



2021

Fall Conference

Legislative Proposals

 **TURNING CRISIS INTO OPPORTUNITY**
Building a Stronger Care Infrastructure



Family and Medical Leave Insurance Program – Establishment - Time to Care Act

Bill Number: TBD

One Sentence Synopsis: This legislation would ensure Marylanders no longer have to choose between the job they need and the family they love by establishing a family and medical leave insurance fund to provide partial wage replacement for employees who take leave to care for a new child, a family member with a serious health condition, their own serious medical condition, or a family member's military deployment.

Committees: Senate Finance, House Economic Matters

Lead Sponsors: Senator Antonio Hayes, Delegate Kris Valderamma

Lead Group: Time to Care Coalition

Lead Group Contact: Myles Hicks, Campaign Manager

Describe the problem:

Unpaid leave forces too many Americans, especially those whose needs are the greatest, to choose between income and family when illness strikes, when new babies arrive, or when the needs of a family member with a disability intensify.

A lot of populations have been affected during this pandemic, but families are dependent on working women. In Maryland, 79% of mothers are in the workforce. Nearly 25% of women take 10 or fewer days of parental leave, potentially putting themselves and their children at risk physically and emotionally. We have seen that women are being disproportionately affected because they are more likely to leave work to care for their families. While Maryland saw a net gain of 13,000 men entering the labor force from January 2020 to June 2021, the number of working women fell by 57,000 in the same time frame, according to the Maryland Department of Labor.

Describe your proposed legislation:

The "Time to Care Act" establishes a Family and Medical Leave Insurance (FAMLI) program through which employees may take up to 12 weeks of paid leave from their jobs to care for new children, other family members with serious health conditions or disabilities, or themselves.

The program provides wage replacement during the leave period ranging from \$50 to \$1000 per week. The benefit level is calculated based on the employee's weekly wage and the State's average weekly wage. In general, the amount received by low-income employees reflects a higher percentage of their total wages.

Wage replacement benefits are drawn from a fund pool into which employers and employees contribute. Contributions are mandatory and are calculated based on the employee's wages.

The job security and partial wage replacement offered by paid family and medical leave will provide women economic security until they return to the workforce.

Benefit to Communities of Color:

We have seen racial disparities in access to wealth and wealth building are compounded by a lack of access to paid family and medical leave. The Time to Care Act works to assist people of color because the partial wage replacement received by a low income employee reflects a higher percentage of their total wages. A paid family and medical leave program can help alleviate some of the health and economic disparities many people of color face.



Motor Vehicle Insurance – Discrimination in Underwriting and Rating – Use of Gender

Bill Number: TBD

One Sentence Synopsis: This bill will eliminate gender discrimination in auto insurance pricing by prohibiting an auto insurer from including gender as one of the rate factors used to set auto insurance premiums.

Committees: Senate Finance, House Economic Matters

Lead Sponsors: Delegate Emily Shetty

Lead Group: Maryland Consumer Rights Coalition

Lead Group Contact: Isadora Stern, Policy Associate

Describe the problem:

Eight of Maryland’s top insurance companies currently use gender as a rate factor in setting auto insurance premiums resulting overwhelmingly in higher costs for women. Right now women are being charged between \$15 and \$65 more for their annual auto insurance premiums than men in every county in Maryland. This “pink tax” for auto insurance is an additional cost women shoulder while only earning an average of eighty-three cents to every dollar earned by men in Maryland. Allowing insurers to dictate auto insurance rates based on the gender of a driver disproportionately harms women and perpetuates systemic bias based on gender, gender orientation, and gender identity.

Describe your proposed legislation:

Preventing auto insurance companies from using gender as a rate factor in setting the cost of auto insurance premiums will eliminate gender discrimination in auto insurance and lead to premiums that are assessed based on a driver’s ability to drive, not their gender identity.

