

Department of Legislative Services  
Maryland General Assembly  
2022 Session

FISCAL AND POLICY NOTE  
First Reader

House Bill 626 (Delegate Williams, *et al.*)  
Health and Government Operations

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Pregnant Person's Freedom Act of 2022

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This bill explicitly clarifies that the authorization to prosecute a person for murder or manslaughter of a viable fetus (1) may not be construed to authorize an investigation or penalty for a person who terminates or attempts to terminate the person's own pregnancy or experiences a miscarriage, perinatal death related to a failure to act, or stillbirth and (2) does not subject a person 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. A person who is subject to unlawful arrest or criminal investigation for either of the above may bring a cause of action for damages. The requirement that an abortion be performed by a licensed physician does not apply to a pregnant person who terminates the person's own pregnancy. The State may not investigate or penalize a pregnant person for terminating the person's own pregnancy under any circumstances, and a pregnant person is not liable for civil damages or subject to a criminal penalty for terminating or attempting to terminate the person's own pregnancy under any circumstances. The bill also changes the term "woman" to "person" or "pregnant person" as appropriate.

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**Fiscal Summary**

**State Effect:** The bill is not anticipated to materially affect State finances or operations, including the workload of the District Court.

**Local Effect:** The bill is not anticipated to materially affect local finances or operations, including the workload of circuit courts and potential damages awarded to a person who is subject to unlawful arrest by local law enforcement or criminal investigation by State's Attorneys' offices, as specified.

**Small Business Effect:** None.

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## Analysis

**Current Law:** In general, the State may not interfere with a woman's decision to end a pregnancy before the fetus is viable, or at any time during a woman's pregnancy, if the procedure is necessary to protect the life or health of the woman or if the fetus is affected by a genetic defect or serious deformity or abnormality. This is consistent with the U.S. Supreme Court's holding in *Roe v. Wade*. The Maryland Department of Health may adopt regulations consistent with established medical practice if they are necessary and the least intrusive method to protect the life and health of the woman. If an abortion is provided, it must be performed by a licensed physician. A physician is not liable for civil damages or subject to a criminal penalty for a decision to perform an abortion made in good faith and in the physician's best medical judgment using accepted standards of medical practice.

### *Murder or Manslaughter of a Viable Fetus*

With certain exceptions, a person may be prosecuted for the murder or manslaughter of a viable fetus. "Viable" is defined as the stage when, in the best medical judgment of the attending physician based on the particular facts of the case before the physician, there is a reasonable likelihood of the fetus's sustained survival outside the womb.

To be prosecuted for murder or manslaughter of a fetus, a person must have (1) intended to cause the death of the viable fetus; (2) intended to cause serious physical injury to the viable fetus; or (3) wantonly or recklessly disregarded the likelihood that the person's actions would cause the death of or serious physical injury to the viable fetus.

These statutory provisions do not (1) apply to or infringe on a woman's right to terminate a pregnancy under the Health-General Article; (2) subject a physician or other licensed medical professional to liability for fetal death that occurs in the course of administering lawful medical care; (3) apply to an act or failure to act of a pregnant woman with regard to her own fetus; or (4) confer personhood or any rights on the fetus.

First-degree murder is punishable by imprisonment for life, with or without the possibility of parole. Murder that is not in the first degree is considered second-degree murder. Violators are subject to a maximum penalty of imprisonment for 40 years.

Manslaughter is a common law offense. The meanings accorded to involuntary and voluntary manslaughter are judicially determined and based on case law. Manslaughter is distinguished from murder by the absence of malice aforethought, express or implied. The absence of intention to kill or to commit any unlawful act which might reasonably produce death or great bodily harm is generally the distinguishing factor between voluntary and involuntary manslaughter. A person who commits manslaughter is guilty of a felony and

subject to maximum penalties of (1) imprisonment for 10 years or (2) imprisonment in a local correctional facility for 2 years and/or a fine of \$500.

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### **Additional Information**

**Prior Introductions:** None.

**Designated Cross File:** SB 669 (Senator Smith) - Judicial Proceedings.

**Information Source(s):** Judiciary (Administrative Office of the Courts); Maryland Department of Health; Department of Legislative Services

**Fiscal Note History:** First Reader - February 14, 2022  
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