

TO: Members, House Health & Government Operations

**FROM: Therese M. Hessler, Director of Administration & Legislation
Maryland Right to Life**

DATE: March 9, 2018

RE: SUPPORT - House Bill 1424 - Pain-Capable Unborn Child Protection Act

Chair Pendergrass, Vice-Chair Bromell, and members of the committee, my name is Therese Hessler. I serve as Director of Administration & Legislation for Maryland Right to Life and I am writing on behalf of our organization and our supporters to urge a favorable report on House Bill 1424 (HB1424.)

Maryland Right to Life strongly supports HB1424, the Pain-Capable Unborn Child Protection Act.

The bill would save unborn children in Maryland from a grotesquely painful death.

HB1424 is legislation that would prohibit abortion on pregnant women in Maryland, except under certain circumstances, if the probable age of an unborn child is a certain number of weeks. The Pain-Capable Unborn Child Protection Act notes that by “8 weeks after fertilization, an unborn child reacts to touch and, after 20 weeks, an unborn child reacts to stimuli that would be recognized as painful if applied to an adult human”.¹

How should we define pain; especially as it pertains to a fetus of a certain gestational age? The experience of pain is complex, with physical, psychological and mental elements. In the simplest sense, pain is an aversive response to a noxious (physically harmful or destructive) stimulus. The medical dictionary administered by the National Institutes of Health (NIH)² supports this view, defining pain as, “**a basic bodily sensation that is induced by a noxious stimulus, is received by naked nerve endings, is characterized by physical discomfort (as pricking, throbbing, or aching), and typically leads to evasive action.**” As humans, we share this basic experience of pain with many other animals, from the very simple creatures like reptiles and birds to more complex mammals like dogs, cats, horses and primates.

Consequently, there is substantial medical evidence that an unborn child is capable of experiencing pain by 20 weeks fertilization, which is 22 weeks in the system of dating that is commonly employed in obstetrics, which counts pregnancy as beginning at the time of the last menstrual period (the “LMP” system.)³

¹ HB1424 Section 20-217 5(2) p.2, lines 16-18.

² Definition “b” Merriam Webster, *Medlineplus*, (<http://www.merriam-webster.com/medlineplus/pain>.)

³ *AmericanPregnancy.org*, Fetal Development (<http://americanpregnancy.org/while-pregnant/fetal-development/>)

Pain receptors (nociceptors) are present throughout the unborn child's entire body by no later than 20 weeks after fertilization and nerves link these receptors to the brain's thalamus and subcortical plate by no later than 20 weeks after fertilization.⁴

This is why that at 20 weeks post fertilization a fetus (or unborn child) will have the same reaction that you or I do when they are pinched - our reflexes tell us to recoil without a thought.⁵

There is widespread scientific evidence that at 20 weeks post fertilization; a human's neural system is fully developed. (This is why doctors administer anesthesia to these tiny patients when they perform in utero fetal surgeries.⁶)

Passage of this bill would make abortion illegal at 20 weeks fertilization or more, except when medically necessary for the mother. It amends the criminal code; the violator is subject to criminal penalties - a fine, up to five years in prison, or both. A woman who undergoes the abortion may NOT be prosecuted. In fact, the bill provides an additional civil cause of action to women who are harmed by violation of the Act. **HB1424 also requires that if she [a pregnant woman 20 weeks post fertilization] underwent an abortion and the violating doctor faced prosecution, a pseudonym would be created for her keeping her autonomy and information private supporting her 14th Amendment right to privacy as *Roe v. Wade* recognized that women have many reasons for seeking abortions⁷ and it is important to keep these tough personal decisions private.**

A Marist poll conducted January 2018 showed 63% of Americans - including 56% of Americans who identify as pro-choice - support banning abortions after 20 weeks fertilization⁸.

There is nothing extreme about the Pain-Capable Unborn Child Protection Act.

HB1424 is aimed at protecting unborn children and women from late-term abortions.

It is known that the fetus withdraws from a needle and similar objects from about 18 weeks and also launches a stress response following a needle puncture⁹. As advances continue in medicine and technology, states have taken initiative to protect unborn children after 20 weeks

⁴Myers, 2004, p.241, para.2, Myers LB, Bulich LA, Hess, P, Miller, NM. Fetal endoscopic surgery: indications and anaesthetic management. *Best Practice & Research Clinical Anaesthesiology*. 18:2 (2004) 231-258. Smith S. Commission of Inquiry into Fetal Sentience. London: CARE, 1996.

⁵Gupta R, Kilby M, Cooper G. Fetal surgery and anaesthetic implications. *Continuing Education in Anaesthesia, Critical Care & Pain*. 8:2 (2008) 71-75. Myers LB, Bulich LA, Hess, P, Miller, NM. Fetal endoscopic surgery: indications and anaesthetic management. *Best Practice & Research Clinical Anaesthesiology*. 18:2 (2004) 231-258.