Benefit to Communities of Color:

This legislation benefits all women. It is especially important for women of color who already experience higher than average premium rates based on the other non driving related factors insurance companies use in underwriting such as credit score, occupation, education, and housing status. These factors are a better indicator of socioeconomic status than they are of a person’s ability to drive. Women of color also suffer more acutely from the gender wage gap, earning on average only 60 cents to the dollar where white women earn over 80 cents to every dollar their non-Hispanic white male counterparts earn.



Primary Caretakers Bill

Bill Number: TBD

One Sentence Synopsis: This bill asks judges to consider whether a person convicted of a non-violent offense is a caretaker of a dependent, and if so, whether that person can be placed into a community-based alternative to incarceration that would prevent separation of the caretaker and their dependent.

Committees: TBD

Lead Sponsors: Senator Jill Carter

Lead Group: Maryland Justice Project

Lead Group Contact: Ava Levine (Intern); Monica Cooper (Executive Director)

Describe the problem:

It is estimated that up to 90,000 children in Maryland have a parent that is either in prison, jail, or under parole/probation. Over the past 40 years, the number of women in prison in Maryland has increased by over 400%. When caretakers are sent to prison and separated from their dependents, both suffer. Well over half of incarcerated women in Maryland are mothers, and more than half were primary caretakers prior to incarceration. Furthermore, given that most women are incarcerated at the Maryland Correctional Institution for Women, and few transportation options to the prison exist, it is often difficult for children to visit their incarcerated mothers, further breaking the bond between a mother and her children. Children with incarcerated parents have been shown to have higher rates of physical health problems (including migraines, asthma, and HIV/AIDS) in addition to higher rates of mental health problems (including depression, anxiety, and PTSD). Most children of incarcerated mothers live with their grandparents, instead of their fathers. Maryland policy also typically results in newborn babies being separated from their incarcerated mothers directly after birth. Ultimately, incarceration and the family separation it results in are becoming increasingly large problems for women in Maryland.

Describe your proposed legislation:

The Primary Caretakers Bill asks judges to consider whether a person convicted of a non-violent offense is the main caretaker for a dependent. If so, the judge can send the person to a community-based alternative to incarceration where appropriate, in turn allowing the caretaker to remain with their dependent. While judges retain discretion as to what exactly the community alternative is, examples include but are not limited to substance abuse treatment, job training, and parenting classes. Given that more than half of incarcerated women are mothers, this bill will have a direct impact on women. Not only does the option for a community-based alternative to incarceration help end the mother-child separation that incarceration so often results in, but it also is more likely to help women get the targeted help they need that may not have been otherwise available in prison. Community-based alternatives to incarceration have repeatedly been shown to be successful in developing the relationship between a parent and their child and for improving parental skills. By allowing women to avoid

incarceration and stay with their dependents through a community-based sentencing alternative, needless family separation and harm to both the mother and child can be avoided.

Benefit to Communities of Color:

By diverting people from incarceration, the Primary Caretakers Bill will absolutely benefit communities of color. Historically and today, people of color, and specifically Black people, have been disproportionately targeted and unfairly punished by Maryland's justice system. Maryland's prison population is approximately 70% Black, whereas the state population is approximately 30% Black. Allowing caretakers to remain with their dependents can help reduce the number of people of color incarcerated in Maryland.



Stalking

Bill Number: TBD

One Sentence Synopsis: This bill will expand the current stalking statute to include electronic communication and tracking devices.

Committees: Senate Judicial Proceedings, House Judiciary

Lead Sponsors: Senator Jeff Waldstreicher, Delegate Vanessa Atterbeary

Lead Group: House of Ruth Maryland

Lead Group Contact: Dorothy Lennig, Legal Clinic Director

Describe the problem:

The original stalking statute was passed at a time before the existence of electronic methods of communication and tracking a person. As such, the stalking statute in its current form only addresses physical forms of following a victim. Nowadays, most stalking is committed using electronic means of communication or tracking, instead of physically pursuing a victim. Common examples of stalking using electronic means include, but are by no means limited to: hiding a GPS tracker in a victim's car; turning on the victim's phone location application and using it to track the victim's whereabouts; putting a camera or listening device in a child's toy in order to hear/watch what happens at the victim's home; and, installing spyware on a victim's computer.

