

Senate Statement

By

Senator, The Hon. Kim Wilkerson, JP

Attorney-General and Minister of Justice

Criminal Code Amendment Bill 2026

18th November 2026

Madam President, I rise today to inform this Honourable Senate of the introduction of the Criminal Code (Medical Termination of Pregnancy) Amendment Bill 2026. I do so conscious that this Bill touches upon one of the most private decisions that any person can face. It is a decision made in doctors' offices and at kitchen tables, often in fear, often in silence, and too often alone. At its heart, this Bill asks a simple question: who decides? For far too long, the law of Bermuda has answered that question with the threat of criminal sanction and the permission of a Committee. This Bill answers it differently. It says that the decision belongs to a woman, in consultation with her doctor.

Madam President, Honourable Senators will recall that, in the 2025 Throne Speech, this Government committed to repealing the provisions of the Criminal Code Act 1907 that address the termination of pregnancy, together with the requirement for approval by the Therapeutic Abortion Committee. I was charged with progressing that reform. This Bill delivers the heart of that commitment, as it takes consensual medical care out of the criminal law and abolishes the Committee. However, it is but the first step in our plans to address the issue of medical terminations and pregnancy loss comprehensively.

Madam President, let me begin by explaining where the law stands today. Under sections 194 to 196 of the Criminal Code Act 1907, procuring a miscarriage remains a criminal offence. A termination is lawful only where a certificate has first been obtained from the

Therapeutic Abortion Committee and they may issue a certificate only on limited grounds. This has meant, in practice, that a psychiatric sign-off has often been required in order to justify the termination under mental health grounds, in circumstances where consent alone should be enough. In other words, a woman who has already reached what may be the most difficult decision of her life must then go through a lengthy process of seeing multiple doctors and then have her case presented to a panel and wait for its permission. Every moment of that wait matters as the later a termination, the greater the clinical risk and on-island care is in practice available only in the early weeks of pregnancy.

Madam President, that process applies even where a termination is needed for medical reasons. Consider a woman, and her family, who have just been given devastating news at a scan: that the child she is carrying will not survive, or that continuing the pregnancy places her own life or health at risk. Under our current law, she must still wait for a Committee to meet and to certify before her doctor may act. Every day of that wait is a day spent carrying a pregnancy that she knows she will not continue. While the Committee meet and process applications swiflty, even a few days in that state can be profoundly harmful, mentally and psychologically, at what is already one of the most painful moments a family can face. The law should not add to that grief. It should get out of the way of her care.

Madam President, the practical reality is starker still. Only two OBGYNs perform the procedure on-island, and, in both cases, in practice only up to fourteen weeks' gestation absent medical necessity. Those who have the means can, and do, travel overseas for care. Those who do not have the means, or who cannot leave behind children and other dependants to board a plane, are left with far fewer options. The additional burdens imposed by this law have never fallen equally. They fall hardest on those of lower economic means and on those with caregiving responsibilities.

Madam President, an option that is available only to those who can afford a plane ticket is not a right. It is a privilege. And the law of this country should not be a respecter of bank balances.

Madam President, the problem, then, is threefold. First, the law treats a healthcare decision as a crime unless a committee gives permission. Second, that permission process causes delay and in pregnancy delay carries clinical risk. Third, the burden of the system falls unequally, on those who cannot afford to seek care abroad or who, for other reasons, cannot travel. This Bill addresses the first two directly. After further consultation, later phases will address the third.

Madam President, consultation also revealed further barriers that compound the legal framework: insurance waiting periods, in at least one case of ten months, before pregnancy and abortion coverage attaches; a proposal to reduce the standard allowance for abortion care;

and the exclusion of abortion care from the Government's Maternity Benefit Programme. These matters are not addressed in this Bill, but I mention them now so that Honourable Senators understand that this Government sees the whole picture, and that we intend to address it.

Madam President, between 2025 and 2026, my Ministry held small-group consultations with those most closely affected by these proposals. We met with women's charities, including the Women's Resource Centre and the Centre Against Abuse; with the physicians who provide this care; with bipartisan political representatives; with the Human Rights Commission and the Gender Affairs Council; with doulas and fertility business owners; with youth charities and social justice organisations; and with women with lived experiences of abortion who have obtained care both on-island and outside of Bermuda. I thank every consultee for their candour and their time.

Madam President, every consultee to date agreed that abortion should be decriminalised and that the Therapeutic Abortion Committee should be abolished. Not most. Every one. There was also broad consensus on removing the psychiatric sign-off frequently required by the Committee, on funding voluntary counselling, and on aligning our laws with modern medical practice. That consensus has shaped the approach that I now set out.

Madam President, I am also mindful that this is a subject upon which Bermudians of good conscience, including many of deep and sincere

faith, hold differing views. I respect those views, and I respect those who hold them. This Bill does not ask any person to abandon their convictions. It does not compel any woman to choose one path or another. What it does ask is that the criminal law step back from a decision that properly belongs to a woman and her doctor; that it resides as it should as a health matter, not a criminal one.

