

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 45

Session of
1997

INTRODUCED BY HOLL, JANUARY 15, 1997

AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES,
APRIL 29, 1997

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania
2 Consolidated Statutes, PROVIDING FOR CRIME AGAINST THE UNBORN <—
3 CHILD; AND further providing for harassment and stalking.

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

6 ~~Section 1. Section 2709(f) 2709(c)(1) AND (F) of Title 18 of~~ <—
7 ~~the Pennsylvania Consolidated Statutes is ARE amended to read:~~ <—

8 SECTION 1. TITLE 18 OF THE PENNSYLVANIA CONSOLIDATED <—
9 STATUTES IS AMENDED BY ADDING A CHAPTER TO READ:

10 CHAPTER 26

11 CRIMES AGAINST THE UNBORN CHILD

12 SEC.

13 2601. SHORT TITLE OF CHAPTER.

14 2602. DEFINITIONS.

15 2603. CRIMINAL HOMICIDE OF UNBORN CHILD.

16 2604. MALICIOUS HOMICIDE OF UNBORN CHILD.

17 2605. VOLUNTARY MANSLAUGHTER OF UNBORN CHILD.

1 2606. AGGRAVATED ASSAULT OF UNBORN CHILD.

2 2607. EXCLUSIONS.

3 2608. CONSTRUCTION.

4 § 2601. SHORT TITLE OF CHAPTER.

5 THIS CHAPTER SHALL BE KNOWN AND MAY BE CITED AS THE CRIMES
6 AGAINST THE UNBORN CHILD ACT.

7 § 2602. DEFINITIONS.

8 THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS CHAPTER
9 SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS SECTION UNLESS THE
10 CONTEXT CLEARLY INDICATES OTHERWISE:

11 "ABORTION." AS DEFINED IN SECTION 3203 (RELATING TO
12 DEFINITIONS).

13 "INTENTIONAL KILLING." AS DEFINED IN SECTION 2502(D)
14 (RELATING TO MURDER).

15 "MALICIOUS." HAVING THE SAME QUALITY OF MALICE WHICH IS AN
16 ESSENTIAL ELEMENT OF MURDER.

17 "PERPETRATION OF A FELONY." AS DEFINED IN SECTION 2502(D)
18 (RELATING TO MURDER).

19 "PRINCIPAL." AS DEFINED IN SECTION 2502(D) (RELATING TO
20 MURDER).

21 "SERIOUS BODILY INJURY." AS DEFINED IN SECTION 2301
22 (RELATING TO DEFINITIONS).

23 "SERIOUS PROVOCATION." AS DEFINED IN SECTION 2301 (RELATING
24 TO DEFINITIONS).

25 "UNBORN CHILD." AS DEFINED IN SECTION 3203 (RELATING TO
26 DEFINITIONS).

27 § 2603. CRIMINAL HOMICIDE OF UNBORN CHILD.

28 (A) OFFENSE DEFINED.--AN INDIVIDUAL IS GUILTY OF CRIMINAL
29 HOMICIDE OF AN UNBORN CHILD IF THE INDIVIDUAL INTENTIONALLY,
30 KNOWINGLY, RECKLESSLY OR NEGLIGENTLY CAUSES THE DEATH OF AN

1 UNBORN CHILD IN VIOLATION OF SECTION 2604 (RELATING TO MALICIOUS
2 HOMICIDE OF UNBORN CHILD) OR 2605 (RELATING TO VOLUNTARY
3 MANSLAUGHTER OF UNBORN CHILD).

4 (B) CLASSIFICATION.--CRIMINAL HOMICIDE OF AN UNBORN CHILD
5 SHALL BE CLASSIFIED AS THE MALICIOUS HOMICIDE OF AN UNBORN CHILD
6 OR VOLUNTARY MANSLAUGHTER OF AN UNBORN CHILD.

7 § 2604. MALICIOUS HOMICIDE OF UNBORN CHILD.