Victims who are subjected to these forms of electronic stalking live in almost-constant fear. They never know when, where or how an abuser might conceal a tracking or listening device and use it to follow, track or spy on their daily activities. Victims who move to a secure location for safety purposes or who change their routines in order to avoid their abusers are left to wonder if their new location is truly safe or if their abusers will find out by using a variety of technologies to locate them.

Under the proposed change in the law, such actions could be considered stalking if the victim can prove that the perpetrator intended to cause or knew or reasonable should have known that the conduct would cause serious emotional distress. This would bring the law in line with the forms of stalking that are mostly widely used today.

Describe your proposed legislation:

Many female victims of domestic violence report stalking by electronic means or by tracking devices.

Benefit to Communities of Color:

Many victims of domestic violence are women of color.



Safe Harbor

Bill Number: TBD

One Sentence Synopsis: This bill will provide a safe harbor for child victims of sex trafficking and prevent their further victimization by connecting them to any services needed through the already established regional navigator program while preventing any criminal or delinquent charges that might be brought against them because they are a victim of trafficking.

Committees: Senate Judicial Proceedings, House Judiciary

Lead Sponsors: Senator Susan Lee, Delegate Brooke Lierman

Lead Group: Maryland Human Trafficking Task Force

Lead Group Contact: Amanda Rodriguez, Esq., Chair MHTTF

Describe the problem:

Most trafficking victims are women and girls. Currently children can be charged in the criminal or juvenile justice system for acts that are directly related to their victimization including prostitution and other related offenses. Children are, by law, considered victims of human trafficking per se if they are engaging in sex work; however, unlike any other victimization, they can also be charged for the very act that makes them a victim. This paradox in the criminal justice system leads to further victimization both as children, but often leads to further abuse as adults.

Describe your proposed legislation:

This bill would provide a safe harbor for child victims of sex trafficking and prevent prosecution for acts committed as a result of trafficking including prostitution and other related offenses. Legislation was passed in 2019 that established the regional navigator program that connects child survivors of trafficking to necessary services. This bill will benefit women and girls by preventing them from being criminalized for being a victim. Children, would instead, receive services and assistance instead of being forced to fight against the stigmas associated with societal views on sex work and the criminal justice system for acts that were committed against them.

Benefit to Communities of Color:

Yes. Children of color are over-represented as child victims of sex trafficking. Communities of color are over-criminalized and this bill would prevent pushing child victims of sex trafficking which are disproportionately children of color in the criminal and juvenile justice systems.



Repeal of Marriage as a Defense to Sex Crimes - Love is No Defense

Bill Number: TBD

One Sentence Synopsis: This bill proposes to repeal the law allowing marriage as a defense to sex crimes.

Committees: Senate Judicial Proceedings, House Judiciary

Lead Sponsors: Senator Susan Lee, Delegate Charlotte Crutchfield

Lead Group: Maryland Coalition Against Sexual Assault (MCASA)

Lead Group Contact: Lisae C Jordan, Executive Director & Counsel

Describe the problem:

This is a bill to repeal the current statute that makes marriage a defense to some sex crimes. Sexual Assault disproportionately affects women.

Like many states, Maryland's laws were based on the premise that marriage was consent to sex and that, therefore, a man could not rape his wife. Unlike many states, Maryland has not yet firmly rejected that antiquated and fundamentally disrespectful concept.