Madam President, this Bill is deliberately focused. It does two things: it makes a consensual termination performed by a qualified medical practitioner lawful, and it abolishes the Therapeutic Abortion Committee. The wider matters raised during our consultation will be the subject of further consultation, and I will return to those shortly, but I want first to speak plainly about what this Bill does.

Madam President, Clause 2 of the Bill repeals and replaces section 196A of the Criminal Code Act 1907. The new section provides that no person shall be guilty of an offence under any law related to the termination of pregnancy, where the pregnancy is terminated in good faith, by medical or surgical means, in a hospital, by a registered medical practitioner or a person assisting that practitioner, with the written consent of the pregnant woman, voluntarily given. For an adult woman, that consent is all that is required.

Madam President, the new section also expressly recognises the circumstances in which the need for care is most acute and has retained many of those from the existing law, while adding others: where a

pregnancy is the result of incest or of a serious sexual offence, including sexual offences against children; where continuing the pregnancy would risk the pregnant person's life, or injury to her physical or mental health; and where there is a substantial risk that, if the child were born, the child would suffer from a serious physical or mental impairment resulting in severe disability. In settling the wording of that last ground, we consulted with the Human Rights Commission to ensure that our language is inclusive and not harmful. No pregnant person in those circumstances should ever have to wonder whether she might be prosecuted for obtaining medical care.

Madam President, for the purposes of the new section, the meaning of "hospital" has been retained and means the King Edward VII Memorial Hospital, or any other facility that the Minister responsible for health may designate by order, subject to the negative resolution procedure. That power is deliberate. It contains abortion care to current hospital clinical practice, yet allows care to be provided safely beyond a single site in future following further reform, while keeping Parliament informed of any such designation. As we develop further abortion reform and explore medical abortion options, the hospital may not always be where medication is administered. That will be established in later legislation, but the power to designate another site is placed in this Bill now so that the law is ready when that time comes.

Madam President, Clause 3 repeals sections 196B to 196D, which contain the machinery of the Therapeutic Abortion Committee. Clause 4 contains the transitional provisions. It abolishes the Committee upon commencement of the Act. It provides that a certificate from the Committee is no longer required for a lawful termination, and that any application pending before the Committee at that time shall be void. The terms of all members expire, while they remain bound by their duties of confidentiality.

Madam President, let me be clear about what that transitional provision means for any woman whose application is pending on the day this Act comes into force. She does not lose anything. Her application falls away because she no longer needs anyone's permission. She may proceed directly with her doctor.

Madam President, I wish also to thank those who have served on the Therapeutic Abortion Committee over the years. They carried out a role that the law required of them, and in doing so, they provided women with access to crucial care within the limitations of the existing framework. The abolition of the Committee is no reflection on them. It is a reflection of the fact that a woman's healthcare decision should never have required a committee in the first place.

Madam President, let me speak to the legal perspective, as this Honourable Senate would expect from me.

Madam President, first, this Bill decriminalises lawful terminations; it does not remove every safeguard in the criminal law. Sections 194 to 196 remain in force. What is changed is that a consensual termination, performed in good faith in a hospital by a registered medical practitioner, is placed firmly outside their reach. A termination performed by an unqualified person, or outside the conditions set out in the new section 196A, remains a criminal offence. That means that anyone procuring their own miscarriage, anyone supplying drugs or instruments to do so, or anyone taking action with the intent to cause a miscarriage outside of the listed parameters, still commits an offence.

Madam President, second, for an adult woman, her consent is all that the new section requires. Where she consents in writing, as far as practicable, and her doctor is satisfied that her consent has been given voluntarily, nothing more is needed. There is no Committee to convince, no certificate to obtain, no psychiatrist to consult and no further ground to prove. She need not explain herself to anyone. The decision is hers.

Madam President, why, then, does the Bill set out further grounds? They serve two purposes. The first is protection. Under current practice in Bermuda, a person under the age of eighteen cannot give that consent. Those grounds ensure that a girl who is pregnant as a result of incest or certain sexual offences, whose life or health is at risk, or who faces a diagnosis of severe foetal abnormality, is not denied lawful care simply

because she is too young to consent for herself. Very often, that girl is the victim of a crime. The law should protect her, not abandon her.

Madam President, the second purpose is recognition. There are women in this country for whom ending a pregnancy would, in ordinary circumstances, be contrary to their deepest moral or religious convictions. Yet some of those women will find themselves in circumstances that no one should ever have to face: a pregnancy forced upon them through a sexual offence, a pregnancy that threatens their life or their health, or a devastating diagnosis at a scan. For such a woman, these grounds are not a hurdle to be cleared. They are an assurance that the law itself recognises the gravity of what she is facing, and that the decision she makes in those circumstances is one that the law expressly acknowledges and respects. She should not have to carry the weight of that decision and the weight of the law's silence at the same time.