8 (A) MALICIOUS HOMICIDE OF UNBORN CHILD OF THE FIRST
9 DEGREE.--

10 (1) AN INDIVIDUAL WHO KILLS AN UNBORN CHILD WITHOUT
11 LAWFUL JUSTIFICATION COMMITS THE OFFENSE OF MALICIOUS
12 HOMICIDE OF AN UNBORN CHILD OF THE FIRST DEGREE IF, IN
13 PERFORMING THE ACTS WHICH CAUSE THE DEATH OF THE UNBORN
14 CHILD, THE INDIVIDUAL DOES ANY OF THE FOLLOWING:

15 (I) BY AN INTENTIONAL KILLING, KILLS THE PREGNANT
16 WOMAN, HER UNBORN CHILD OR ANOTHER.

17 (II) ATTEMPTS AN INTENTIONAL KILLING OF THE PREGNANT
18 WOMAN OR ANOTHER.

19 (2) THE PENALTY FOR MALICIOUS HOMICIDE OF AN UNBORN
20 CHILD OF THE FIRST DEGREE SHALL BE THE SAME AS FOR MURDER OF
21 THE FIRST DEGREE EXCEPT THAT THE DEATH PENALTY SHALL NOT BE
22 IMPOSED.

23 (B) MALICIOUS HOMICIDE OF UNBORN CHILD OF THE SECOND
24 DEGREE.--AN INDIVIDUAL WHO KILLS AN UNBORN CHILD WITHOUT LAWFUL
25 JUSTIFICATION COMMITS THE OFFENSE OF MALICIOUS HOMICIDE OF AN
26 UNBORN CHILD OF THE SECOND DEGREE IF, IN PERFORMING ACTS WHICH
27 CAUSE THE DEATH OF AN UNBORN CHILD, THE INDIVIDUAL WAS ENGAGED
28 AS A PRINCIPAL OR AN ACCOMPLICE IN THE PERPETRATION OF A FELONY.
29 THE PENALTY FOR MALICIOUS HOMICIDE OF AN UNBORN CHILD OF THE
30 SECOND DEGREE SHALL BE THE SAME AS FOR MURDER OF THE SECOND

1 DEGREE.

2 (C) MALICIOUS HOMICIDE OF UNBORN CHILD BY AGGRAVATED ASSAULT
3 ON THE PREGNANT WOMAN OR ANOTHER.--AN INDIVIDUAL WHO KILLS AN
4 UNBORN CHILD WITHOUT LAWFUL JUSTIFICATION COMMITS THE OFFENSE OF
5 MALICIOUS HOMICIDE OF AN UNBORN CHILD BY AGGRAVATED ASSAULT
6 AGAINST THE PREGNANT WOMAN OR ANOTHER IF, IN PERFORMING ACTS
7 WHICH CAUSE THE DEATH OF AN UNBORN CHILD, THE INDIVIDUAL WAS
8 ENGAGED AS A PRINCIPAL OR AN ACCOMPLICE IN THE PERPETRATION OF
9 AN AGGRAVATED ASSAULT, AS DEFINED IN SECTION 2702(A)(1)
10 (RELATING TO AGGRAVATED ASSAULT) AGAINST THE PREGNANT WOMAN OR
11 ANOTHER. THE PENALTY FOR THIS OFFENSE SHALL BE THE SAME AS FOR
12 MALICIOUS HOMICIDE OF THE UNBORN CHILD OF THE THIRD DEGREE.

13 (D) MALICIOUS HOMICIDE OF UNBORN CHILD OF THE THIRD
14 DEGREE.--ALL OTHER KINDS OF MALICIOUS HOMICIDE OF AN UNBORN
15 CHILD WITHOUT LAWFUL JUSTIFICATION AND ALL OTHER KINDS OF MURDER
16 OR ATTEMPTED MURDER OF THE PREGNANT WOMAN OR ANOTHER WHICH CAUSE
17 THE DEATH OF THE UNBORN CHILD WITHOUT LAWFUL JUSTIFICATION SHALL
18 BE MALICIOUS HOMICIDE OF AN UNBORN CHILD OF THE THIRD DEGREE.
19 THE PENALTY FOR MALICIOUS HOMICIDE OF AN UNBORN CHILD OF THE
20 THIRD DEGREE IS THE SAME AS THE PENALTY FOR MURDER OF THE THIRD
21 DEGREE.

