

MAINE STATE LEGISLATURE

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119th MAINE LEGISLATURE

FIRST REGULAR SESSION-1999

Legislative Document

No. 1128

H.P. 805

House of Representatives, February 9, 1999

An Act Creating Offenses Against Unborn Children.

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative KASPRZAK of Newport.
Cosponsored by Senator DAVIS of Piscataquis and
Representatives: AHEARNE of Madawaska, CLARK of Millinocket, DAVIS of Falmouth,
JOY of Crystal, PLOWMAN of Hampden, SIROIS of Caribou, WATERHOUSE of Bridgton,
WESTON of Montville.

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

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

4 **CHAPTER 10**

6 **OFFENSES AGAINST AN UNBORN CHILD**

8 **§221. Definitions**

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

14 1. "Abortion" has the same meaning as set forth in Title
16 22, section 1598, subsection 2.

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

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

26 **§222. Intentional homicide of unborn child**

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

36 2. This section does not apply to:

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

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

50 3. It is an affirmative defense to a prosecution under
52 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.

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

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

§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. And 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.

26
27 **§226. Aggravated assault on unborn child**

28
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.

46
47 4. Prosecution of a person under this section does not
48 prohibit the prosecution of the person under any other law.

2

SUMMARY

4 This bill creates new crimes against unborn children.
6 Punishment for intentionally or knowingly causing the death of an
8 unborn child is the same as for murder. Voluntary manslaughter
10 of an unborn child is a Class A crime. Recklessly causing the
12 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.

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