Describe your proposed legislation:

Criminal Law §3-318 provides that marriage is a defense to certain sex crimes. We have made some progress: Spouses can be prosecuted for any sex crime if they have a limited divorce. Additionally, if the parties have been separate and apart and "without cohabitation" (meaning without having sexual relations) and they have been separated for three months or have a written separation agreement, then they can be prosecuted for sex crimes that are not based on age or capacity. Finally, if the rape involved actual force or threat of force, marriage is not a defense. For other sex crimes, marriage is a complete defense. This bill repeals Criminal Law §3-318. Marriage should never be a defense to a sex crime.

Benefit to Communities of Color:

Black and Indigenous women who are victims of sex crimes receive less police protection, less interventions, fewer prosecutions of their assaulter, and less assistance. African American females experience intimate partner violence at a rate 35% higher than that of white females, and about 2.5 times the rate of women of other races, (Bureau of Justice Statistics, 2001). 48% of Latinas in one study reported that their partner's violence against them had increased since they immigrated to the US. (Dutton, Mary; Leslye Orloff, and Giselle Aguilar Hass. 2000, Characteristics of help-seeking behaviors, resources, and services needs of battered immigrant Latinas: Legal and Policy implications. Georgetown Journal on Poverty Law and Policy. 7(2)). This bill will help reform a criminal justice system that fails women of color.



Interim and Temporary Protective Order – Virtual Petition and Hearing

Bill Number: TBD

One Sentence Synopsis: This bill seeks to expand access to safety through the courts by enabling petitioners eligible for protective orders who are seeking medical treatment in a hospital or urgent care setting to petition for an interim or temporary protective order from that setting and have the hearing conducting remotely.

Committees: Senate Judicial Proceedings, House Judiciary

Lead Sponsors: Senator Shelly Hettleman

Lead Group: Baltimore Jewish Council and MNADV

Lead Group Contact: Sarah Mersky Miicke, Deputy Director, BJC and Melanie Shapiro, Public Policy Director MNADV

Describe the problem:

Currently, victims of abuse, including domestic violence and sexual assault, cannot obtain protective orders from their abusers in a hospital or urgent care setting, thus, leaving the facility unprotected. This bill would allow all eligible victims of abuse the ability to apply for temporary or interim protective orders in those settings.

Describe your proposed legislation:

This legislation would allow victims of abuse who are eligible to request interim and/or temporary protective orders to do so in a hospital or urgent care setting. Currently, if a victim is in those facilities due to a violence incident, they cannot leave the hospital protected from their abuser. Further, victims who are in a hospital or urgent care setting for other medical reasons who trust their medical professional and feel safe in those settings to disclose their abuse, cannot receive a protective order before leaving. This legislation applies to everyone eligible for protective orders including, domestic violence, sexual assault, child abuse and elder abuse victims.

Benefit to Communities of Color:

Yes, this bill creates additional protections for all women, children, and victims of abuse eligible to request a protective order. Additionally, Black women experience intimate partner violence at a rate 35% higher than that of white females, and about 2.5 times the rate of women of other races, (Bureau of Justice Statistics, 2001). The protective order process is an alternative to the criminal court process and already marginalized communities often do not report offenses to the police due to unequal, unfair and unjust treatment.



Child Custody and Visitation - Reasonable Effort to Protect

Bill Number: TBD

One Sentence Synopsis: This bill proposes that any reasonable effort to protect a child or a party to a custody or visitation order from the other party may not be considered an unjustifiable denial or interference with visitation granted by a custody or visitation order.

Committees: Senate Judicial Proceedings, House Judiciary

Lead Sponsors: Senator Susan Lee, Delegate Vanessa Atterbeary (pending)

Lead Group: Child Custody Workgroup members

Lead Group Contact: Michael Lore, Office of Senator Susan Lee

Describe the problem:

Reasonable protection for children in a Catch-22 situation where you have to follow a court order but also protect your children.

Describe your proposed legislation:

Clarify the law and provide an explicit ability to protect children despite contradictory court order.

Benefit to Communities of Color:

Significant disparities in communities of color who may have less access to family lawyers.



