not receive prenatal care, or engaged in terminating a pregnancy outside of a clinical setting. Misapplication of a feticide or fetal homicide provisions are not the only type of law used to punish pregnancy outcomes, but also child abuse or endangerment laws misinterpreted to declare fetuses as persons, or laws related to the disposal of human remains. With the new Texas law enacted to ban abortion access at 6 weeks by creating a vigilante



system of involving civil lawsuits against third-party actors assisting a pregnant person in accessing abortion care, we need to make it clear in Maryland that not only will we not subject pregnant people or those who have experienced pregnancy loss or termination to the criminal justice or civil court system, but also those who assist pregnant people seeking abortion care.

The legislation has four key provisions:

- 1) a pregnant person is not liable for civil damages or subject to criminal investigation or penalty for terminating or attempting to terminate the person's own pregnancy under any circumstances;
- 2) the state does not have the authority to criminally investigate or penalize a pregnant person who has experienced a miscarriage, stillbirth, or perinatal death related to a failure to act during the pregnancy;
- 3) a person is not subject to criminal penalties or civil damages for aiding, informing, or in any way assisting a pregnant person in terminating or seeking to terminate the person's pregnancy; and
- 4) a person may bring a cause of action for damages if the person was subject to unlawful arrest or criminal investigation for a violation of these provisions.

No person should fear arrest or be subjected to government control or retribution as a result of pregnancy or any outcome of pregnancy. Prosecuting an individual for miscarriage, stillbirth, or perinatal death ignores root causes of poor pregnancy outcomes and discourages those who need prenatal or obstetric care the most. For communities of color who have constantly been challenged in experiencing positive pregnancy outcomes due to systemic racism and ethnic disparities, the threats of discrimination, incarceration, loss of parental rights, or loss of personal autonomy are powerful deterrents to seeking timely healthcare. No pregnancy-related medical event or condition should be criminalized, including pregnant people with substance use disorders, under medication-assisted treatment, or engaged in behavioral therapies.

Anti-abortion laws and regulations are rooted in white supremacy, and since the pandemic, more aggressive restrictions are being passed across the nation making access to reproductive healthcare harder for communities of color. For example, there is no arguing the fact that abortion bans disproportionately harm Black people, who are three times as likely to die during childbirth than white people. Abortion bans impact people of color not only because of maternal mortality rates, but because people of color are overrepresented in abortion care. Most people who need abortion care are low-income, and because of the legacy of slavery and institutionalized and systemic racism, a greater proportion of people of color are low-income. Black, Latinx, and Native American people are disproportionately affected by financial hardship and may have fewer resources to travel for timely reproductive healthcare.

Even before the pandemic, there was a slight to moderate increase in patients from other states seeking early and later abortion care in Maryland, and the number continues to rise.



And with the newly enacted Texas abortion ban, legislators in other states such as North Carolina, Virginia, and Pennsylvania are threatening to follow in passing similar measures. Vigilante action in the form of empowering private citizens to sue anyone suspected of providing or aiding access to abortion care against restrictions or bans will disproportionately target people of color. Those who would be opening themselves to civil liability include clinic employees, counselors, and anyone providing transportation or funding to a person obtaining abortion care.

HB0626 seeks to strengthen the protections Maryland already affords to pregnant people by sending a clear signal to law enforcement and prosecutors that nobody should be punished for having an abortion, losing a pregnancy, or suffering a perinatal loss. For these reasons, the People's Commission to Decriminalize Maryland **urges a favorable report on HB0626.** Thank you for your time and consideration.

Member organizations of the People's Commission to Decriminalize Maryland include:

Baltimore Action Legal Team | Baltimore Harm Reduction Coalition | Baltimore Safe Haven | Baltimore Youth Arts | Cause Engagement Associates | Communities United | Center for Children's Law and Policy | Community Law in Action | Disability Rights Maryland | FreeState Justice | Health Care for the Homeless | Homeless Persons Representation Project | Job Opportunities Task Force | Justice Policy Institute | Maryland Justice Project | National Alliance on Mental Illness - Maryland | Open Society Institute - Baltimore | Out for Justice | Power Inside | Public Justice Center | Rebuild, Overcome, and Rise (ROAR) Center at University of Maryland | Baltimore (UMB) School of Law - University of Baltimore | Sex Workers Outreach Project - Baltimore | University of Maryland School of Law | Women's Law Center of Maryland | Youth as Resources | Youth Empowered Society

The People's Commission exists to reduce the disparate impact of the justice system on youth and adults who have been historically targeted and marginalized by local and state criminal and juvenile laws based on their race, gender, disability or socio-economic status. Through a statewide collaboration with organizations and affected individuals, the People's Commission explores and identifies specific ways that criminal laws disproportionately harm historically marginalized groups. Beyond identifying the issues, the groups worked together to envision the ways the law can be changed, rewritten, or eliminated altogether to reduce disparate impacts, reduce the prison industrial complex, improve public health, community accountability, and overall human flourishing. Decriminalization means the elimination of policies and practices that expose marginalized communities to increased justice involvement not because of a legitimate public safety concern but primarily because of behaviors and conduct that arise from their status or identity. Decriminalization also includes the implementation of policies and practices that do not rely on the police, courts, and corrections to respond to this category of behaviors and conduct.