

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL
No. 1299 Session of
1997

INTRODUCED BY O'BRIEN, TIGUE, TRUE, SAYLOR, FLEAGLE, ARMSTRONG, HALUSKA, MARKOSEK, BELARDI, MAITLAND, FAIRCHILD, GORDNER, BIRMELIN, McNAUGHTON, TRELLO, WOGAN, COLAIZZO, McCALL, WAUGH, CLARK, KENNEY, KELLER, STABACK, SCRIMENTI, MASLAND, HERSHEY, BENNINGHOFF, OLASZ, STERN, KAISER, BAKER, DIGIROLAMO, MILLER, PESCI, MELIO, YEWIC, CORPORA, HORSEY, EGOLF, CIVERA, DALLY, BLAUM, HUTCHINSON, ADOLPH, BROWN, LYNCH, ROHRER, DeLUCA, FICHTER, YOUNGBLOOD, TANGRETTI, BROWNE, E. Z. TAYLOR, MICOZZIE, BARLEY, ALLEN, ARGALL, BOYES, BUTKOVITZ, CAWLEY, CLYMER, DEMPSEY, DERMODY, DONATUCCI, FARGO, FLICK, GEIST, GIGLIOTTI, GRUPPO, HABAY, HANNA, HESS, JAROLIN, LAWLESS, LEDERER, LEH, MAJOR, MARSICO, MAYERNIK, McGEEHAN, McILHATTAN, ORIE, PETRARCA, PHILLIPS, PIPPY, PISTELLA, RAYMOND, READSHAW, SCHULER, SEMMEL, SERAFINI, S. H. SMITH, STAIRS, STEVENSON, STRITTMATTER, J. TAYLOR, TRICH, VAN HORNE, ZIMMERMAN, ZUG, BARRAR, HARHART, STEIL, D. W. SNYDER, SCHRODER, SATHER, LaGROTTA, COLAFELLA, CAPPABIANCA, SAINATO, PETRONE, SANTONI, SHANER, TRAVAGLIO, WOJNAROSKI, WALKO, BELFANTI AND LUCYK, 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 child.

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 CHILD

1 Sec.

2 2601. Short title of chapter.

3 2602. Definitions.

4 2603. Criminal homicide of unborn child.

5 2604. Malicious homicide of unborn child.

6 2605. Voluntary manslaughter of unborn child.

7 2606. Aggravated assault of unborn child.

8 2607. Exclusions.

9 § 2601. Short title of chapter.

10 This chapter shall be known and may be cited as the Crimes
11 Against the Unborn Child Act.

12 § 2602. Definitions.

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

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

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

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

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

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

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

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

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

1 definitions.

2 § 2603. Criminal homicide of unborn child.

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

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

10 § 2604. Malicious homicide of unborn child.

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

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

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

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

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

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

1 as a principal or an accomplice in the perpetration of a felony.
2 The penalty for malicious homicide of an unborn child of the
3 second degree shall be the same as for murder of the second
4 degree.

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

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

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

28 § 2605. Voluntary manslaughter of unborn child.

29 (a) Offense defined.--An individual who kills an unborn
30 child without lawful justification commits voluntary

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

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

15 § 2606. Aggravated assault of unborn child.

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

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

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

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

30 (ii) voluntary manslaughter, as defined in section

1 2503 (relating to voluntary manslaughter), by such
2 individual of the pregnant woman or another; or
3 (iii) murder, as defined in section 2502 (relating
4 to murder), of the pregnant woman or another.

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

7 § 2607. Exclusions.

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

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

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

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

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

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