

House Study Bill 634

HOUSE FILE _____
BY (PROPOSED COMMITTEE ON
HUMAN RESOURCES BILL BY
CHAIRPERSON BODDICKER)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to crimes against an unborn child, providing for
2 a repeal, and providing penalties.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
4 TLSB 6275YC 80
5 pf/sh/8

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1 1 Section 1. Section 707.7, Code 2003, is amended by
1 2 striking the section and inserting in lieu thereof the
1 3 following:
1 4 707.7 CRIMES AGAINST AN UNBORN CHILD.
1 5 1. This section shall be known and may be cited as the
1 6 "Unborn Victims of Violence Act".
1 7 2. For the purposes of this section, unless the context
1 8 otherwise requires:
1 9 a. "Another" means the unborn child or any human being
1 10 other than the person committing the act.
1 11 b. "Any person" means the person committing the act, but
1 12 does not include the pregnant woman whose unborn child is
1 13 killed or injured.
1 14 c. "Forcible felony" means forcible felony as defined in
1 15 section 702.11.
1 16 d. "Great bodily harm" includes, but is not limited to,
1 17 permanent disability or disfigurement.
1 18 e. "Substantial bodily harm" includes, but is not limited
1 19 to, causing the birth of a child prior to thirty-seven weeks'
1 20 gestation if the child weighs two thousand five hundred grams
1 21 or less, but does not include the inducement of a child's
1 22 birth when inducement is performed for bona fide medical
1 23 purposes.
1 24 f. "Unborn child" means a member of the species homo
1 25 sapiens being carried in the womb at any stage of development
1 26 prior to birth.
1 27 g. "Without lawful justification" means acting under
1 28 circumstances in which the use of lethal force is not legally
1 29 justified.
1 30 3. Any person who without lawful justification causes the
1 31 death of an unborn child is guilty of murder in the first
1 32 degree of an unborn child if the person does either of the
1 33 following:
1 34 a. Willfully, deliberately, and with premeditation causes
1 35 the death of or does great bodily harm to another or knows
2 1 that the person's acts will cause great bodily harm to
2 2 another, resulting in the death of an unborn child.
2 3 b. Attempts to commit or commits a forcible felony,
2 4 resulting in the death of an unborn child.
2 5 Murder in the first degree of an unborn child is a class
2 6 "A" felony.
2 7 4. Any person who without lawful justification causes the
2 8 death of an unborn child is guilty of murder in the second
2 9 degree of an unborn child if the person does any of the
2 10 following:
2 11 a. Perpetrates an act eminently dangerous to another and
2 12 evinces a depraved mind, without regard to human life or the
2 13 life of an unborn child, resulting in the death of an unborn
2 14 child.
2 15 b. Knows that the person's acts create a strong
2 16 probability of death or great bodily harm to another,
2 17 resulting in the death of an unborn child.
2 18 Murder of an unborn child in the second degree is a class
2 19 "B" felony.
2 20 5. Any person who without lawful justification causes the
2 21 death of an unborn child is guilty of voluntary manslaughter
2 22 of an unborn child if the person does any of the following:

2 23 a. Causes the death of another as the result of sudden,
2 24 violent, and irresistible passion resulting from serious
2 25 provocation sufficient to excite such passion in a person and
2 26 there is not an interval between the provocation and the
2 27 killing in which a person of ordinary reason and temperament
2 28 would regain control and suppress the impulse to kill,
2 29 resulting in the death of an unborn child.

2 30 b. Commits or attempts to commit a misdemeanor offense
2 31 with such force or violence that the death of or great bodily
2 32 harm to another was reasonably foreseeable, resulting in the
2 33 death of an unborn child.

2 34 c. Intends to cause the death of an unborn child because
2 35 the person is coerced by threats and the threats cause the
3 1 person to reasonably believe that the person's act is the only
3 2 means of preventing imminent death to the person or another,
3 3 resulting in the death of an unborn child.

3 4 Voluntary manslaughter of an unborn child is a class "C"
3 5 felony.

3 6 6. Any person who without lawful justification causes the
3 7 death of an unborn child is guilty of involuntary manslaughter
3 8 of an unborn child if the person does any of the following:

3 9 a. Creates an unreasonable risk of causing death or great
3 10 bodily harm to another by the person's culpable negligence and
3 11 consciously takes the risk, resulting in the death of an
3 12 unborn child.

3 13 b. Injures a pregnant woman with a firearm or another
3 14 dangerous weapon as the result of negligently believing the
3 15 pregnant woman to be an animal, resulting in the death of an
3 16 unborn child.

3 17 c. Sets a spring gun, pitfall, deadfall, snare, or other
3 18 similar dangerous weapon or device, resulting in the death of
3 19 an unborn child.

