



HB1171 Declaration of Rights – Right to Reproductive Liberty  
Presented to Hon. Shane Pendergrass and Members of the House Health & Government  
Operations Committee

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February 22, 2022 1:00 p.m.

**POSITION: SUPPORT with Amendment**

The People's Commission to Decriminalize Maryland **urges the House Health & Government Operations Committee a favorable report with amendment on HB1171** - Declaration of Rights – Right to Reproductive Liberty, sponsored by House Speaker Adrienne Jones.

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, did not receive prenatal care, survived domestic violence, 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 laws 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.

Given the renewed hostility toward abortion rights in state legislatures and the lack of consistent affirmation of the right to abortion care by the U.S. Supreme Court, we understand the strong urge to strengthen the current state codification regarding abortion rights with a constitutional amendment. **However, the language in HB1171 does not go far enough.** We fear that 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. We recommend an amendment with the following language in bold:

THAT EVERY PERSON, AS A CENTRAL COMPONENT OF THE INDIVIDUAL'S RIGHTS TO LIBERTY AND EQUALITY, HAS THE FUNDAMENTAL RIGHT TO REPRODUCTIVE LIBERTY WHICH INCLUDES THE RIGHT TO MAKE AND EFFECTUATE DECISIONS REGARDING THE INDIVIDUAL'S OWN REPRODUCTION, INCLUDING BUT NOT LIMITED TO THE ABILITY TO PREVENT, CONTINUE, OR END THEIR PREGNANCY **[without criminal or civil penalties based on their actual, potential, or perceived pregnancy outcomes]**. THE



STATE MAY NOT, DIRECTLY OR INDIRECTLY, DENY, BURDEN, OR ABRIDGE THE RIGHT UNLESS JUSTIFIED BY A COMPELLING STATE INTEREST ACHIEVED BY THE LEAST RESTRICTIVE MEANS.

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 neonatal loss ignores root causes of poor pregnancy outcomes and perinatal loss, 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.

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. We understand that HB1171 intends to strengthen the protections Maryland already affords to pregnant people, but it needs to do more in sending a clear signal to law enforcement and prosecutors that nobody should be punished for having an abortion, losing a pregnancy, or suffering a neonatal loss. For these reasons and many more the People’s Commission to Decriminalize Maryland **urges a favorable report with the amendment we suggest for HB1171.** 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