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HOUSE BILL 111

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

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AN ACT

RELATING TO CRIMES; PROVIDING PROTECTION FOR UNBORN VICTIMS OF VIOLENCE.

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" means the unborn child or any human being other than the actor;

B. "forcible felony" means any felonious act that involves a high risk of violence;

C. "unborn child" means a child in utero, and the term "child in utero" means a member of the species homo sapiens at any stage of development who is carried in the womb;

1 D. "whoever" means a person other than the pregnant
2 woman whose unborn child is killed or injured; and

3 E. "without lawful justification" means acting
4 under circumstances in which the use of lethal force is not
5 legally justified.

6 Section 3. MURDER OF AN UNBORN CHILD.--

7 A. Whoever, without lawful justification, causes
8 the death of an unborn child is guilty of murder of an unborn
9 child if he:

10 (1) intends to cause the death of or do great
11 bodily harm to another or knows that his acts will cause the
12 death of or do great bodily harm to another;

13 (2) knows that his acts create a strong
14 probability of the death of or great bodily harm to another;

15 (3) attempts or commits a forcible felony; or

16 (4) perpetrates an act eminently dangerous to
17 another and evinces a depraved mind, without regard for human
18 life.

19 B. The sentence for murder of an unborn child shall
20 be equal to that for murder.

21 Section 4. VOLUNTARY MANSLAUGHTER OF AN UNBORN CHILD.--

22 A. Whoever, without lawful justification, causes
23 the death of an unborn child is guilty of voluntary
24 manslaughter of an unborn child if he:

25 (1) intends to cause the death of another in

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1 an immediate response provoked by such words or acts of another
2 as would provoke a person of ordinary self-control under like
3 circumstances;

4 (2) commits or attempts to commit a
5 misdemeanor or gross misdemeanor offense with such force or
6 violence that the death of or great bodily harm to another was
7 reasonably foreseeable; or

8 (3) intends to cause the death of an unborn
9 child because he is coerced by threats made by someone other
10 than his co-conspirator and that cause him to reasonably
11 believe that his act is the only means of preventing imminent
12 death to himself or another.

13 B. Voluntary manslaughter of an unborn child is a
14 third degree felony.

15 Section 5. INVOLUNTARY MANSLAUGHTER OF AN UNBORN CHILD.--

16 A. Whoever, without lawful justification, causes
17 the death of an unborn child is guilty of involuntary
18 manslaughter of an unborn child if he:

19 (1) creates an unreasonable risk by his
20 culpable negligence and consciously takes a chance of causing
21 death or great bodily harm to another;

22 (2) injures the mother of the unborn child
23 with a firearm or other dangerous weapon as a result of
24 negligently believing her to be an animal;

25 (3) sets a spring gun, pit fall, deadfall,

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1 snare or other like dangerous weapon or device; or

2 (4) negligently permits any animal known by
3 the actor to have vicious propensities or to have caused great
4 or substantial bodily harm in the past to run uncontrolled off
5 the owner's premises or negligently fails to keep that animal
6 properly confined.

7 B. Notwithstanding the provisions of Section
8 66-8-101.1 NMSA 1978, involuntary manslaughter of an unborn
9 child is a fourth degree felony.

10 Section 6. BATTERY OF AN UNBORN CHILD.--

11 A. Whoever, without legal justification, inflicts
12 great or substantial bodily harm upon an unborn child who is
13 subsequently born alive by intentionally or knowingly touching
14 a pregnant woman without her consent is guilty of battery of an
15 unborn child.

16 B. Battery of an unborn child resulting in great
17 bodily harm to the unborn child is a third degree felony.
18 Battery of an unborn child resulting in substantial bodily harm
19 to the unborn child is a misdemeanor.

20 C. As used in this section:

21 (1) "great bodily harm" includes, but is not
22 limited to, permanent disability or disfigurement; and

23 (2) "substantial bodily harm" includes, but is
24 not limited to, the birth of the unborn child prior to thirty-
25 seven weeks gestation if the child weighs two thousand five

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1 hundred grams or less at the time of birth. "Substantial
2 bodily harm" does not include the inducement of the unborn
3 child's birth when done for bona fide medical purposes.

4 Section 7. EXCEPTIONS.--This act does not apply to:

5 A. acts that cause the death of an unborn child if
6 those acts were committed during a legal abortion to which the
7 pregnant woman, or a person authorized by law to act on her
8 behalf, consented or for which consent is implied by law;

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

11 C. acts that are committed pursuant to usual and
12 customary standards of medical practice during diagnostic
13 testing or therapeutic treatment; or

14 D. acts involving the use of force in lawful self-
15 defense or lawful defense of another.

16 Section 8. KNOWLEDGE OF PREGNANCY NOT REQUIRED.--An
17 offense under the Unborn Victims of Violence Act does not
18 require proof that:

19 A. the person engaging in the conduct had knowledge
20 or should have had knowledge that the victim of the underlying
21 offense was pregnant; or

22 B. the defendant intended to cause the death of, or
23 bodily injury to, the unborn child.

24 Section 9. OTHER CONVICTIONS NOT BARRED.-- A prosecution
25 for or conviction under the Unborn Victims of Violence Act is

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1 not a bar to conviction of or punishment for any other crime
2 committed by the defendant as part of the same conduct.

3 Section 10. SEVERABILITY.--If any part or application of
4 the Unborn Victims of Violence Act is held invalid, the
5 remainder or its application to other situations or persons
6 shall not be affected.

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