

IN RE: B.CD. & B.CB.

* IN THE
* SUPREME COURT OF
* MARYLAND
* September Term, 2025
* No. SCMPET03092025

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**BRIEF OF *AMICI CURIAE* B.CD & B.CB. IN SUPPORT OF
PETITION FOR WRIT OF CERTIORARI**

Physicians for Reproductive Health (“PRH”) is a physician-led nonprofit seeking to ensure meaningful access to comprehensive reproductive care. PRH’s network includes over 500 physicians from all fifty states, the District of Columbia and Puerto Rico. PRH has unique insight into the challenges that patients and providers, especially those in communities disproportionately impacted by health disparities, face when patients are prevented from accessing necessary care or utilizing health resources, such as safe haven laws.

Doing Right By Birth (“DRBB”) is a physician-led nonprofit seeking to re-center the care of pregnant people who use drugs, their children, families, and communities on science, compassion, and human rights. DRBB seeks to shift the focus from drugs to parent, infant, and dyadic well-being, as well as support for early childhood development.

SUMMARY OF THE ARGUMENT

On August 8, 2025, the Appellate Court of Maryland affirmed the Circuit Court of Anne Arundel County’s decision that postpartum persons who safely surrender their

newborn under Maryland's Safe Haven Law (the "Safe Haven Law" or "Law") can be punished by a neglect finding under Maryland's Children in Need of Assistance ("CINA") framework and consequently suffer severe collateral legal and health consequences.

From a medical perspective, applying Maryland's CINA framework to safe haven cases exposes postpartum parents to additional and devastating health outcomes. Indeed, the Maryland General Assembly intended for the Safe Haven Law to shield persons "who are in such desperate situations" from persecution, reasoning that it would be "a grave injustice" to punish postpartum persons in crisis.¹ By invalidating the Law's promise of immunity from criminal or civil penalties, the Appellate Court's decision is at odds with the spirit of the Safe Haven Law and medical guidance. CINA consequences may exacerbate the ongoing maternal health crisis (particularly with respect to Black, Hispanic, and Indigenous parents) by punishing vulnerable patients suffering from stressors including postpartum depression ("PPD") and other anxiety disorders. The lower courts' decisions threaten to discourage postpartum persons from availing themselves of the Law. Thus, this Court should grant certiorari to review these decisions.

I. Safe Haven Laws Exist to Support Postpartum Persons and their Newborns

All new parents should have ready access to comprehensive pre- and postnatal care and support. In reality, the infrastructure in place to support postpartum patients is severely

¹ Sarah Koenig, *Infant havens statute is eyed; Bills would shield people who abandon babies at 'safe' spots; 'To prevent tragedies,'* The Baltimore Sun, Feb. 16, 2001 (quoting Montgomery County delegate Sharon M. Grosfeld, a Safe Haven bill sponsor).

lacking, especially for those experiencing a combination of social marginalization and postpartum stressors.² Safe haven laws are one of the few (albeit imperfect) pieces of social infrastructure in place to support the safety and wellbeing of postpartum persons and their newborns.³

Medical professionals, including PRH and DRBB physicians, know patients experience the best health outcomes when they receive care free from fear of negative consequences perpetuated by state criminal legal or child welfare systems. The Safe Haven Law is aligned with this goal by allowing new parents to make a safe choice for their newborn by expressly “[p]roviding immunity from civil liability and criminal prosecution for a [postpartum parent] who leaves an unharmed newborn with a responsible adult person” M.D. Code Regs. 07.02.27.01(A)(1) (2018). But, a subsequent CINA neglect finding contradicts the Law’s core purpose and exacerbates the health impacts of a burdened support system on postpartum parents and their newborns.

² Brittany G. Grissette et al., *Barriers to Help-Seeking Behavior Among Women with Postpartum Depression*, 47(6) J. of Obstetric, Gynecologic, & Neonatal Nursing 812, 812 (November 2018); Isha Weerasinghe, *Attacks on DEI Negatively Affect Prenatal and Postpartum Mental Health*, The Center for Law and Social Policy (CLASP) (April 11, 2025), <https://www.clasp.org/blog/attacks-on-dei-negatively-affect-prenatal-and-postpartum-mental-health/>.

³ *Infant Safe Haven Laws: Summary of State Laws*, Child Welfare Information Gateway, <https://pdba.georgetown.edu/Security/citizenssecurity/eeuu/documents/safehavenall.pdf> (last visited September 23, 2025).