Tender Heart Doctrine update

Bill Number: TBD

One Sentence Synopsis: This bill would add Criminal Child Neglect and witnessing crimes of violence a crime of violence to the tender heart doctrine applicability, so evidence collected from young children is admissible in court.

Committees: Senate Judicial Proceedings, House Judiciary

Lead Sponsors: Senator Susan Lee, Delegate Charlotte Crutchfield

Lead Group: Montgomery County States Attorney's Office

Lead Group Contact: Debbie Feinstein

Describe the problem:

Children of abuse and neglect are forced to repeat their stories in court

Describe your proposed legislation:

Add criminal neglect to crimes listed where this hearsay exception can be used, as well as witnessing a crime of violence, for children under 12, as existing law allows for criminal child abuse.

Benefit to Communities of Color:

Not clear if disparate impact.



Police Training - Stalkerware

Bill Number: TBD

One Sentence Synopsis: This bill would require police to be trained in the criminal laws concerning stalking as they pertain to electronic surveillance or tracking, including services available to victims, related prevention methods for victims, and how to document digital evidence.

Committees: Senate Judicial Proceedings, House Judiciary

Lead Sponsors: Senator Susan Lee

Lead Group: Electronic Frontier Foundation

Lead Group Contact: Eva Galperin

Describe the problem:

Stalkerware is becoming much more common but when victims approach law enforcement with their concerns they are not given much helpful info because they are not training in the problem.

Describe your proposed legislation:

Require new police officers to be trained with basic info to help victims of stalkerware.

Benefit to Communities of Color:

Yes, but not clear how disparate proportion.



Family Law - Emancipation of a Minor and Authorization to Marry

Bill Number: TBD

One Sentence Synopsis: This bill would prohibit an individual under the age of 17 years from marrying and altering the conditions under which an individual who is 17 years old is authorized to marry.

Committees: Senate Judicial Proceedings, House Judiciary

Lead Sponsors: Senator Sarah Elfreth, Delegate Vanessa Atterbeary

Lead Group: Tahirih Justice Center

Lead Group Contact: Casey Swegman, Interim Director of Public Policy

Describe the problem:

This legislation would address those barriers to safety and justice head on by limiting which minors can be married (17) and under what circumstances, empowering all minors with the full legal rights of an adult prior to marriage. Most importantly, this legislation would provide all minors party to a potential marriage with equal access to an attorney advocate, an opportunity to disclose abuse and seek intervention in a forced marriage process, and specialized referral resources where they can seek support.

Describe your proposed legislation:

Currently, 15 year-olds in Maryland can marry if they are pregnant and have parental consent, while 16 and 17 year-olds only require parental consent to marry. Most of these marriages are between young girls and older men, and these girls are forced or coerced into abusive marriages. Women who marry as minors experience higher drop-out rates, greater medical and mental health problems, higher rates of poverty, and an 80% increase in divorce rates. This legislation would prevent the exploitation of female minors who are coerced into unwanted marriages.

Benefit to Communities of Color:

Child marriage survivors and those at risk the U.S. already experience barriers to services and often face dismissal of their claims from the very systems set up to prevent and respond to violence. In addition, some survivors of child marriage also experience intersecting and compounded oppressions including racism and xenophobia that impact their ability to access support and achieve safety and justice on their own terms.

Immigrant survivors, especially Black immigrants and other immigrants of color, often experience unique barriers to safety and justice based on their immigration status, limited English proficiency, literacy levels, history of trauma, unmet mental health needs, cultural and religious backgrounds, community isolation (which can be exacerbated in locations that are historically resource limited), and a lack of knowledge of laws, rights, resources and systems.

Child marriage in marginalized communities of color is also exacerbated by white supremacy and saviorism among service providers, advocates, and policy makers, which can inhibit help-seeking behaviors and engagement with mental health systems and other psycho-social care.



