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HOUSE BILL 30

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

Larry A. Larrañaga

AN ACT

RELATING TO CRIMINAL LAW; CREATING CRIMES AGAINST UNBORN CHILDREN; ENACTING THE UNBORN VICTIMS OF VIOLENCE ACT IN MEMORY OF LITTLE ISAAC; REPEALING AND ENACTING SECTIONS OF THE CRIMINAL CODE; PROVIDING PENALTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. SHORT TITLE.--This act may be cited as the "Unborn Victims of Violence Act".

SECTION 2. DEFINITIONS.--As used in the Unborn Victims of Violence Act:

A. "another" includes an unborn child; and

B. "unborn child" means a child in the uterus who is a member of the species homo sapiens, at any stage of development.

SECTION 3. MURDER OF AN UNBORN CHILD.--

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1 A. Murder of an unborn child in the first degree is
2 causing the death of an unborn child without lawful
3 justification or excuse:

4 (1) by acting with deliberate intent to cause
5 the death of or do great bodily harm to another;

6 (2) in the commission of or attempt to commit
7 any felony; or

8 (3) by any act greatly dangerous to the lives
9 of others, indicating a depraved mind regardless of human life.

10 B. Whoever commits murder of an unborn child in the
11 first degree is guilty of a capital felony.

12 C. Unless acting upon sufficient provocation, upon
13 a sudden quarrel or in the heat of passion, a person who causes
14 the death of an unborn child without lawful justification or
15 excuse commits murder of an unborn child in the second degree
16 if in performing the acts that cause the death, the person
17 knows that such acts create a strong probability of death or
18 great bodily harm to another.

19 D. Whoever commits murder of an unborn child in the
20 second degree is guilty of a second degree felony resulting in
21 the death of a human being.

22 SECTION 4. MANSLAUGHTER OF AN UNBORN CHILD.--

23 A. Manslaughter of an unborn child is the unlawful
24 killing of an unborn child through actions committed without
25 malice.

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1 B. Voluntary manslaughter of an unborn child
2 consists of acting upon a sudden quarrel or in the heat of
3 passion to cause death or great bodily harm to another and
4 causing the death of an unborn child.

5 C. Whoever commits voluntary manslaughter of an
6 unborn child is guilty of a third degree felony.

7 D. Involuntary manslaughter of an unborn child
8 consists of causing the death of an unborn child in the
9 commission of:

10 (1) an unlawful act not amounting to a felony;
11 or

12 (2) a lawful act that may produce death in an
13 unlawful manner or without due caution or circumspection.

14 E. Whoever commits involuntary manslaughter of an
15 unborn child is guilty of a fourth degree felony.

16 **SECTION 5. INJURY TO AN UNBORN CHILD.--**

17 A. Injury to an unborn child consists of a battery
18 upon a pregnant woman that results in bodily harm or great
19 bodily harm to the unborn child.

20 B. Whoever commits injury to an unborn child
21 resulting in bodily harm to the unborn child is guilty of a
22 misdemeanor. Whoever commits injury to an unborn child
23 resulting in great bodily harm to the unborn child is guilty of
24 a third degree felony.

25 C. As used in this section:

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1 (1) "bodily harm" means any injury to the
2 unborn child and includes the birth of the unborn child prior
3 to thirty-seven weeks gestation if the child weighs two
4 thousand five hundred grams or less at the time of birth.

5 "Bodily harm" does not include the inducement of the unborn
6 child's birth when done for bona fide medical purposes; and

7 (2) "great bodily harm" means an injury that
8 creates a high probability of death, causes serious
9 disfigurement or results in permanent or protracted loss or
10 impairment of the function of any member or organ of the body.

11 SECTION 6. LIMITATION ON APPLICABILITY.--This act does
12 not apply to:

13 A. a legal abortion to which a pregnant woman, or a
14 person authorized to act on her behalf, consented or for which
15 consent is implied by law;

16 B. acts committed by a pregnant woman with respect
17 to her own unborn child;

18 C. acts committed pursuant to usual and customary
19 standards of medical practice during diagnostic testing or
20 therapeutic treatment; or

21 D. acts involving the use of force in lawful self-
22 defense or lawful defense of another.

23 SECTION 7. KNOWLEDGE OF PREGNANCY NOT REQUIRED.--An
24 offense under the Unborn Victims of Violence Act does not
25 require evidence that the defendant had knowledge or should

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1 have had knowledge that the victim of the underlying offense
2 was pregnant.

3 SECTION 8. REPEAL.--Section 30-3-7 NMSA 1978 (being Laws
4 1985, Chapter 239, Section 1) is repealed.

5 SECTION 9. EFFECTIVE DATE.--The effective date of the
6 provisions of this act is July 1, 2011.