

BILL NO: Senate Bill 357
TITLE: Pain Capable Unborn Child Protection Act
COMMITTEE: Finance
HEARING DATE: March 10, 2020
POSITION: **OPPOSE**

Senate Bill 357 would outlaw abortion after twenty weeks of gestation, criminalize doctors' actions, and require onerous reporting for no discernible reason. The Women's Law Center of Maryland, Inc. opposes Senate Bill 357 because it is based on contested medical assertions and invades very personal decisions that women have a constitutional right to make and should make in consultation with their doctors.

Senate Bill 357 contains several pages of medical conclusions. Not only are the assertions in this bill unsubstantiated and unverified, but there are many, many studies that refute the assertions in this bill. For example, the American Congress of Obstetricians and Gynecologists, and the Commission of Inquiry into Fetal Sentience and the Royal College of Obstetricians and Gynecologists, both in Britain, all conclude in their studies that the possibility of fetal pain occurs much later than the 20 weeks indicated in this bill. The Journal of American Medical Association, in its comprehensive review of all studies conducted up to the time of their review, concluded that fetal pain may occur beginning at 28 weeks of gestation. Thus, there is simply no consensus in the medical field from which to support this legislation.

Furthermore, in other states, bills such as this one have come under successful attack as being unconstitutional, including in Alabama, Iowa, Kentucky, Nebraska, New Jersey, West Virginia, and Wisconsin. For example, in the Ninth Circuit laws such as this bill proposes faced expensive and time-consuming challenges to their constitutionality. Should this bill pass, Maryland can expect the same to happen here, with the same likely result. In a case decided in 2013, the U.S. District Court for the District of Idaho struck down a law nearly identical to this one, in both title and substance. The judge in that case declared the state's so-called fetal pain ban to be an undue burden on a woman's right to choose an abortion, relying on language from the earlier Ninth Circuit decision that affirmed the injunction blocking parts of the law. As the Ninth Circuit said, "[T]here can be no doubt that requiring women to explore the intricacies of state abortion statutes to ensure that they and their provider act within Idaho's abortion statute framework, results in an 'undue burden' on a woman seeking an abortion of a nonviable fetus." The judge continued, "[T]he Ninth Circuit faulted Idaho statutes for heaping yet another substantial obstacle in the already overburdened path that McCormack and pregnant women like her face when deciding whether to obtain an abortion" We understand several other states have enjoined statutes such as this bill proposes in the past several years. Furthermore, the bill contains various reporting requirements that not only violate patient privacy but also poses grave safety concerns that raises the risk level of every doctor performing those services and every woman who seeks the services.

Decisions about pregnancy are and should remain a matter between a woman and her doctor. No one else can place themselves in the position of a woman contemplating terminating her pregnancy; each case is unique and individual. In the overwhelming majority of cases, women and families contemplating a later abortion are not choosing to terminate an *unintended* pregnancy. These families are faced with serious medical issues that affect their ability to continue a pregnancy they have every intention of carrying to term, and forces them to confront the loss of a child they very much want.

For these reasons, the Women's Law Center urges an unfavorable report on Senate Bill 357.

The Women's Law Center of Maryland is a private, non-profit, membership organization that serves as a leading voice for justice and fairness for women. It advocates for the rights of women through legal assistance to individuals and strategic initiatives to achieve systemic change.