Innkeepers - Records and Human Trafficking Awareness Training

Bill Number: TBD

One Sentence Synopsis: This bill would require innkeepers to maintain computerized records of all guest transactions and receipts and all employees to receive training to identify and report suspected human trafficking.

Committees: Senate Finance, House Economic Matters

Lead Sponsors: Senator Michael Jackson, Delegate Eric Ebersole

Lead Group: Baltimore County Commission for Women

Lead Group Contact: Amy Blank Co-Chair Public Policy Agenda

Describe the problem:

Human trafficking is the fastest growing criminal enterprise in the world. Traffickers predominately target women and girls, as young as 12 years of age, for labor and sexual exploitation. Those most vulnerable are from impoverished communities of color who are often survivors of sexual assault. While an estimated 14,000 -17,000 people are trafficked into the United States, 200,000 are from the US. Baltimore, in particular, is literally at the crossroads of this issue. The intersection of all major transportation hubs (i.e.,the Port of Baltimore, I-95/I-70 bus stations and truck stops, BWI airport and Amtrak) conveniently merge into our hospitality destinations (i.e., the convention center, casinos, hotels, and ball parks), easily enabling human traffickers to intrap, transport, and exploit victims.

Women and girls forced into sex trafficking experience higher levels of anxiety, isolation, and trauma far beyond other crime victims. They sustain brutal physical assaults that result in repeated broken bones, concussions, bruises, burns and starvation. Withholding condoms, birth control and gynecological care make them susceptible to life-long, and life-threatening reproductive injuries and diseases such as sexually transmitted diseases (STDs), HIV AIDS, unwanted pregnancies, miscarriages and infertility. And on top of all that is raging addiction.

Describe your proposed legislation:

The Maryland General Assembly is strategically poised to not only address human trafficking in our state, but throughout the country. According to the Maryland Human Trafficking Task Force in 2014, the United States investigated 1,927 cases, prosecuted 253 defendants and convicted 174 traffickers. States Attorneys need assistance from the hospitality industry to identify victims and obtain evidence to prosecute traffickers and clients. To this end, Business Regulation - Innkeepers - Records and Human Trafficking Awareness Training will be re-introduced in the 2022 Maryland General Assembly. This legislation, fashioned after other state statutes, requires innkeepers to maintain computerized records of all guest transactions and receipts for 6 months. Additionally, all employees will receive training to

identify and report suspected human trafficking. This documentation can result in more prosecutions and convictions of traffickers and clients, and reporting will increase the rescue and recovery of victims.

The previous legislation had no opposition or fiscal impact to State and Local governments, and poses minimal cost to the hospitality industry due to existing training materials. Given the increased public and government attention to human trafficking, robust advocacy and grassroots support, and the backdrop of an election year, we believe the legislation has a great chance for success.

Benefit to Communities of Color:

The overwhelming majority of human trafficking victims are women and girls of color. The intersectionality of sexism, racism, poverty, trauma and sexualization are all systemic conditions that allow women and girls of color to become easy targets for traffickers. Maryland's response to human trafficking was to decriminalize prostitution, converting prison programs into treatment centers for sexual, physical and psychological trauma, addiction, and transitional housing services for survivors. However, the overwhelming majority of human traffickers and clients are not investigated, prosecuted or convicted, perpetuating this insidious problem.

Providing Law Enforcement and State Attorneys with the evidence they need to investigate, prosecute and convict perpetrators will curtail the supply and demand of human trafficking. As well, broadening awareness, identification and reporting of suspected trafficking in hotel establishments provides more protections for women and girls of color.



Termination of Pregnancy - Performance and Criminal and Civil Liability (Pregnant Person's Dignity Act)

Bill Number: TBD

One Sentence Synopsis: The Pregnant Person's Dignity Act will prohibit subjecting pregnant people or those who have experienced pregnancy loss or termination to Maryland's criminal justice and/or civil court systems, as well as individuals who assist or provide aid to pregnant people seeking abortion care.