II. As Applied by the Lower Court Decisions, the CINA Framework Undermines the Purpose of the Safe Haven Law

The Safe Haven Law directs a designated facility receiving a safely-surrendered newborn to notify the local social services department. Md. Code Ann., Cts. & Jud. Proc. § 5-641. According to the lower court decisions, in order for the state to take custody of a surrendered newborn, the local department must file a CINA petition with one of four findings: abuse, neglect, developmental disability, or mental disorder. *In re B.CD.*, No. 2293, 2025 Md. App. LEXIS 732, at *51 (Aug. 8, 2025). Where, as here, there is no evidence of abuse, developmental disability, or mental disorder, the local department requests a CINA finding based on neglect. *Id.* Thus, per the lower courts' rulings, the mere fact that a postpartum person safely surrendered their newborn, in a manner consistent with the Safe Haven Law, supports a CINA neglect finding. *Id.* at *53. The consequences of this finding are directly contrary to the immunity promised by the Law.

A. A CINA Neglect Finding Carries Serious Legal and Health Consequences

A CINA neglect finding (both in and outside of the safe haven context) carries long-term legal and public health consequences, which fly in the face of the Law's clear intent to provide immunity. M.D. Code Regs. 07.02.27.01.

For example, a neglect finding carries the risk of a child protective services ("CPS") investigation. After making a neglect finding, the local department may subsequently extend their investigation to the postpartum parent's treatment of any other children in their care. Md. Code Ann., Family Law ("F.L.") §§ 5-714, 5-706. The investigation may also lead to the postpartum person being placed on Maryland's centralized child abuse registry.

F.L. §§ 5-714, 5-706; *Prince George's Cnty Dep't of Soc. Servs. v. Knight*, 158 Md. App. 130, 142 (2004) (Sonner, J. concurring) (placement on the child abuse registry has “substantial injurious collateral consequence”). The heightened surveillance that can stem from availing oneself of the Law may further result in declined physical and mental health, diminished sleep quality and quantity, and higher rates of maternal mortality.⁴

Additionally, a CINA neglect finding may result in loss of custody, visitation, or other parental rights as to the postpartum person's *other* children. Courts making custody or visitation determinations consider evidence of *neglect*, including a CINA neglect finding, against “any child residing within the party's household, including a child other than the child who is the subject of the custody or visitation.” F.L. § 9-101.1(b)(3) (2025). *In re Nathaniel A.*, 160 Md. App. 581, 593 (2005); *In re Adoption No. 12612*, 353 Md. 209, 234 (1999); *In re William B.*, 73 Md. App. 68, 77 (1987). It is well-documented that children experience long-lasting physical and emotional harm when the state separates them from their parents.⁵

⁴ See Elizabeth Wall-Wieler et al., *Mortality Among Mothers Whose Children Were Taken Into Care by Child Protection Services: A Discordant Sibling Analysis*, 187(6) Am. J. of Epidemiology 1182, 1186 (2018), <https://pubmed.ncbi.nlm.nih.gov/29617918/>; Elizabeth Wall-Wieler et al., *Maternal Mental Health after Custody Loss and Death of a Child: A Retrospective Cohort Study Using Linkable Administrative Data*, 63(5) The Canadian J. of Psychiatry 322, 326 (2018) <https://pmc.ncbi.nlm.nih.gov/articles/PMC5912297/>.

⁵ See, e.g., Vivek Sankaran et al., *A Cure Worse Than the Disease? The Impact of Removal on Children and Their Families*, Univ. of Mich. L. Sch. Scholarship Repository (July 2019), <https://repository.law.umich.edu/articles/2055/>.

In sum, a new parent who surrenders their newborn will face devastating long-term legal and health consequences resulting from a CINA neglect finding. Indeed, entering a CINA neglect finding in the safe haven context against a person suffering from one or more postpartum stressors can punish a parent experiencing a mental health crisis (and who already lacks access to other resources or support) and their children. These potential outcomes can and will discourage postpartum persons from availing themselves of the Law. The penalties are at odds with the purpose of the Law, and as discussed below, have a disproportionate impact on postpartum persons in historically marginalized communities, by creating additional obstacles to family health and wellbeing.⁶

