

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1299 Session of
1997

INTRODUCED BY O'BRIEN, TRUE, SAYLOR, FLEAGLE, ARMSTRONG,
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BARRAR, HARHART, STEIL, D. W. SNYDER, SCHRODER, SATHER,
LaGROTTA, COLAFELLA, CAPPABIANCA, SAINATO, PETRONE, SANTONI,
SHANER, TRAVAGLIO, WOJNAROSKI, WALKO AND BELFANTI,
APRIL 10, 1997

REFERRED TO COMMITTEE ON JUDICIARY, APRIL 10, 1997

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania
2 Consolidated Statutes, providing for crimes against the
3 unborn.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Title 18 of the Pennsylvania Consolidated
7 Statutes is amended by adding a chapter to read:

8 CHAPTER 26

9 CRIMES AGAINST THE UNBORN

10 Sec.

1 2601. Short title of chapter.

2 2602. Definitions.

3 2603. Criminal homicide of unborn child.

4 2604. Malicious homicide of unborn child.

5 2605. Voluntary manslaughter of unborn child.

6 2606. Aggravated assault of unborn child.

7 2607. Exclusions.

8 § 2601. Short title of chapter.

9 This chapter shall be known as the Crimes Against the Unborn
10 Act.

11 § 2602. Definitions.

12 The following words and phrases when used in this chapter
13 shall have the meanings given to them in this section unless the
14 context clearly indicates otherwise:

15 "Abortion." As defined in section 3203 (relating to
16 definitions).

17 "Intentional killing." As defined in section 2502(d)
18 (relating to murder).

19 "Malicious." Having the same quality of malice which is an
20 essential element of murder.

21 "Perpetration of a felony." As defined in section 2502(d)
22 (relating to murder).

23 "Principal." As defined in section 2502(d) (relating to
24 murder).

25 "Serious bodily injury." As defined in section 2301
26 (relating to definitions).

27 "Serious provocation." As defined in section 2301 (relating
28 to definitions).

29 "Unborn child." As defined in section 3203 (relating to
30 definitions).

1 § 2603. Criminal homicide of unborn child.

2 (a) Offense defined.--An individual is guilty of criminal
3 homicide of an unborn child if the individual intentionally,
4 knowingly, recklessly or negligently causes the death of an
5 unborn child.

6 (b) Classification.--Criminal homicide of an unborn child
7 shall be classified as the malicious homicide of an unborn child
8 or voluntary manslaughter of an unborn child.

9 § 2604. Malicious homicide of unborn child.

10 (a) Malicious homicide of unborn child of the first
11 degree.--

12 (1) An individual who kills an unborn child without
13 lawful justification commits the offense of malicious
14 homicide of an unborn child of the first degree if, in
15 performing the acts which cause the death of the unborn
16 child, the individual does any of the following:

17 (i) By an intentional killing, kills the pregnant
18 woman, her unborn child or another.

19 (ii) Attempts an intentional killing of the pregnant
20 woman or another.

21 (2) The penalty for malicious homicide of an unborn
22 child of the first degree shall be the same as for murder of
23 the first degree except that the death penalty shall not be
24 imposed.

25 (b) Malicious homicide of unborn child of the second
26 degree.--An individual who kills an unborn child without lawful
27 justification commits the offense of malicious homicide of an
28 unborn child of the second degree if, in performing acts which
29 cause the death of an unborn child, the individual was engaged
30 as a principal or an accomplice in the perpetration of a felony.

1 The penalty for malicious homicide of an unborn child of the
2 second degree shall be the same as for murder of the second
3 degree.

4 (c) Malicious homicide of unborn child by aggravated assault
5 on the pregnant woman or another.--An individual who kills an
6 unborn child without lawful justification commits the offense of
7 malicious homicide of an unborn child by aggravated assault
8 against the pregnant woman or another if, in performing acts
9 which cause the death of an unborn child, the individual was
10 engaged as a principal or an accomplice in the perpetration of
11 an aggravated assault, as defined in section 2702(a)(1)
12 (relating to aggravated assault) against the pregnant woman or
13 another. The penalty for this offense shall be the same as for
14 malicious homicide of the unborn child of the third degree.

15 (d) Malicious homicide of unborn child of the third
16 degree.--All other kinds of malicious homicide of an unborn
17 child without lawful justification and all other kinds of murder
18 or attempted murder of the pregnant woman or another which cause
19 the death of the unborn child without lawful justification shall
20 be malicious homicide of an unborn child of the third degree.
21 The penalty for malicious homicide of an unborn child of the
22 third degree is the same as the penalty for murder of the third
23 degree.

24 (e) Construction.--The provisions of this section shall not
25 be construed to prohibit the prosecution of the offender under
26 any other provision of law.

27 § 2605. Voluntary manslaughter of unborn child.

28 (a) Offense defined.--An individual who kills an unborn
29 child without lawful justification commits voluntary
30 manslaughter of an unborn child if, at the time of the killing,

1 the individual is acting under a sudden and intense passion
2 resulting from serious provocation by the pregnant woman or
3 another whom the actor endeavors to kill but the individual
4 negligently or accidentally causes the death of the unborn
5 child. Voluntary manslaughter of an unborn child is a felony of
6 the first degree.

7 (b) Unreasonable belief killing justifiable.--An individual
8 who intentionally or knowingly kills an unborn child commits
9 voluntary manslaughter of an unborn child if, at the time of the
10 killing, the individual believes the circumstances to be such
11 that, if they existed, would justify the killing under Chapter 5
12 (relating to general principles of justification) but the belief
13 is unreasonable.

14 § 2606. Aggravated assault of unborn child.

15 (a) Offense defined.--An individual who causes serious
16 bodily injury to an unborn child without lawful justification
17 commits the offense of aggravated assault of an unborn child if
18 any of the following apply:

19 (1) The individual intentionally, knowingly or
20 recklessly, under circumstances manifesting extreme
21 indifference to the life of the unborn child, the pregnant
22 woman or another, causes serious bodily injury to the unborn
23 child.

24 (2) Serious bodily injury to the unborn child results
25 from:

26 (i) aggravated assault, as defined in section
27 2702(a)(1) (relating to aggravated assault), by such
28 individual upon the pregnant woman or another;

29 (ii) voluntary manslaughter, as defined in section
30 2503 (relating to voluntary manslaughter), by such

1 individual of the pregnant woman or another; or
2 (iii) murder, as defined in section 2502 (relating
3 to murder), of the pregnant woman or another.

4 (b) Grading.--Aggravated assault of an unborn child is a
5 felony of the first degree.

6 § 2607. Exclusions.

7 Nothing in this chapter shall do any of the following:

8 (1) Apply to acts committed during any abortion, whether
9 lawful or unlawful, in which the pregnant woman cooperated or
10 consented.

11 (2) Apply to the consensual or good faith performance of
12 medical procedures, diagnostic testing or therapeutic
13 treatment.

14 (3) Impose criminal liability upon the pregnant woman in
15 regard to crimes against her unborn child.

16 Section 2. The provisions of this act are severable. If any
17 provision of this act or its application to any person or
18 circumstance is held invalid, the invalidity shall not affect
19 other provisions or applications of this act which can be given
20 effect without the invalid provision or application.

21 Section 3. This act shall take effect in 60 days.