



## SB0357 - Pain-Capable Unborn Child Protection Act

Presented to the Honorable Dolores Kelley and Members of the Senate Finance Committee  
March 10, 2020 1:00 p.m.

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### POSITION: OPPOSE

NARAL Pro-Choice Maryland urges the Senate Finance Committee **an unfavorable report on SB0357 - Pain-Capable Unborn Child Protection Act**, sponsored by Senator Andrew Serafini.

Our organization is an advocate for reproductive health, rights, and justice. We work to ensure every childbearing individual has the freedom to decide if, when, and how to form their families. In doing so, we acknowledge that every pregnancy is unique and honor pregnancy decision-making in all its complexity. SB0357 prohibits a physician from performing or inducing, or attempting to perform or induce, an abortion procedure if the fetus is 20 or more weeks in development. It stipulates exceptions only in cases of a “medical emergency,” or a condition that could result in the woman’s death or substantial and irreversible physical impairment to one of her major bodily functions.

The proposed legislation denies child-bearing individuals reproductive freedom in cases [of fetal anomalies, which are most commonly diagnosed during the second trimester of pregnancy](#).<sup>i</sup> Later-diagnosed congenital conditions, including anencephaly (severe abnormal brain development), heart defects, and missing organs, are the leading causes of [infant mortality](#).<sup>ii</sup> With the restrictions proposed in SB0357, a woman could [be legally obliged to carry an unhealthy pregnancy to term and ultimately have a child that has no chance of a life](#) or one requiring constant medical intervention or living in chronic pain.<sup>iii</sup> Further, this legislation threatens the liberty of women who have become pregnant in cases of rape, incest, and intimate partner violence. In addition to its foreseeable harms, SB0357 is blatantly unconstitutional. The Supreme Court has long held that a state may regulate abortion care but may not ban abortions before fetal viability.<sup>iv</sup> Further, the bill’s definition of [“medical emergency” explicitly excludes risks to a woman’s psychological and emotional health](#), which has been a protected circumstance for abortion since *Roe v. Wade*.<sup>v</sup> Maryland families deserve access to this care.

According to the Centers for Disease Control and Prevention (CDC), only [1.3% of abortions are performed after 20 weeks](#), a rate reflective of the uniqueness of circumstances under which women typically seek the procedure at this point in development.<sup>vi</sup> Later abortion care often occurs after discovering medical complications to the life or health of the mother, fetus, or both. During pregnancy, [typical diagnostic testing for birth defects occurs just before or at 20 weeks of gestation](#).<sup>vii</sup>

[Research](#) suggest that the neural pathways associated with pain perception are not fully developed until well into the third trimester, and there is increasing evidence that [the fetus never experiences a state of true wakefulness in utero](#) and is kept in a continuous state of sleep-like unconsciousness or sedation by the presence of its chemical environment.<sup>viii</sup> Anti-choice individuals claim that limb withdrawal from a tactile stimulus is evidence of pain perception. However, according to research from [Ibis Reproductive Health and](#)

[London's Royal College of Obstetrics and Gynecology](#), limb withdrawal occurs even in full-term fetuses in response to non-painful tactile sensations, including light touch.<sup>ix,x</sup> The appearance of limb withdrawal on ultrasound represents a reflex rather than a response to pain.

Unsurprisingly, SB0357 uses the language “unborn child,” which it defines as “an individual organism of the species homo sapiens from fertilization until live birth.” Our organization is deeply concerned about passing legislation that *explicitly* establishes personhood for a fertilized egg, embryo, and fetus. This is a direct assault on the fundamental holding of *Roe v. Wade*, and endowing such personhood inescapably diminishes the personhood of the woman, including her rights to liberty, bodily autonomy, and medical decision-making.

As an advocate for reproductive health, rights, and justice, we acknowledge that every pregnancy is unique and work to ensure that every childbearing individual has the freedom to decide if, when, and how to form or add to one's existing family. SB0357 overlooks critical reasons for later abortion care, undermines women's constitutional rights, and establishes fetal personhood, threatening the personhood and well-being of any living individual capable of childbearing. It is critical that all Maryland women and girls are able to make decisions based on their unique pregnancies, which can include tragic complications and unexpected medical conditions. Therefore, NARAL Pro-Choice Maryland strongly **urges an unfavorable report on SB0357**. Thank you for your time and thoughtful consideration.

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<sup>i</sup> Lyus, R. et al. (2013). *Second Trimester Abortion for Fetal Abnormality*. Retrieved from <http://www.bmj.com/content/347/bmj.f4165>

<sup>ii</sup> Centers for Disease Control and Prevention. *Infant Mortality*. Retrieved from <https://www.cdc.gov/reproductivehealth/maternalinfanthealth/infantmortality.htm>

<sup>iii</sup> Chistensen, Erika. *New York Forces Women Like Me to Carry Nonviable Pregnancies to Term*. Retrieved from <https://rewire.news/article/2017/05/23/new-york-forces-women-like-carry-nonviable-pregnancies-term/>

<sup>iv</sup> *Roe v. Wade*, 410 U.S. at 163-64. *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992).

<sup>v</sup> Guttmacher Institute. (2017, January). *Evidence You Can Use: Later Abortion*. Retrieved from <https://www.guttmacher.org/evidence-you-can-use/late-abortion>

<sup>vi</sup> Jatlaoui, T. C. et al. (2017, November 24). *Abortion Surveillance – United States, 2014*. Retrieved from [https://www.cdc.gov/mmwr/volumes/66/ss/ss6624a1.htm?s\\_cid=ss6624a1\\_w](https://www.cdc.gov/mmwr/volumes/66/ss/ss6624a1.htm?s_cid=ss6624a1_w)

<sup>vii</sup> *Diagnostic Tests for Birth Defects*, The American Congress of Obstetricians and Gynecologists, September 2015, <http://www.acog.org/Patients/FAQs/Diagnostic-Tests-for-Birth-Defects> .

<sup>viii</sup> Mellor DJ, Diesch TJ, Gunn AJ, Bennet L. The importance of awareness for understanding fetal pain. *Brain Research Reviews*, 2005;49(3):455–71.

<sup>ix</sup> Ibis Reproductive Health. *Fetal pain, analgesia, and anesthesia in the context of abortion*, April 2018. Retrieved from <https://www.ibisreproductivehealth.org/publications/fetal-pain-analgesia-and-anesthesia-context-abortion>.

<sup>x</sup> Royal College of Obstetrics and Gynecology. *Fetal Awareness: Review of Research and Recommendations for Practice*, March 2020. Retrieved from <https://www.rcog.org.uk/globalassets/documents/guidelines/rcogfetalawarenesswpr0610.pdf>