

MAINE STATE LEGISLATURE

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122nd MAINE LEGISLATURE

FIRST REGULAR SESSION-2005

Legislative Document

No. 262

H.P. 201

House of Representatives, January 18, 2005

An Act To Protect Unborn Children from Acts of Violence

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

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative DUPREY of Hampden.
Cosponsored by Senator DAVIS of Piscataquis, Senator MARTIN of Aroostook and
Representatives: CARR of Lincoln, CEBRA of Naples, CRESSEY of Cornish, HALL of
Holden, HAMPER of Oxford, PARADIS of Frenchville, Senators: COURTNEY of York,
SNOWE-MELLO of Androscoggin.

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 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 the state of fetal development when the life of the fetus may be continued indefinitely outside the womb by natural or artificial life-supportive systems until birth.

24 **§222. Murder of unborn child**

26 1. A person is guilty of murder of an unborn child if the person:

30 A. Intentionally or knowingly causes the death of the unborn child; or

32 B. Engages in conduct that manifests a depraved indifference to the value of the unborn child's life and that in fact causes the death of the unborn child.

36 2. For purposes of subsection 1, paragraph B, when the crime of depraved indifference murder is charged, the crime of criminally negligent manslaughter is deemed to be charged.

40 3. The sentence for murder of an unborn child is as authorized in chapter 51.

44 4. It is an affirmative defense to a prosecution under subsection 1, paragraph A that the person caused the death while under the influence of extreme anger or extreme fear brought about by adequate provocation.

48 5. For purposes of subsection 4, provocation is adequate if:

50

2 A. It is not induced by the person; and

4 B. It is reasonable for the person to react to the
6 provocation with extreme anger or extreme fear, provided
8 that evidence demonstrating only that the person has a
 tendency towards extreme anger or extreme fear is not
 sufficient, in and of itself, to establish the
 reasonableness of the person's reaction.

10 6. This section does not apply to:

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

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

20 7. Nothing contained in subsection 4 may constitute a
22 defense to a prosecution for, or preclude conviction of,
24 manslaughter or any other crime. Prosecution of a person under
 this section does not prohibit the prosecution of the person
 under any other law.

26 **§223. Felony murder of unborn child**

28 1. A person is guilty of felony murder of an unborn child
30 if, acting alone or with one or more other persons in the
32 commission of, or an attempt to commit, or immediate flight after
34 committing or attempting to commit, murder, robbery, burglary,
 kidnapping, arson, gross sexual assault, or escape, the person or
 another participant in fact causes the death of an unborn child
 and the death is a reasonably foreseeable consequence of such
 commission, attempt or flight.

36 2. It is an affirmative defense to prosecution under this
38 section that the defendant:

40 A. Did not commit the homicidal act or in any way solicit,
42 command, induce, procure or aid the commission thereof;

44 B. Was not armed with a dangerous weapon, or other weapon
46 that under the circumstances indicated a readiness to
 inflict serious bodily injury;

48 C. Reasonably believed that no other participant was armed
 with a weapon; and

2 D. Reasonably believed that no other participant intended
4 to engage in conduct likely to result in death or serious
6 bodily injury.

8 3. This section does not apply to:

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

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

22 4. Felony murder of an unborn child is a Class A crime.

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

28 **§224. Manslaughter of unborn child**

30 1. A person is guilty of manslaughter of an unborn child if
32 that person:

34 A. Recklessly, or with criminal negligence, causes the
36 death of an unborn child. Violation of this paragraph is a
38 Class A crime;

40 B. Intentionally or knowingly causes the death of an unborn
42 child under circumstances that do not constitute murder
44 because the person causes the death while under the
46 influence of extreme anger or extreme fear brought about by
48 adequate provocation. Adequate provocation has the same
50 meaning as in section 222, subsection 5. The fact that the
person causes the death of an unborn child while under the
influence of extreme anger or extreme fear brought about by
adequate provocation constitutes a mitigating circumstance
reducing murder to manslaughter and need not be proved in
any prosecution initiated under this subsection. Violation
of this paragraph is a Class A crime; or

C. Has direct and personal management or control of any
employment, place of employment or other employee and
intentionally or knowingly violates any occupational safety
or health standard of this State or the Federal Government
and that violation in fact causes the death of an employee's
unborn child and that death is a reasonably foreseeable
consequence of the violation. This paragraph does not apply
to:

2 (1) Any person who performs a public function either
3 on a volunteer basis or for minimal compensation for
4 services rendered; or

5 (2) Any public employee responding to or acting at a
6 life-threatening situation who is forced to make and
7 does make a judgment reasonably calculated to save the
8 life of a human being.

10 Violation of this paragraph is a Class C crime.

12 2. This section does not apply to:

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

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

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

24 **§225. Assault on unborn child**

26 1. A person is guilty of assault on an unborn child if the
27 person intentionally, knowingly or recklessly causes bodily
28 injury to an unborn child.

30 2. This section does not apply to:

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

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

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

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

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

46 1. A person is guilty of aggravated assault on an unborn
47 child if the person, in committing assault on an unborn child,
48 intentionally or knowingly causes:
49

- 2 A. Serious bodily injury to the unborn child;
- 4 B. Bodily injury to the unborn child with use of a
dangerous weapon; or
- 6
- 8 C. Bodily injury to the unborn child under circumstances
manifesting extreme indifference to the value of human
life. Such circumstances include, but are not limited to,
10 the number, location or nature of the injuries and the
manner or method inflicted.
- 12
- 14 2. This section does not apply to:
- 16 A. Acts that cause bodily injury to an unborn child if
those acts are committed during an abortion, lawful or
unlawful, to which the pregnant woman consents; or
- 18
- 20 B. Acts that are committed pursuant to usual and customary
standards of medical practice during diagnostic testing or
therapeutic treatment.
- 22
- 24 3. Aggravated assault on an unborn child is a Class B crime.
- 26 4. Prosecution of a person under this section does not
prohibit the prosecution of the person under any other law.

28 **§227. Elevated aggravated assault on unborn child**

- 30 1. A person is guilty of elevated aggravated assault on an
unborn child if that person:
- 32
- 34 A. Intentionally or knowingly causes serious bodily injury
to an unborn child with the use of a dangerous weapon;
- 36 B. Engages in conduct that manifests a depraved
indifference to the value of human life and that in fact
causes serious bodily injury to an unborn child with the use
38 of a dangerous weapon; or
- 40
- 42 C. With terroristic intent engages in conduct that in fact
causes serious bodily injury to an unborn child.
- 44 2. This section does not apply to:
- 46 A. Acts that cause bodily injury to an unborn child if
those acts are committed during an abortion, lawful or
48 unlawful, to which the pregnant woman consents; or

