



February 8, 2022

Re: Oppose House Bill 744 – a bill to create the crime of fetal manslaughter

Dear Chairman Adams and members of the House Courts of Justice, Subcommittee #1,

The ACLU of Virginia strongly opposes House Bill 744 (HB744) because of the potential for criminalizing personal, private reproductive healthcare choices and adding charges for accidents when someone does not know an individual is pregnant with little to no benefit to public safety.

We are deeply concerned with the implications this bill would have for a pregnant person's ability to choose reproductive care that best fits their needs. Such limitations may infringe upon an individual's constitutional right to privacy, equal protection, and due process. For example, many parents and pregnant people prefer to hire midwives to deliver their baby in the comfort of their homes. However, under this bill, a midwife would be charged with manslaughter if a woman gives birth at home with the midwife contrary to a doctor's order – regardless of the circumstances. Every person who becomes pregnant struggles through mounds of information, social pressure and judgment, including medical advice from multiple and occasionally dissenting providers, in a sincere effort to make sound choices about their pregnancy. Thus, HB 744 potentially criminalizes them for decisions made in good faith or make it harder for them to seek the reproductive healthcare that fits their needs.

It is a tragedy anytime a pregnant person loses a pregnancy due to the criminal actions of another. But our legal system already punishes that person for their crimes. A pregnant person in Virginia already has recourse that respects their agency and autonomy. Virginia Code § 8.01-50(B) provides for a civil tort action against a tortfeasor who causes a fetal death, as defined in § 32.1-249, by his wrongful act, neglect, or default. The physical and psychological injuries ultimately fall on the person losing a pregnancy, not on the fetus. The current law is sufficient in holding the wrongdoer accountable without potentially infringing on the pregnant person's rights as proposed in HB 744.

The bill also conflicts with a fundamental principle of criminal law, which holds that knowledge of the underlying fact that renders one's act subject to penalty is essential to conviction. Yet, under this bill, a person could be held criminally responsible for the death of a fetus even if the person did not know, and had no reason to know, that the person was pregnant.

It is for these reasons we oppose HB 744 and urge you to vote “no.”

Sincerely,

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