

# Assembly Bill 2223

## Decriminalization of Abortion and Pregnancy Loss

Assemblymember Buffy Wicks (AD-15)

### THIS BILL

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AB 2223 will ensure that no one in the State of California will be investigated, prosecuted, or incarcerated for ending a pregnancy or experiencing pregnancy loss.

### THE ISSUE

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Reproductive justice is a framework created by Black women in 1994 to address the intersectional and multifaceted issues that women of color and their families face in society. At the core of reproductive justice is the belief in the right to bodily autonomy; the right to have children; the right not to have children; and the right to parent the children we have with dignity and respect, in safe and sustainable communities. A critical part of realizing reproductive justice for people in California is clarifying that nobody will be investigated, prosecuted, or incarcerated for their actual, potential, or alleged pregnancy outcomes.

In the past two decades, at least 1,300 pregnant people have been criminally prosecuted for having miscarriages or stillbirths, or self-

managing an abortion.<sup>1</sup> California has not been exempt: despite clear law that ending or losing a pregnancy is not a crime, prosecutors have charged people with homicide offenses for pregnancy losses.<sup>2</sup>

In California, this misuse of state power is partly traceable to out-of-date provisions that give coroners a duty to investigate certain abortions and pregnancy losses. Based on these provisions, health care providers and institutions report people who have just given birth, had an abortion, or experienced a pregnancy loss to police, triggering harmful investigations and even unlawful prosecutions.

This threat of criminal prosecutions has a harmful effect on individual and public health, because people who fear prosecution due to their health issues are deterred from seeking care. This is a critical issue for Black, Indigenous, and other people of color, who are more likely to experience adverse pregnancy outcomes as a result of systemic racial inequities<sup>3</sup> and also more likely to be under scrutiny of punitive state systems.<sup>4</sup> It is also a concern for immigrants, queer and trans people, young people, and others who may self-manage

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<sup>1</sup> See, e.g., Paltrow & Flavin, *Arrests of and Forced Interventions on Pregnant Women in the United States, 1973–2005: Implications for Women's Legal Status and Public Health*, 38 J. Health Pol., Pol'y, & L. 299 (Apr. 2013); Martin, *Take a Valium, Lose Your Kid, Go to Jail: In Alabama, Anti-Drug Fervor and Abortion Politics Have Turned a Meth-Lab Law into the Country's Harshes Weapon Against Pregnant Women*, ProPublica, (Sept. 23, 2015); Bach, *Prosecuting Poverty, Criminalizing Care*, 60 Wm. & Mary L. Rev. 809 (2019); Diaz-Tello et al., *If/When/How: Lawyering for Reproductive Justice, Roe's Unfinished Promise: Decriminalizing Abortion Once and For All* (2019).

<sup>2</sup> Alex Wigglesworth, [With woman in prison for stillbirth, California's murder law is tested](#), Los Angeles Times (Dec. 16, 2020).

<sup>3</sup> E.g., Pruitt et al. *Racial and Ethnic Disparities in Fetal Deaths — United States, 2015–2017*, 69 MMWR Morb Mortal Wkly Rep 1277 (2020).

<sup>4</sup> See Hinton et al., *Vera Institute of Justice Evidence Brief, An Unjust Burden: The Disparate Treatment of Black Americans in the Criminal Justice System* (May 2018); Bridges, *Privacy Rights and Public Families*, 34 Harvard J. L. & Gender 113 (2011); Children's Bureau, U.S. Dept. of Health & Human Servs., *Child Welfare Practice to Address Racial Disproportionality and Disparity* (April 2021).

abortions because care in formal medical systems is inaccessible.

Worse, there is frequently no recourse for people who have been harmed by the legal system as a result of their pregnancy loss or self-managed abortion. California's Reproductive Privacy Act provides a guarantee to a right to make reproductive decisions, but does not provide avenues for redress for people who are denied these rights.

Finally, states hostile to abortion rights are attempting to impose criminal or civil penalties on people who assist others in obtaining an abortion. Californians must be able to support friends, community members, and loved ones with their abortion without being investigated, arrested, or prosecuted.

## **SOLUTION**

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AB 2223 protects reproductive freedom by clarifying that the Reproductive Privacy Act prohibits pregnancy criminalization, and creates a private right of action for people whose rights have been violated to seek accountability using civil courts.

This bill would also remove outdated provisions requiring coroners to investigate certain pregnancy losses, and ensure that information collected about pregnancy loss is not used to target people through criminal or civil legal systems.

## **SUPPORT**

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ACLU California Action (Co-Sponsor)  
Black Women for Wellness Action Project (Co-Sponsor)  
California Latinas for Reproductive Justice (Co-Sponsor)  
If/When/How: Lawyering for Reproductive Justice (Co-Sponsor)  
NARAL Pro-Choice California (Co-Sponsor)  
Planned Parenthood Affiliates of California (Co-Sponsor)

ACCESS Reproductive Justice  
American Association of University Women  
American Atheists  
American College of Obstetricians and Gynecologists District IX  
Asian Americans Advancing Justice – California  
Attorney General Rob Bonta  
California Coalition for Women Prisoners  
California Legislative Women's Caucus  
California for Safety and Justice  
California Nurses Association  
California Nurse Midwives Association  
California Medical Association  
California State Controller  
California Women's Law Center  
Californians United for a Responsible Budget  
Catholics for Choice  
City of Los Angeles  
Courage California  
Culver City Democratic Club  
Disability Rights California  
Ella Baker Center for Human Rights  
Fund Her  
Initiate Justice  
League of Women Voters of California  
National Center for Youth Law  
National Health Law Program  
Nevada County Citizens for Choice  
Office of the Lieutenant Governor Eleni Kounalakis  
Physicians for Reproductive Health  
Public Health Advocates  
San Francisco City Attorney's Office  
San Francisco District Attorney's Office  
Smart Justice California  
Stronger Women United  
Survived & Punished  
Tides Advocacy  
University of California  
URGE: United for Reproductive & Gender Equity  
Voices for Progress Education Fund  
Western Center on Law and Poverty  
Women's Foundation California  
Women's Health Specialists

## CONTACT

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Samantha Huynh  
Office of Assemblymember Buffy Wicks  
[Samantha.Huynh@asm.ca.gov](mailto:Samantha.Huynh@asm.ca.gov)  
(916) 319-2015