



Written by [R. Cort Kirkwood](#) on January 23, 2012

## Md. Abortionists: State Law Does Not Permit Our Prosecution

Two abortionists in Maryland, charged with murder under the state's fetal homicide law, claim that prosecutors are misusing that law and attacking a woman's "right to choose." Attorneys for the duo made the argument last week in court in asking a judge to dismiss the state's case.



But a pro-abortion state delegate who authored the fetal homicide law disagrees, claiming that in Maryland aborting a child after it can survive outside the womb is illegal.

Defense attorneys claim the murder charges are the prosecutor's attempt to scare doctors out of performing abortions.

[Maryland's abortion law](#), passed in 1992, is among the most radical in the country.

### What Happened

The late-term abortionists, Nicola Riley (above) and Steve Brigham, [landed in hot water](#) in August 2010 when they botched an abortion on an 18-year-old woman who had begun her procedure in Voorhees, N.J., according to news accounts. Her cervix dilated at a clinic in that town, whereupon she was told to go to a clinic in Elkton, Md., the [Washington Post reported](#).

At the abortuary in Elkton, the young woman's cervix ruptured. According to the [Post](#), instead of calling 911, abortionist Riley drove the victim to an area hospital. After that, the victim landed at Johns Hopkins Hospital in Baltimore.

It is unclear from news reports whether the child died in utero, was born alive and then killed, or died outside the womb with no intervention from the abortionists. But the murder of the woman's child led to a grisly discovery. The abortionists, [authorities allege](#), had stored some three dozen deceased unborn children in a freezer.

The pair aren't performing abortions anymore, at least for the time being. They also face a range of charges, said the [Post](#). Unless a judge dismisses them, Brigham will stand trial for five counts each of first- and second-degree murder and one count of conspiracy to commit murder. Riley faces one count each on those same charges.

[Prosecutors indicted](#) the pair in December.

### Case Attacks "Right to Choose"

Attorneys for the pair claim that prosecutors are misusing Maryland's fetal homicide law, an argument that may carry some weight given that the chief prosecutor in [Cecil County, Md.](#), where the clinic is located, [admitted that](#) his office was in "uncharted territory."



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That said, Riley's attorney put it this way in a motion to dismiss the charges, the *Post* reported: "The General Assembly never intended for doctors to be prosecuted at all for performing abortions, let alone convicted and subjected to criminal penalty."

[According to](#) the *Baltimore Sun*, the motion also claims state law protects abortionists from criminal charges: "Maryland law expressly provides that a licensed physician performing an abortion is immune from criminal liability[;] the charges against Dr. Riley should be dismissed."

Unsurprisingly, the attorney accused prosecutors of trying to undermine the state's liberal abortion law and curtail a woman's "right to choose," the [Sun reported](#). Prosecuting the pair, Riley's attorney wrote, places "an undue burden on a woman's right to choose to terminate her pregnancy in private consultation with her doctor." The attorney continued,

To use this law as the state wishes in this case, to prosecute a doctor for performing an abortion for a patient who sought this medical care and consented to it is ... a gross abuse of the criminal justice system.

The state's vague charges reflect an attempt to intimidate any physician who might consider performing an abortion in Cecil County with the threat of criminal prosecution, effectively banning the constitutionally protected procedure.

The brief also notes that Maryland's fetal homicide law "does not apply to a woman's right to terminate her pregnancy."

### **Delegate Says Lawyers are Wrong**

Yet the delegate who helped write the fetal homicide law says otherwise, the [Sun reported](#).

Del. [Samuel I. Rosenberg](#), a Democrat who represents Baltimore, cosponsored the bill, which the state's lawmakers passed after the [Laci Peterson murder](#) trial. Scott Peterson, now serving a term in prison, was convicted for murdering not only Laci but also their unborn child.

[According to](#) Maryland's code, "A person prosecuted for murder or manslaughter as provided in subsection (b) of this section must have:

- (1) intended to cause the death of the viable fetus";
- (2) intended to cause serious physical injury to the viable fetus; or
- (3) wantonly or recklessly disregarded the likelihood that the person's actions would cause the death of or serious physical injury to the viable fetus.

The law exempts abortionists who practice their deadly trade, noting that the law is "inapplicable to the termination of pregnancy" and that "nothing in this section applies to or infringes on a woman's right to terminate a pregnancy."

[According to](#) the *Sun*, Rosenberg was firm in his defense of the law and that the doctors might well be prosecuted for fetal homicide under its provisions. He is a [staunch supporter](#) of the [Roe v. Wade](#) decision, in which the Supreme Court struck down abortion laws in all 50 states, giving women the right to murder their unborn children.

"Del. Samuel I. Rosenberg, a Baltimore Democrat who co-sponsored the fetal homicide law, said it is not limited to any type of case," the [Sun](#) reported, adding:

He denied that the wording undermines *Roe v. Wade*, the landmark Supreme Court decision that



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established a constitutional right to abortion.

“Our clear intent was that you could not take action under this statute for an abortion that was legal,” Rosenberg said. “Abortion is illegal under any circumstance if the fetus is viable.” Maryland law generally prohibits abortions when fetuses have a reasonable likelihood of sustained life outside the womb, but allows exceptions when the mother’s life or health is in danger.

“I would oppose any legislation or prosecution that would violate *Roe* and would burden a woman’s right to choose,” Rosenberg said Friday. “My intent when we worked on this bill was to ensure that the fetal homicide statute would be used in appropriate circumstances. The courts will judge whether this is the case here.”

### **Maryland’s Liberal Abortion Law**

If the doctors are acquitted, the case will highlight how radical Maryland’s abortion law is. Contrary to what [Rosenberg said](#), abortion is not illegal in Maryland after an unborn child reaches “viability.” State law does not define “viable,” the *Sun* noted. Abortionists and doctors decide whether an unborn child is viable.

[According to](#) Maryland Right To Life, the state boasts “one of the most extreme abortion statutes in the United States.” It became law in 1992, and a strong effort to repeal by referendum failed. The law has “[p]ermitted abortion on demand, even late in pregnancy,” [MDRTL reports](#). In addition, the group said, the law has:

... protected abortionists from legal action; allowed abortionists to perform abortions on minors without notifying a parent; and left health care workers who refuse to make abortion referrals as a matter of conscience vulnerable to civil liability and disciplinary action.

The group notes that [NARAL Pro-Choice America](#), which used to be called the National Abortion Rights Action League, [gives Maryland](#) an “A” rating on killing the unborn. “Only [California](#) and [Washington State](#) have a higher score of “A+,” [the group notes](#).

As well, “Maryland is the only state where an abortionist may act with impunity while health care workers are vulnerable to job discrimination, lawsuits, poor peer reviews, and disciplinary action for refusing to perform or facilitate abortions.”

*Photo: Dr. Nicola Irene Riley and her attorney Edwin Wall appear in Salt Lake City’s 3rd District Court Monday, January 9, 2012.: AP Images*



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