Derbyshire SW. Fetal Pain: Do We Know Enough to Do the Right Thing? *Reproductive Health Matters*. 16:31Supp. (2008) 117-126.

⁶The New York Times. *To Mend a Birth Defect, Surgeons Operate on the Patient Within the Patient*. (Oct. 2017).

⁷Roe v. Wade, 410 U.S. 113, 153 (1973).

⁸Americans' Opinion on Abortion (January 2018) (<https://www.kofc.org/en/resources/communications/abortion-limits-favored.pdf>).

⁹Royal College of Obstetricians and Gynaecologists, *Fetal Awareness. Review of Research and Recommendations for Practice* (2010).

after fertilization based on substantial evidence and research. There are currently 24 states that ban abortion after 20 weeks fertilization, and only two states (Arizona and Idaho) have declared such a ban as unconstitutional.¹⁰

There are currently only 59 (out of 198 countries) that allow abortion “without restriction as to reason” or “elective,” or “abortion on demand.” Only seven of the 59 countries allow elective abortions after 20 weeks post fertilization: Canada, China, Netherland, North Korea, Singapore, the United States, and Vietnam. **Only seven countries out of 198 countries allow abortion after 20 weeks post fertilization. The United States is one of the seven. If unborn children cannot feel pain by this gestational age, why have so many countries banned abortions after this point?**

Opponents may argue that passing HB1424 would be detrimental to a woman’s health and put her at risk of complications or even death. This is simply not the case as **HB1424 provides more than adequate exceptions to protect a woman’s life or health - allowing abortions after 20 weeks fertilization for medical emergencies and risks to the mother’s health.**¹¹ **These medical emergencies are clearly defined in the bill. This also protects physicians from any penalties from helping a woman who needs an abortion due to a medical emergency.**

HB1424 does not take away a woman’s constitutional right to consult with her doctors.

Opponents may also argue that there is no exception for fetal anomalies. Over the past three decades, prenatal diagnosis has greatly benefitted in advances in ultrasound technology and in the ability to detect microscopic and submicroscopic chromosome anomalies. The majority of these, including structural anomalies, and central nervous system anomalies are detectable between 19-21 weeks gestational age or 17-19 weeks fertilization.¹²

The validation in scientific and medical research further asserts that a 20 weeks post fertilization fetus can feel pain and that HB1424 does not create any unwanted government intrusion as it is in the States interest to protect those within the State that can feel pain.¹³

It is the duty of the State to assert a compelling State interest in protecting the lives of unborn children from the stage at which substantial medical evidence indicates that they are capable of feeling pain; this compelling interest is intended to be separate from and independent of the State’s compelling interest in protecting the lives of unborn children from the stage of viability; and neither State interest is intended to replace the other.¹⁴

Based on the evidence presented, there is a clear and concise justification for legislative action and the passing of HB1424.

¹⁰ McCormack v. Herzog, 2015 U.S. App. LEXIS 8936 (9th Cir. Idaho May 29, 2015).

¹¹ HB1424 (2018) p.4 lines 23-30 (E)(1). p.6 lines 13-7 (2) p.8 lines 4-9 (I).

¹² Images Paediatr Cardiol 2001 Apr-Jun; 3(2): 3-18. *Prenatal diagnosis of congenital anomalies.* (<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3232499/>)

¹³ Eisenstadt v. Baird, 405 U.S. 438, 453 (1972).

¹⁴ HB1424 p.3 lines 32-37 Section 20-217 (13).

As individuals and as a society we must choose the attitude we will embrace regarding fetal pain. Those who insist and deny, ‘it is impossible to confirm what a fetus experiences’ despite numerous studies and evidence, deny the obvious fact that it is equally impossible to know what any other individual experiences at any stage of life and is not a legitimate argument to ignore what we know from science and from our own observations.

Imposing pain on any pain-capable living creature is cruelty. That’s why we work to create and hopefully pass bills in Maryland that protect the helpless; by proposing new no kill animal shelters, expanding domestic violence protective order laws and safeguards¹⁵, proposing private areas for nursing mothers who are breastfeeding¹⁶, expanding definitions of what constitutes as a hate crime, protecting minors from being coerced to change their sexual preference or gender identity¹⁷, building employment protections for pregnant women and new moms¹⁸, and making sure inmates have basic feminine hygiene products and that pregnant inmates have the support they need and so much more...we do these things because we acknowledge that on some level these bills take away pain and discomfort. We acknowledge this based on what we know and what we observe, whether we are giving the benefit of the doubt, out of compassion, empathy and justice, or whether we in opposition decide to ignore the pain simply because the precise psychological quality of their pain cannot be known with certainty.

This choice very much speaks to the kind of society and State we want to be.

We urge a favorable report and your support on HB1424.

Thank you.

Therese M. Hessler
 Director Legislation & Administration
 Maryland Right to Life
 (410) 269-6397

¹⁵ HB0065 (2018).

¹⁶ HB0571 (2018).

¹⁷ HB0902 (2018).

¹⁸ HB1109 (2018).