22 § 2605. VOLUNTARY MANSLAUGHTER OF UNBORN CHILD.

23 (A) OFFENSE DEFINED.--AN INDIVIDUAL WHO KILLS AN UNBORN
24 CHILD WITHOUT LAWFUL JUSTIFICATION COMMITS VOLUNTARY
25 MANSLAUGHTER OF AN UNBORN CHILD IF, AT THE TIME OF THE KILLING,
26 THE INDIVIDUAL IS ACTING UNDER A SUDDEN AND INTENSE PASSION
27 RESULTING FROM SERIOUS PROVOCATION BY THE PREGNANT WOMAN OR
28 ANOTHER WHOM THE ACTOR ENDEAVORS TO KILL BUT THE INDIVIDUAL
29 NEGLIGENTLY OR ACCIDENTALLY CAUSES THE DEATH OF THE UNBORN
30 CHILD. VOLUNTARY MANSLAUGHTER OF AN UNBORN CHILD IS A FELONY OF

1 THE FIRST DEGREE.

2 (B) UNREASONABLE BELIEF KILLING JUSTIFIABLE.--AN INDIVIDUAL
3 WHO INTENTIONALLY OR KNOWINGLY KILLS AN UNBORN CHILD COMMITS
4 VOLUNTARY MANSLAUGHTER OF AN UNBORN CHILD IF, AT THE TIME OF THE
5 KILLING, THE INDIVIDUAL BELIEVES THE CIRCUMSTANCES TO BE SUCH
6 THAT, IF THEY EXISTED, WOULD JUSTIFY THE KILLING UNDER CHAPTER 5
7 (RELATING TO GENERAL PRINCIPLES OF JUSTIFICATION) BUT THE BELIEF
8 IS UNREASONABLE.

9 § 2606. AGGRAVATED ASSAULT OF UNBORN CHILD.

10 (A) OFFENSE DEFINED.--AN INDIVIDUAL WHO CAUSES SERIOUS
11 BODILY INJURY TO AN UNBORN CHILD WITHOUT LAWFUL JUSTIFICATION
12 COMMITS THE OFFENSE OF AGGRAVATED ASSAULT OF AN UNBORN CHILD IF
13 ANY OF THE FOLLOWING APPLY:

14 (1) THE INDIVIDUAL INTENTIONALLY, KNOWINGLY OR
15 RECKLESSLY, UNDER CIRCUMSTANCES MANIFESTING EXTREME
16 INDIFFERENCE TO THE LIFE OF THE UNBORN CHILD, THE PREGNANT
17 WOMAN OR ANOTHER, CAUSES SERIOUS BODILY INJURY TO THE UNBORN
18 CHILD.

19 (2) SERIOUS BODILY INJURY TO THE UNBORN CHILD RESULTS
20 FROM:

21 (I) AGGRAVATED ASSAULT, AS DEFINED IN SECTION
22 2702(A)(1) (RELATING TO AGGRAVATED ASSAULT), BY SUCH
23 INDIVIDUAL UPON THE PREGNANT WOMAN OR ANOTHER;

24 (II) VOLUNTARY MANSLAUGHTER, AS DEFINED IN SECTION
25 2503 (RELATING TO VOLUNTARY MANSLAUGHTER), BY SUCH
26 INDIVIDUAL OF THE PREGNANT WOMAN OR ANOTHER; OR

27 (III) MURDER, AS DEFINED IN SECTION 2502 (RELATING
28 TO MURDER), BY SUCH INDIVIDUAL OF THE PREGNANT WOMAN OR
29 ANOTHER.