B. A CINA Neglect Finding Risks Exacerbating the Maternal Health Crisis

Medical providers view the imposition of a CINA finding as a threat to the health of postpartum persons, including those availing themselves of the Safe Haven Law because they are suffering from a severe postpartum mood or anxiety disorder. Physicians consistently recommend that new parents experiencing postpartum distress should be met with compassion and support. The inequitable access and/or lack of medical and community resources available to postpartum persons leaves a vulnerable patient in an impossible position: choosing between making a safe choice for their newborn and for themselves, thereby risking a CINA finding, or remaining in crisis and placing themselves

⁶ See Munira Z. Gunja et al., *Insights into the U.S. Maternal Mortality Crisis: An International Comparison*, Common Wealth Fund (June 4, 2024), <https://www.commonwealthfund.org/publications/issue-briefs/2024/jun/insights-us-maternal-mortality-crisis-international-comparison>.

and their children at greater risk. Safe haven laws, designed to address a variety of postpartum emergencies, are one of the few resources still available to navigate an acute health crisis—*i.e.*, by providing an avenue for new parents to ensure their newborn is safe.

Systemic societal inequities in healthcare create an increased risk of postpartum mental health crises for new parents of color.⁷ This disproportionate impact on Black, Indigenous, and Hispanic parents is “a direct result of systemic inequities.... linked to factors like reduced access to quality healthcare, experiences of racism and implicit bias from providers, higher rates of traumatic birth experiences, and the chronic stress associated with social and economic inequality.”⁸ Yet, Black, Indigenous, and Hispanic patients are less likely to receive treatment for postpartum mood disorders, *even after* diagnosis.⁹ Maryland faces among the highest disparities in maternal health outcomes.¹⁰ Accordingly, the negative consequences of a CINA neglect finding likely will also

⁷ Jamila Taylor & Christy M. Gamble, *Suffering in Silence*, The Ctr. for Am. Progress (November 17, 2017), <https://www.americanprogress.org/article/suffering-in-silence/>; see also Sarah C. Haight, Jamie R. Daw, et al., *Racial and Ethnic Inequities In Postpartum Depressive Symptoms, Diagnosis, and Care In 7 US Jurisdictions*, 43(4) Health Affairs 486 (Apr. 2024).

⁸ See PostpartumDepression.org, *Statistics on Postpartum Depression*, <https://www.postpartumdepression.org/resources/statistics/> (last visited September 25, 2025) (“PPD Statistics”).

⁹ See Haight, *supra* note 7 (White respondents suffering from PPD received mental health care 67.4% of the time, while Hispanic and Black respondents received care 37.2% and 37% of the time, respectively).

¹⁰ Gunja, *supra* note 6 at 1; Scott Maucione, *Maryland women’s health disparities are above national average, study says*, WYPR (Oct. 7, 2024, at 1:07 ET), <https://www.wypr.org/wypr-news/2024-10-07/maryland-womens-health-disparities-are-above-national-average-study-says>.

disproportionally affect communities of color, who already face other intersections of oppression, and further exacerbate the maternal health crisis.

The Safe Haven Law was intended to provide for the safe and anonymous surrender of a newborn without fear of penalties. But the lower courts' rulings, which allow the state to penalize postpartum persons who use the Law, will result in a chilling effect on its use and endanger maternal and pediatric health—particularly in minority communities already experiencing health inequities.

CONCLUSION

This Court has the responsibility to support the wellbeing of newborns and parents by ensuring that postpartum persons are not deterred from availing themselves of the Safe Haven Law—legislation intended to improve maternal and infant health outcomes. Accordingly, the amici respectfully urge the Court to grant the writ.

Respectfully submitted,

/s/ Melinda Johnson

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**Special Admission Sought*

**STATEMENT OF INTENT TO FILE SUPPLEMENTAL BRIEF PURSUANT TO
RULE 8-511(E)(2)**

Should this Court grant the petition for a writ of certiorari, the amici intend to seek consent of the parties or move for leave to file an amicus curiae brief on the issues before the Court.

CERTIFICATE OF RULES COMPLIANCE

1. This brief contains 1,868 words, excluding the parts of the brief exempted from the word count by Rule 8-503.
2. This brief complies with the font, spacing, and type size requirements stated in Rule 8-112.

/s/ Melinda Johnson

CERTIFICATE OF SERVICE

I hereby certify that, pursuant to Rule 20-201(g), on October 6, 2025, the foregoing brief of amici curiae in support of petitioner was electronically filed via MDEC File and Serve and that two copies will be served by first-class mail on the next business day, on:

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