Madam President, I wish to say a further word about minors. It is not written in law, but it has long been accepted clinical practice in Bermuda that parents must consent to medical treatment on behalf of their child, unless that treatment is life-threatening. In the United Kingdom, the principle of Gillick competence has been adopted through case law. No such case law has developed in Bermuda, and no case has been heard in the Bermuda courts in which Gillick has been applied. It would likely therefore take an Act of Parliament to determine that Gillick competence is applicable in Bermuda. Nor do we yet have a Mental Capacity Act.

These are matters for health legislation, and we do not intend to touch the question of medical consent for those under eighteen in Criminal Code legislation at this juncture. The current, and continued, practice for minors under eighteen will therefore be a referral to the Department of Child and Family Services, who will refer the minor to a psychiatrist at Child and Adolescent Services at the Mid-Atlantic Wellness Institute, before her referral to an obstetrician-gynaecologist for a termination.

Madam President, third, this Bill does not alter the gestational limits within which care is currently provided. Until any further reform is brought forward, lawful terminations will continue to be governed by clinical practice, within the hospital setting that this Bill retains. Nothing in this Bill makes care available at a later stage of pregnancy than it is today. The hospital has a clearly established clinical practice, and the existing legislation has never contained a gestational limit. We do not wish to write into law limits of our own choosing until we have completed further consultation. Nor do we wish to inadvertently create a crime where a woman travels overseas for a termination after fourteen weeks. In the United Kingdom and in New York, termination is lawful up to twenty-four weeks. Clinical practice in Bermuda is set, and it is not changing, even if the law is updated to permit terminations later than fourteen weeks. The question of a gestational framework will be the subject of further consultation, and will come before this Honourable Senate in its own right.

Madam President, fourth, Bermuda will not be charting unknown waters. In 1988, the Supreme Court of Canada, in *R v Morgentaler*, struck down a regime of therapeutic abortion committees strikingly similar to our own, finding that the delays and unequal access it produced were incompatible with a woman's security of the person. Chief Justice Dickson observed that forcing a woman, by threat of criminal sanction, to carry a foetus to term unless she meets criteria unrelated to her own priorities and aspirations is a profound interference with her body. And, in March of this year, the House of Lords voted to retain a clause in the United Kingdom's Crime and Policing Bill that removes women in England and Wales from the reach of the criminal law in relation to their own pregnancies. Bermuda's current framework has become an outlier among our Commonwealth comparators. This Bill begins to correct that.

Madam President, decriminalisation is necessary, but it is not sufficient. Our consultation raised a number of wider matters affecting access to reproductive healthcare. Those options include a national health policy on reproductive care, including a gestational framework; the authorisation of both misoprostol and mifepristone under the Pharmacy and Poisons Act 1979 to allow for medical termination options, not solely surgical; reforms to insurance coverage, including waiting periods; the inclusion of abortion care in the Maternity Benefit

Programme; and clear protocols for access by minors, guided by the principle of Gillick competence, as applied in the United Kingdom.

Madam President, Honourable Senators may also ask about data. While we intend to work with the Bermuda Hospitals Board to receive anonymised data for the purpose of annual statistics, we have not legislated to require that within a Criminal Code bill. That may form part of later legislation.

Madam President, that further consultation will also examine how best to support women and families, and its outcome will be brought before this Honourable Senate in due course. The options include funding voluntary counselling services through our third-sector partners; examining aligning the legal threshold of viability with medical practice at twenty-four weeks, so that birth certificates may be issued from twenty-four weeks rather than twenty-eight in the event of stillbirth; and amending the Employment Act 2000 to provide miscarriage and stillbirth leave for both parents.

Madam President, I want to pause on that last point, because it says something important about this programme of reform. This is not simply about one procedure. It is about how our laws treat women and families throughout pregnancy, including in moments of profound loss. A family grieving a miscarriage or a stillbirth deserves time and compassion, not a return to the office the following morning. Our laws should meet people where they are.

Madam President, as this Bill comes before this Honourable Senate for debate, I look forward to hearing from all Honourable Senators, and I welcome a full and respectful discussion. I would ask only that we keep in mind the women whom this law affects: the young mother who cannot leave her children to travel abroad; the woman who has been the victim of a sexual offence; the couple who have received devastating news at a scan; and the woman who has simply, and carefully, made a decision about her own life and her own future.

Madam President, the law of this country has treated those women as potential criminals and their doctors as potential accomplices. This Bill brings that chapter to a close. It removes the Committee. It removes the certificate. It removes the threat of prosecution from lawful care. And it places the decision where it has always belonged: with a woman and her doctor. Not with a Committee. Not with the criminal courts. With her.

Thank you, Madam President.