



TESTIMONY IN SUPPORT OF HB1131

Pregnancy Outcome Protection Act Favorable with Amendments

Advance Maryland strongly supports HB1131, which takes the vital and overdue step of protecting Marylanders from criminal investigation and prosecution for natural or self-determined pregnancy outcomes. Pregnancy loss, whether through miscarriage, stillbirth, or self-managed abortion, is a deeply personal experience that should never be treated as a crime. Yet, without statutory protection, Maryland residents have faced arrest, incarceration, loss of child custody, and irrevocable public harm simply for experiencing a pregnancy loss. HB1131 offers a meaningful remedy. However, as currently written, the bill contains provisions that risk replicating the very harms it seeks to prevent. We urge the Committee to pass HB1131 with the amendments described below.

Why Decriminalization Is Necessary: The Evidence of Systemic Harm

A. National Scope of Pregnancy Criminalization

The criminalization of pregnancy outcomes is not a theoretical risk — it is a documented and growing crisis. Pregnancy Justice, in partnership with law schools across the country, has documented more than 2,000 cases since 1973 in which state actors — including police, prosecutors, healthcare workers, and family court officials — investigated, arrested, or prosecuted individuals for circumstances related to their pregnancies or pregnancy outcomes. These prosecutions have accelerated significantly in the post-Dobbs era.

It is important to note that in the post-Dobbs era, the overwhelming majority of these charges did not require proof that the pregnant person actually harmed the fetus or infant. This standard invites prosecutorial overreach and provides no meaningful protection for people experiencing pregnancy loss in Maryland.

B. Racial and Income Disparities in Pregnancy Criminalization

Pregnancy criminalization does not fall equally on all Marylanders. National and state data consistently show that Black, Indigenous, and other people of color bear a disproportionate share of surveillance, investigation, and prosecution related to pregnancy outcomes. This disparity is rooted in systemic racism embedded in healthcare and law enforcement alike.

Poverty is a near-universal characteristic of those prosecuted for pregnancy-related conduct. Pregnancy Justice's research found that more than three-quarters of defendants in documented pregnancy criminalization cases were low-income individuals, based on indicators such as court-appointed counsel, Medicaid coverage, public housing receipt, SNAP, or TANF benefits. This is not coincidental. Low-income pregnant people are more likely to rely on publicly funded healthcare systems, which in turn are more likely to report them to law enforcement; are less able to hire experienced legal representation; face fewer resources to fight prolonged prosecutions; and suffer more devastating consequences from even brief periods of incarceration, including loss of housing, employment, and child custody.

Maryland is not immune to pregnancy criminalization either. While the state has strong protections for reproductive freedom, criminalization can, and has happened. *Akers v. State*, and *Kilmon v. State* are

two examples of cases that should be of serious concern to this committee, and are relevant to HB1131. The prosecution of Ms. Akers for second-degree murder and first-degree child abuse arose from prosecutors' refusal to accept her account of a stillbirth; prosecutors used her internet search history and lack of prenatal care as evidence of intent to harm — a credibility determination that legal scholars and advocates have argued reflects implicit racial bias. While her conviction was ultimately overturned by the Maryland Supreme Court, and a new trial has been ordered, Ms. Akers has endured years of incarceration, public scrutiny, and family separation before receiving any relief. Ms. Kilmon accepted a plea deal for reckless endangerment based on cocaine use during pregnancy, despite no medical evidence of harm beyond a low birth weight, and despite the fact that such charges would not exist but for her pregnancy. She spent a year in prison before her case was appealed and overturned. Her experience illustrates how charges alone can destroy lives even when the underlying conduct is ultimately deemed non-criminal.

C. Criminalization Deters Prenatal Care and Harms Public Health

Beyond its direct harms, the threat of criminal prosecution causes pregnant people to avoid seeking medical care. Research from Pregnancy Justice, the American College of Obstetricians and Gynecologists, and Amnesty International shows that fear of reporting to law enforcement or child welfare authorities drives people away from prenatal care, substance use treatment, and emergency obstetric services — particularly among low-income communities and communities of color. This is not a hypothetical harm, and criminalization does not protect fetal or maternal health and in fact undermines it.

