

MAINE STATE LEGISLATURE

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120th MAINE LEGISLATURE

FIRST REGULAR SESSION-2001

Legislative Document

No. 1406

H.P. 1049

House of Representatives, March 5, 2001

An Act Creating Offenses Against Unborn Children.

Reference to the Committee on Criminal Justice suggested and ordered printed.

Millicent M. MacFarland

MILLICENT M. MacFARLAND, Clerk

Presented by Representative ANDREWS of York.

Cosponsored by Representatives: CRESSEY of Baldwin, KASPRZAK of Newport,
MENDROS of Lewiston and

Representatives: DESMOND of Mapleton, GLYNN of South Portland, LOVETT of
Scarborough, MURPHY of Berwick, SNOWE-MELLO of Poland, STEDMAN of Hartland,
WESTON of Montville.

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

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

10 B. And at the time of the killing, the person believes the
11 circumstances to be such that, if they existed, would
12 justify or exonerate the killing, but the person's belief is
13 unreasonable.

14 2. This section does not apply to:

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

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

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

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

30 **§224. Involuntary manslaughter of unborn child**

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

36 2. This section does not apply to:

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

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

46 3. Involuntary manslaughter of an unborn child is a Class B
47 crime, except that it is a defense to the prosecution of an
48 involuntary manslaughter of an unborn child based upon the
49 reckless or criminally negligent operation of a motor vehicle,
50 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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10 1. A person is guilty of assault on an unborn child if the
11 person intentionally or knowingly causes bodily injury to an
12 unborn child.

13
14 2. This section does not apply to:

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

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

23
24 3. Assault on an unborn child is a Class D crime.

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

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

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

34
35 2. This section does not apply to:

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

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

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

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

SUMMARY

2

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.