30 (B) GRADING.--AGGRAVATED ASSAULT OF AN UNBORN CHILD IS A

1 FELONY OF THE FIRST DEGREE.

2 § 2607. EXCLUSIONS.

3 NOTHING IN THIS CHAPTER SHALL DO ANY OF THE FOLLOWING:

4 (1) APPLY TO ACTS COMMITTED DURING ANY ABORTION OR
5 ATTEMPTED ABORTION, WHETHER LAWFUL OR UNLAWFUL, IN WHICH THE
6 PREGNANT WOMAN COOPERATED OR CONSENTED.

7 (2) APPLY TO THE CONSENSUAL OR GOOD FAITH PERFORMANCE OF
8 MEDICAL PROCEDURES, DIAGNOSTIC TESTING OR THERAPEUTIC
9 TREATMENT.

10 (3) IMPOSE CRIMINAL LIABILITY UPON THE PREGNANT WOMAN IN
11 REGARD TO CRIMES AGAINST HER UNBORN CHILD.

12 § 2608. CONSTRUCTION.

13 THE PROVISIONS OF THIS CHAPTER SHALL NOT BE CONSTRUED TO
14 PROHIBIT THE PROSECUTION OF AN OFFENDER UNDER ANY OTHER
15 PROVISION OF LAW.

16 SECTION 2. SECTION 2709(F) OF TITLE 18 IS AMENDED TO READ:

17 § 2709. Harassment and stalking.

18 * * *

19 ~~(C) GRADING.~~

<—

20 ~~(1) AN OFFENSE UNDER SUBSECTION (A) SHALL BE GRADED AS~~
21 ~~FOLLOWS:~~

22 ~~(I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II), THE~~
23 ~~OFFENSE SHALL CONSTITUTE A SUMMARY OFFENSE.~~

24 ~~(II) AN OFFENSE UNDER SUBSECTION (A)(3) IF THE~~
25 ~~DEFENDANT IS OR, DURING THE PAST FIVE YEARS, WAS ENGAGED~~
26 ~~IN CIVIL LITIGATION WITH THE VICTIM SHALL CONSTITUTE A~~
27 ~~FELONY OF THE THIRD DEGREE.~~

28 * * *

29 (f) Definitions.--As used in this section, the following
30 words and phrases shall have the meanings given to them in this

1 subsection:

2 "Course of conduct." A pattern of actions composed of more
3 than one act over a period of time, however short, evidencing a
4 continuity of conduct. Acts indicating a course of conduct which
5 occur in more than one jurisdiction may be used by any other
6 jurisdiction in which an act occurred as evidence of a
7 continuing pattern or course of conduct.

8 "Emotional distress." A temporary or permanent state of
9 great physical or mental strain.

10 "Family or household member." Spouses or persons who have
11 been spouses, persons living as spouses or who lived as spouses,
12 parents and children, other persons related by consanguinity or
13 affinity, current or former sexual or intimate partners or
14 persons who share biological parenthood.

15 ~~SECTION 2. THE AMENDMENT OF 18 PA.C.S. § 2709(C)(1) SHALL~~ <—
16 ~~APPLY TO OFFENSES COMMITTED ON OR AFTER THE EFFECTIVE DATE OF~~
17 ~~THIS ACT.~~

18 SECTION 3. THE PROVISIONS OF THIS ACT ARE SEVERABLE. IF ANY <—
19 PROVISION OF THIS ACT OR ITS APPLICATION TO ANY PERSON OR
20 CIRCUMSTANCE IS HELD INVALID, THE INVALIDITY SHALL NOT AFFECT
21 OTHER PROVISIONS OR APPLICATIONS OF THIS ACT WHICH CAN BE GIVEN
22 EFFECT WITHOUT THE INVALID PROVISION OR APPLICATION.

23 Section ~~2-3~~ 4. This act shall take effect in 60 days. <—