

# MAINE STATE LEGISLATURE

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# 118th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1997

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Legislative Document

No. 732

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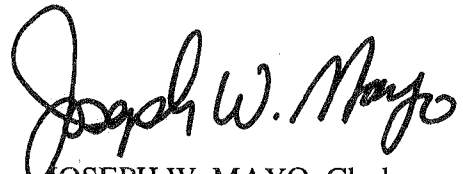
H.P. 541

House of Representatives, February 4, 1997

**An Act to Amend the Laws of Murder and Manslaughter to Include the  
Death of a Fetus.**

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Reference to the Committee on Judiciary suggested and ordered printed.

  
JOSEPH W. MAYO, Clerk

Presented by Representative KASPRZAK of Newport.  
Cosponsored by Senator CAREY of Kennebec and  
Representatives: AHEARNE of Madawaska, BRAGDON of Bangor, LANE of Enfield,  
MACK of Standish, VIGUE of Winslow, WATERHOUSE of Bridgton.

2 Be it enacted by the People of the State of Maine as follows:

4 Sec. 1. 17-A MRSA c. 10 is enacted to read:

6 CHAPTER 10

8 OFFENSES AGAINST AN UNBORN CHILD

10 §221. Definitions

12 As used in this chapter, unless the context otherwise  
indicates, the following terms have the following meanings.

14 1. "Abortion" has the same meaning as set forth in Title  
22, section 1598, subsection 2.

16 2. "Person" does not include the pregnant woman whose  
unborn child is killed or injured.

20 3. "Unborn child" means any individual of the human species  
from fertilization until birth.

22 §222. Intentional homicide of unborn child

24 1. A person is guilty of intentional homicide of an unborn  
child if the person intentionally or knowingly causes the death  
of the unborn child and the person knows the pregnant woman is  
pregnant.

30 2. This section does not apply to:

32 A. Acts that cause the death of an unborn child if those  
acts are committed during any abortion, lawful or unlawful,  
to which the pregnant woman consents; or

36 B. Acts that are committed pursuant to usual and customary  
standards of medical practice during diagnostic testing or  
therapeutic treatment.

40 3. It is an affirmative defense to a prosecution under  
subsection 1 if at the time of the killing the person believes  
the circumstances to be such that, if they existed, would justify  
or exonerate the killing, but the person's belief is unreasonable.

44 4. Intentional homicide of an unborn child is punishable as  
is murder under chapter 51.

48 5. Prosecution of a person under this section does not  
prohibit the prosecution of the person under any other law.

50 §223. Voluntary manslaughter of unborn child

1. A person is guilty of voluntary manslaughter of an unborn child if the person causes the death of an unborn child:

A. While under the influence of extreme anger or extreme fear brought about by adequate provocation and the person negligently or accidentally causes the death of the unborn child. Adequate provocation has the same meaning as in section 201, subsection 4; or

B. At the time of the killing, the person believes the circumstances to be such that, if they existed, would justify or exonerate the killing, but the person's belief is unreasonable.

2. This section does not apply to:

A. Acts that cause the death of an unborn child if those acts are committed during any abortion, lawful or unlawful, to which the pregnant woman consents; or

B. Acts that are committed pursuant to usual and customary standards of medical practice during diagnostic testing or therapeutic treatment.

3. Voluntary manslaughter of an unborn child is a Class A crime.

4. Prosecution of a person under this section does not prohibit the prosecution of the person under any other law.

#### §224. Involuntary manslaughter of unborn child

1. A person is guilty of involuntary manslaughter of an unborn child if the person recklessly causes the death of an unborn child.

2. This section does not apply to:

A. Acts that cause the death of an unborn child if those acts are committed during any abortion, lawful or unlawful, to which the pregnant woman consents; or

B. Acts that are committed pursuant to usual and customary standards of medical practice during diagnostic testing or therapeutic treatment.

3. Involuntary manslaughter of an unborn child is a Class B crime, except that it is a defense to the prosecution of an involuntary manslaughter of an unborn child based upon the reckless or criminally negligent operation of a motor vehicle, which reduces the crime to a Class C crime, that the death of the

2 unborn child resulted from conduct that would otherwise be  
3 defined as only a civil violation or civil infraction.

4 4. Prosecution of a person under this section does not  
5 prohibit the prosecution of the person under any other law.

6 **§225. Assault on unborn child**

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8 1. A person is guilty of assault on an unborn child if the  
9 person intentionally or knowingly causes bodily injury to an  
10 unborn child.

11  
12 2. This section does not apply to:

13  
14 A. Acts that cause bodily injury to an unborn child if  
15 those acts are committed during any abortion, lawful or  
16 unlawful, to which the pregnant woman consents; or

17  
18 B. Acts that are committed pursuant to usual and customary  
19 standards of medical practice during diagnostic testing or  
20 therapeutic treatment.

21  
22 3. Assault on an unborn child is a Class D crime.

23  
24 4. Prosecution of a person under this section does not  
25 prohibit the prosecution of the person under any other law.

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27 **§226. Aggravated assault on unborn child**

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29 1. A person is guilty of aggravated assault on an unborn  
30 child if the person, in committing assault on an unborn child,  
31 intentionally or knowingly causes serious bodily injury to the  
32 unborn child.

33  
34 2. This section does not apply to:

35  
36 A. Acts that cause serious bodily injury to an unborn child  
37 if those acts are committed during any abortion, lawful or  
38 unlawful, to which the pregnant woman consents; or

39  
40 B. Acts that are committed pursuant to usual and customary  
41 standards of medical practice during diagnostic testing or  
42 therapeutic treatment.

43  
44 3. Aggravated assault on an unborn child is a Class C  
45 crime.

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47 4. Prosecution of a person under this section does not  
48 prohibit the prosecution of the person under any other law.

## SUMMARY

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This bill creates new crimes against unborn children. Punishment for intentionally or knowingly causing the death of an unborn child is the same as for murder. Voluntary manslaughter of an unborn child is a Class A crime. Recklessly causing the death of an unborn child is a Class B crime, except that it is reduced to a Class C crime if the death was caused by the reckless operation of a motor vehicle. Assault and aggravated assault on an unborn child are Class D and Class C crimes respectively.

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These crimes do not apply to an abortion to which the pregnant woman has consented, nor do they apply to acts committed pursuant to usual and customary standards of medical practice during diagnostic or therapeutic treatment. These crimes do not apply to the pregnant woman.