

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1167 (Delegate McComas, *et al.*)
Health and Government Operations

Public Health - Abortions - Coercion (Coercive Abuse Against Mothers
Prevention Act)

This bill establishes a misdemeanor penalty for coercing a pregnant woman to have an abortion, as specified; violators are subject to a maximum fine of \$1,000. A victim of this crime may (1) file a civil action for damages against the perpetrator and (2) file an action in circuit court to prevent the perpetrator from committing or continuing to commit violations. A physician must take specified actions and wait at least 24 hours before performing an abortion on a specified pregnant woman unless the abortion is necessary to prevent the death of or substantial and irreversible injury to a pregnant woman. A health care facility must conspicuously post a specified notice as a condition of licensure. An employee or volunteer of a health care facility who knows, alleges, or suspects that a pregnant woman is a victim of coercion must notify local law enforcement to make a specified report within 48 hours. If a minor is denied financial support due to the minor's refusal to have an abortion, the minor must be considered an emancipated minor for purposes of public assistance eligibility.

Fiscal Summary

State Effect: Any impact on expenditures regarding the provision of public assistance to an emancipated minor is indeterminate and assumed to be minimal. Minimal increase in general fund expenditures from additional civil and criminal cases heard in the District Court. Minimal increase in general fund revenues from fines imposed for the newly established criminal offense.

Local Effect: Minimal increase in local expenditures to the extent that additional civil actions are filed in circuit courts. Revenues are not materially affected.

Small Business Effect: Minimal.

Analysis

Bill Summary: “Abortion” means the act of using or prescribing an instrument, medicine, drug, or any other substance, device, or means with the intent to terminate the clinically diagnosable pregnancy of a woman, with knowledge that the termination by those means will with reasonable likelihood cause the death of the unborn child. “Abortion” does not include the use or prescription of an instrument, medicine, drug, or any other substance, device, or means if used or prescribed to (1) save the life or preserve the health of an unborn child; (2) remove a dead unborn child resulting from spontaneous pregnancy loss; (3) remove an ectopic pregnancy; or (4) treat a maternal disease or illness for which the prescribed drug is indicated.

Prohibition Against Coercion

An individual who knows or suspects that a woman is pregnant may not engage (or conspire with another individual to engage) in the following conduct with the intent of directing the pregnant woman to have an abortion, based on the pregnant woman disregarding or refusing the individual’s demand that the woman seek an abortion:

- committing, attempting to commit, or threatening to commit physical harm to the pregnant woman, unborn child, or another individual;
- committing, attempting to commit, or threatening to commit a violation of the Criminal Law Article;
- revoking, attempting to revoke, or threatening to revoke a scholarship awarded to the pregnant woman by an institution of higher education;
- discharging, attempting to discharge, or threatening to discharge the pregnant woman or another individual from employment;
- changing, attempting to change, or threatening to change the compensation, terms, conditions, or privileges of employment of the pregnant woman or another individual;
- denying, attempting to deny, or threatening to deny any social assistance that a pregnant woman has applied for, has been receiving, or is eligible for; or
- denying, removing, or threatening to remove financial support or housing from a dependent of the pregnant woman.

A violator is guilty of a misdemeanor and on conviction is subject to a fine of up to \$1,000.

Civil Remedies for Victims of Coercion

A woman who is a victim of a violation of the specified misdemeanor may bring a civil action for money damages against the perpetrator (including a wrongful death action)

regardless of (1) whether an abortion was actually performed; (2) whether the defendant was criminally prosecuted; or (3) the outcome of any criminal prosecution. In a successful civil action, a woman is entitled to reasonable attorney's fees.

A woman may also bring an action in circuit court to prevent the perpetrator from committing a subsequent violation or cease an ongoing violation of the specified misdemeanor. The court must provide the pregnant woman with counsel (if requested), consider the matter in an expedited manner, and grant any relief necessary to prevent further violation or cease an ongoing violation.

Minor's Emancipation

If a minor is denied financial support from a parent, guardian, or custodian due to the minor's refusal to have an abortion, the minor must be considered an emancipated minor for purposes of public assistance eligibility. However, any such public assistance benefits may not be used to obtain an abortion.

Health Care Facilities

As a condition of licensure, a health care facility that performs abortions must conspicuously post a specified notice in a waiting room, consultation room, and procedure room. A health care facility may not employ or allow to volunteer an individual who has violated the below reporting requirements for employees and volunteers or physician requirements.

Health Care Facility Employees and Volunteers

An employee or volunteer at a health care facility must report the knowledge, allegation, or suspicion that a pregnant woman is a victim of coercion in violation of the specified misdemeanor within 48 hours of discovery. The report must contain the name and address of the pregnant woman, the name and address of a parent or guardian if the pregnant woman is a minor, and any relevant information the employee or volunteer has relating to the known, alleged, or suspected coercion. An employee or volunteer who fails to report their knowledge, allegation, or suspicion regarding coercion, as specified, is guilty of a misdemeanor and on conviction is subject to a fine of up to \$500.

Physician Requirements

Before performing an abortion, a physician must, in a private room, (1) ask the pregnant woman if she is being coerced, threatened, or forced to have an abortion; (2) offer to provide the pregnant woman with information about assistance, counseling, and protective services offered by social services and law enforcement agencies; (3) provide the pregnant

woman with a telephone that she may use to make a private phone call; and (4) provide the pregnant woman with an alternative exit from the facility.

If an employee or volunteer knows, alleges, or suspects that a pregnant woman is a victim of the specified misdemeanor, a physician must orally inform the pregnant woman that (1) coercion is prohibited; (2) the pregnant woman may have legal remedies; and (3) a request or demand for an abortion made by the father of the unborn child does not relieve the father of his financial support responsibilities.

A physician may not perform an abortion on a pregnant woman who is known, alleged, or suspected to be a victim of the specified misdemeanor within 24 hours after the later of (1) the discovery of the knowledge, suspicion, or allegation or (2) informing the pregnant woman of her rights as specified above. The 24-hour waiting period may be waived if, in the physician's best medical judgment, an abortion is necessary to prevent the death of the pregnant woman or substantial and irreversible injury to one of the pregnant woman's major bodily functions.

A physician who fails to comply with these requirements is guilty of a misdemeanor and on conviction is subject to a fine of up to \$500.

Rights of Reporting Individuals

If an individual who reports an alleged violation of the bill requests a notification, a law enforcement agency must notify the reporting individual at least 24 hours before the law enforcement agency's initial contact with the alleged violator.

Current Law: 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*, 410 U.S. 113 (1973). A viable fetus is one that has a reasonable likelihood of surviving outside of the womb. The Maryland Department of Health (MDH) 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.

The Office of Health Care Quality within MDH regulates specified health care facilities within in the State where abortions may be provided, including ambulatory surgical centers, freestanding ambulatory surgical centers, hospitals, and surgical abortion facilities.

Additional Comments: The bill states that the sentence imposed for the misdemeanor of coercing an abortion must be consecutive to and not concurrent with any other sentence imposed. However, the maximum penalty for the misdemeanor is a \$1,000 fine.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Maryland Commission on Civil Rights; Judiciary (Administrative Office of the Courts); University System of Maryland; Morgan State University; Maryland Department of Health; Department of State Police; Department of Legislative Services

Fiscal Note History: First Reader - March 9, 2022
km/jc

Analysis by: Amber R. Gundlach

Direct Inquiries to:
(410) 946-5510
(301) 970-5510