

# MAINE STATE LEGISLATURE

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MAJORITY  
JUDICIARY

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STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
118TH LEGISLATURE  
FIRST SPECIAL SESSION

COMMITTEE AMENDMENT "A" to H.P. 541, L.D. 732, Bill, "An Act to Amend the Laws of Murder and Manslaughter to Include the Death of a Fetus"

Amend the bill by striking out the title and substituting the following:

'An Act to Amend the Maine Criminal Code to Include the Loss of a Pregnancy'

Further amend the bill by striking out everything after the enacting clause and before the summary and inserting in its place the following:

'Sec. 1. 17-A MRSA §208, as amended by PL 1981, c. 317, §6, is further amended to read:

§208. Aggravated assault

1. A person is guilty of aggravated assault if he that person intentionally, knowingly, or recklessly causes:

- A. Serious bodily injury to another; ~~ex~~
- B. Bodily injury to another with use of a dangerous weapon; ~~ex~~
- C. Bodily injury to another under circumstances manifesting extreme indifference to the value of human life. Such circumstances include, but are not limited to, the number, location or nature of the injuries, the manner or method inflicted, or the observable physical condition of the victim; or

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2 D. Bodily injury to a woman who is in fact pregnant that  
4 includes loss of or injury to her pregnancy. This paragraph  
does not apply to:

6 (1) Medical or other health care acts or omissions of  
8 a health care provider or health care practitioner  
licensed, registered or certified in this State; or

10 (2) Acts or omissions of the pregnant woman.

12 2. Aggravated assault is a Class B crime, except that  
14 violation of subsection 1, paragraph D is a Class A crime.

16 **Sec. 2. 17-A MRSA §1151, sub-§8,** as enacted by PL 1995, c.  
18 149, §1, is amended to read:

18 8. To permit sentences that do not diminish the gravity of  
20 offenses, with reference to the factors, among others, of:

22 A. The age of the victim; and

24 B. The selection by the defendant of the person against  
26 whom the crime was committed or of the property that was  
28 damaged or otherwise affected by the crime because of the  
race, color, religion, sex, ancestry, national origin,  
physical or mental disability or sexual orientation of that  
person or of the owner or occupant of that property; and

30 C. The physical condition of the victim, including  
32 pregnancy.'

34 Further amend the bill by inserting at the end before the  
summary the following:

**FISCAL NOTE**

38 This bill may increase prosecutions for Class A crimes.  
40 Sentences of more than nine months imposed for Class A crimes  
42 must be served in state correctional institutions. The cost to  
the State per sentence is \$179,438 based upon an average length  
44 of stay of 6 years and 2 months. The State also must reimburse  
counties for sentences served in county jails of 9 months or less  
46 for Class A crimes.

48 The Judicial Department may require additional General Fund  
appropriations to cover indigent defense costs related to these  
50 new cases. The amounts can not be estimated at this time. The  
additional workload and administrative costs associated with the

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minimal number of new cases filed in the court system can be absorbed within the budgeted resources of the Judicial Department. The collection of additional fines may also increase General Fund revenue by minor amounts.'

**SUMMARY**

This amendment is the majority report. This amendment replaces the bill. It makes aggravated assault, which in all other situations is a Class B crime, a Class A crime if the actor intentionally, knowingly or recklessly causes bodily injury to a pregnant woman and that bodily injury includes the loss of or injury to the woman's pregnancy. This new category of aggravated assault does not apply to medical or other health care acts or omissions of a health care practitioner or health care provider. It also does not apply to the acts or omissions of the pregnant woman herself. The State does not have to prove that the actor knew that the woman was pregnant.

This amendment also includes, as a general sentencing principle applicable to all crimes, the consideration of the physical condition of the victim, including the fact that the woman is pregnant. Although this does not increase the sentencing class of a crime because the victim was pregnant at the time of the crime, it specifically states that the court can consider the victim's pregnancy in determining the appropriate sentence within the existing sentencing framework.