Committees: Senate Judicial Proceedings, House Judiciary

Lead Sponsors: Senator Will Smith, Delegate Nicole Williams

Lead Group: People's Commission to Decriminalize Maryland, a coalition comprised of leading advocacy groups such as NARAL Pro-Choice Maryland, Women's Law Center of Maryland, Public Justice Center, FreeState Justice, Disability Rights Maryland, Advocates for Children

Lead Group Contact: Diana Philip, Co-Chair of the Bodily Autonomy Workgroup - People's Commission to Decriminalize Maryland

Describe the problem:

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 woman or 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, investigation, and/or prosecution for their reproductive decisions and experiences.

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 women 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, 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 law suits 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 and/or civil court systems, but also those who assist or provide aid to pregnant people seeking abortion care.

Describe your proposed legislation:

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. A potential revision of MD. Criminal Law § 2-103 provides an opportunity to strengthen the protections Maryland already affords to pregnant people, sending a clear signal to law enforcement and prosecutors that nobody should be punished for having an abortion, losing a pregnancy, or suffering an infant loss.

The legislation has four key provisions: 1) a woman is not liable for civil damages or subject to criminal investigation or penalty for terminating or attempting to terminate the woman’s own pregnancy under any circumstances; 2) the state does not have the authority to criminally investigate or penalize a woman who has experienced a miscarriage, neonatal death related to a failure to act, or stillbirth; 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.

Benefit to Communities of Color:

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 death 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 women 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.



Abortion Care Access Act of 2022

Bill Number: TBD

One Sentence Synopsis: This legislation will protect and increase access to affordable abortion care in Maryland.

Committees: Senate Finance, House Health and Government Operations

Lead Sponsors: Delegate Ariana Kelly

Lead Group: Planned Parenthood of Maryland

Lead Group Contact: Robyn Elliott

Describe the problem:

In 1991, the Maryland General Assembly codified the legal right to abortion, as provided by Roe v Wade. Senate Bill 162 became a ballot measure and went into effect after Marylanders overwhelmingly supported the measure with 62% of the vote. Maryland is now considered a safe state for abortion rights even if the Supreme Court overturns Roe v Wade.

The current question for pro-choice Marylanders is: Does the right to an abortion mean women can access abortion care? Unfortunately, no. Even in states like Maryland, access is being chipped away by a shortage of trained providers, poor insurance coverage, and anti-abortion rules imposed at the federal level every time there is a shift in power. Abortion access is not safe in Maryland- only 7 of 24 Maryland jurisdictions currently have an abortion care provider. With Texas effectively overturning Roe within its borders and at least 17 other states on the brink of total bans on abortion, Maryland needs to be ready. Women in Maryland need us to protect abortion access, and so do the women who will soon be forced to travel hundreds of miles for health care.

Describe your proposed legislation:

The bill recognizes that advanced practice clinicians - nurse practitioners, certified nurse-midwives/certified midwives, and physician assistants - are qualified to provide abortion care. These clinicians are the key to ensuring access to abortion care in every region of the state. The bill also provides state support for clinical training in abortion care. Health care professionals will be able to get the training they need – including health care practitioners graduating from programs in states that ban abortion. In addition, it strengthens and streamlines insurance coverage for abortion care.

Benefit to Communities of Color:

Yes. Communities of color are particularly impacted by limitations on abortion access. As we know, significant racial and ethnic disparities persist for a wide range of health outcomes, from diabetes to heart disease to breast and cervical cancer to sexually transmitted infections (STI), including HIV. This is also true for unintended pregnancies. Unnecessary barriers to abortion care increase costs and wait

times, further exacerbating existing health disparities and economic injustices. This legislation eliminates unnecessary barriers and will make health care more accessible and affordable.



Prevention of Forced Infant Separation Act

Bill Number: TBD

One Sentence Synopsis: This Act prevents the forced separation of infants born to incarcerated women with pre-release status in Maryland.