Support for HB1131 with Critical Amendments

The Committee is urged to pass HB1131 with the following amendments, which are necessary to ensure the bill's protections are complete, enforceable, and consistent with Maryland's constitutional guarantees of reproductive freedom and equal protection.

A. Simplify and Broaden the Core Protective Language

As written, HB1131 creates distinctions between pregnancy outcomes that are protected and those that remain subject to investigation. Any carve-out that permits some forms of reproductive criminalization undermines Maryland's constitutional right to reproductive freedom and equal protection. The bill should adopt simpler, more comprehensive language, such as:

“No person shall be penalized, prosecuted, or otherwise subjected to adverse action based on their actual, potential, perceived, or alleged pregnancy outcomes, including but not limited to miscarriage, stillbirth, or abortion. Nor shall any person assisting a person in exercising their right to reproductive freedom with that person's consent be penalized, prosecuted, or otherwise subjected to adverse action for doing so.”

This approach, modeled on legislation adopted in other states, avoids the unintended consequences of more complex language while providing a clear, enforceable standard.

B. Remove the Exception for Deaths “After a Live Birth”

The bill currently states that it would not protect a death “after a live birth.” As the Akers case demonstrates, many criminalization cases in Maryland involve birth outcomes — including stillbirths — in which prosecutors allege that a live birth occurred even when the evidence supports a stillbirth. Retaining this exception gives law enforcement and prosecutors the discretion to investigate any adverse birth outcome by simply alleging that a live birth occurred. This perpetuates the racial and

income disparities that HB1131 is intended to address, because that credibility determination will not be made evenhandedly. Individuals who are Black, low-income, do not seek immediate medical care, or do not respond to pregnancy loss in a way that conforms to social expectations will be most vulnerable to this exception.

C. Remove Exceptions to the Statute's Applicability

The current bill includes explicit exceptions permitting investigation or prosecution where external abuse or coercion is alleged (p.4, lines 18-19). These carve-outs are unnecessary and dangerous. Existing law already prohibits abuse, and a separate exception in this legislation is redundant. More importantly, vague abuse exceptions provide a pathway for law enforcement to investigate the pregnant person under the guise of investigating a third party. The bill should make clear that no investigation of a person for their own pregnancy outcomes is permitted, regardless of whether another individual is also being investigated.

The bill also authorizes investigation of the person who experienced a pregnancy loss where law enforcement is investigating another individual for suspected criminal conduct related to the pregnancy or loss (p. 3, lines 16–24). This language should also be removed. There is no legitimate basis for investigating the pregnant person in connection with their own loss, even when a third party is under investigation. Permitting such investigation undermines the core protective purpose of the bill and reintroduces prosecutorial discretion that will fall disproportionately on the most marginalized.

The committee should also note that charges under human remains statutes have been used to prosecute pregnancy loss, including in Maryland, which could still be permitted by the legislation unless lines 4-5 on p.4 are removed. Everyone deserves to be treated with dignity when experiencing a loss, including in how they choose to privately handle remains. In lieu of more simplified language outlined in A, the bill should make clear that how an individual manages the physical remains of a pregnancy loss cannot serve as the basis for criminal charges.

D. Replace Criminal Penalties for Providers with a Private Right of Action

Other states have chosen civil enforcement mechanisms, including a private right of action, rather than criminal penalties for providers. A civil enforcement model reduces the risk that criminal liability will discourage providers from offering care to pregnant patients.

Conclusion

HB1131 represents a critical step toward ensuring that Maryland does not punish its residents for experiencing pregnancy loss. The evidence is clear: pregnancy criminalization falls hardest on those who are Black, Indigenous, and low-income; it deters healthcare-seeking; it produces unjust outcomes; and it does nothing to improve maternal or fetal health. We respectfully ask the committee to support HB1131 with amendments, and to commit to continued legislative action to protect all pregnant Marylanders from the threat of criminal prosecution.

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