Committees: TBD

Lead Sponsors: Senator Jill P. Carter

Lead Group: Maryland Justice Project

Lead Group Contact: Monica Cooper, Executive Director

Describe the problem:

The crisis of mass incarceration – and the process of ending it – has become a central policy concern in the United States over the past few years. However, much of the conversation both nationally and within Maryland has centered around the experiences of men in carcel institutions, even though women are the fastest growing incarcerated population in the U.S. Despite this rapid growth, many correctional facilities are still not adequately equipped to meet the physiological and social needs of women, primarily due to the nation’s male-specific model for incarceration. This has a negative impact on the health of incarcerated women, especially those who are pregnant and give birth while incarcerated.

In the State of Maryland, pregnant women who go into labor while incarcerated in a Department of Public Safety and Correctional Services (DPSCS) correctional facility will be transported to a hospital but are required to return to their facility as soon as they are discharged. For a standard vaginal delivery, this is generally 1-2 days after giving birth. This means that most incarcerated women have less than 48 hours with their newborns before the baby is forcibly separated from the mother. Every year, over 95 pregnant women are admitted into a DPSCS correctional facility, and 18% of these pregnancies will result in a live birth. Considering that the majority of incarcerated women are the sole caregivers of their children, many of these newborns will enter the Maryland Department of Human Services (DHS) foster care program just days after they are born.

The forced separation of infants leads to a myriad of adverse health outcomes for both the baby and the mother. Research suggests that the first year is one of the most important in an infant’s life, as it is a time of significant physical, cognitive, and social development. This means that when babies are forcibly separated from their parents just days after birth, there can be lifelong developmental consequences. Not only does separation immediately cause a permanent increase in a baby’s stress levels, but separated babies are more likely to develop post-traumatic stress and substance use disorders as adults. For mothers, the psychological consequences of forced separation can be just as severe. Mothers separated from their newborns are more likely to experience post-partum depression, extreme powerlessness, grief, and feelings of detachment after forced separation.

Describe your proposed legislation:

In 2021, Minnesota became the first state to prevent the forced separation of infants from incarcerated mothers after the passage of the Healthy Start Act. The Healthy Start Act allowed the Commissioner of Corrections to place pregnant individuals into community alternatives up to one-year postpartum, giving babies and caregivers the support they need to thrive. During the 2021 session, this bill was led by an all-women team of legislatures and received broad bipartisan support in both the House and the Senate. Through the passage of the Prevention of Forced Infant Separation Act, Maryland can join Minnesota in keeping families together during incarceration.

This Act would expand upon SB684, legislation that was led by the Maryland Justice Project in 2020 and authorized the Commissioner of Correction to operate a pre-release unit for women within the Division of Corrections (DOC). In particular, the Act would provide pregnant women under DPSCS custody with pre-release status the option to relocate to this unit throughout the duration of their pregnancy and remain with their infants up to one year postpartum. Pregnant women who are not eligible for pre-release status and are instead housed at the Maryland Correctional Institution for Women will have access to infant bonding programs that help mothers maintain strong bonds with their children. Additionally, both pre-release eligible and non-eligible women will have access to postpartum care, the pumping and storage of breast milk, and a designated case manager to connect the mother to housing, employment, and social services necessary for successful reentry.

There is a clear need for Maryland to prevent the cruel and harmful separation of infants days after birth. However, there is also a clear legislative solution. The Prevention of Forced Infant Separation Act will help incarcerated parents form strong attachments with their newborns, leading to better health outcomes and a strong incentive against recidivism.

Benefit to Communities of Color:

Black women are disproportionately represented in Maryland's prison system and are more likely to have risk factors for poor perinatal outcomes, such as substance use, limited access to healthcare, and histories of trauma and abuse. This Act would benefit Black women by providing them access to crucial postpartum care while incarcerated and the ability to remain with their infants, helping to reduce healthcare disparities in the Black community.