3 20 d. Negligently permits any animal known by the person to
3 21 have vicious propensities, or to have caused great bodily harm
3 22 in the past, to run uncontrolled off the owner's premises, or
3 23 negligently fails to keep the animal properly confined,
3 24 resulting in the death of an unborn child.

3 25 Involuntary manslaughter of an unborn child is a class "D"
3 26 felony.

3 27 7. Any person who, without lawful justification, inflicts
3 28 great bodily harm or substantial bodily harm on an unborn
3 29 child, by intentionally or knowingly touching a pregnant woman
3 30 without her consent, and the unborn child is subsequently born
3 31 alive, commits assault of an unborn child.

3 32 Assault of an unborn child is an aggravated misdemeanor.

3 33 8. This section shall not apply to any of the following:

3 34 a. An act which causes the death of an unborn child if the
3 35 act was committed during a legal abortion to which the
4 1 pregnant woman or a person legally authorized to act on the
4 2 pregnant woman's behalf consented or for which consent is
4 3 implied by law.

4 4 b. An act which is committed pursuant to usual and
4 5 customary standards of medical practice during diagnostic
4 6 testing or therapeutic treatment.

4 7 c. An act committed in self-defense or in defense of
4 8 another person or any other act committed if legally justified
4 9 or excused.

4 10 9. An offense under this section does not require proof of
4 11 either of the following:

4 12 a. That the person engaging in the act knew or should have
4 13 known that the victim of the underlying offense was pregnant.

4 14 b. That the person engaging in the act intended to cause
4 15 the death of or bodily harm to the unborn child.

4 16 10. A prosecution or conviction under this section is not
4 17 a bar to prosecution or conviction of a person for any other
4 18 crime committed by the person stemming from the same act.

4 19 Sec. 2. Section 707.8, Code 2003, is repealed.

4 20 EXPLANATION

4 21 This bill amends the portion of the Code relating to
4 22 feticide, Code section 707.7, by eliminating current
4 23 provisions and replacing them with a section to be known and
4 24 cited as the "Unborn Victims of Violence Act".

4 25 Currently, the Code section provides that a person who
4 26 intentionally terminates a human pregnancy with the knowledge
4 27 and voluntary consent of the pregnant person after the end of
4 28 the second trimester and death of the fetus results commits
4 29 feticide, which is a class "C" felony. The Code section also
4 30 currently provides that a person who attempts to intentionally
4 31 terminate a human pregnancy with the knowledge and voluntary
4 32 consent of the pregnant person after the end of the second
4 33 trimester and death of the fetus does not result commits

4 34 attempted feticide, which is a class "D" felony. The current
4 35 Code section also provides that the Code section does not
5 1 apply to the termination of a human pregnancy performed by a
5 2 physician licensed in this state to practice medicine or
5 3 surgery when in the best clinical judgment of the physician
5 4 the termination is performed to preserve the life or health of
5 5 the pregnant person or of the fetus and every reasonable
5 6 medical effort not inconsistent with preserving the life of
5 7 the pregnant person is made to preserve the life of a viable
5 8 fetus. Finally, the current Code section provides that any
5 9 person who terminates a human pregnancy, with the knowledge
5 10 and voluntary consent of the pregnant person, who is not a
5 11 person licensed to practice medicine and surgery or
5 12 osteopathic medicine and surgery, commits a class "C" felony.

5 13 The bill replaces the current provisions by establishing
5 14 the elements of murder of an unborn child in the first degree,
5 15 which is a class "A" felony, murder of an unborn child in the
5 16 second degree, which is a class "B" felony, voluntary
5 17 manslaughter of an unborn child, which is a class "C" felony,
5 18 involuntary manslaughter of an unborn child, which is a class
5 19 "D" felony, and assault of an unborn child, which is an
5 20 aggravated misdemeanor.

5 21 The bill provides that the new Code section does not apply
5 22 to an act which causes the death of an unborn child if the act
5 23 was committed during a legal abortion to which the pregnant
5 24 woman or the legally authorized representative of the pregnant
5 25 woman consented or for which consent is implied by law, an act
5 26 which is committed pursuant to usual and customary standards
5 27 of medical practice during diagnostic testing or therapeutic
5 28 treatment, or an act committed in self-defense or in defense
5 29 of another person or any other act committed if legally
5 30 justified or excused.

5 31 Under the bill, an offense under the new Code section does
5 32 not require proof that the person engaging in the act knew or
5 33 should have known that the victim of the underlying offense
5 34 was pregnant or that the person engaging in the act intended
5 35 to cause the death of or bodily harm to the unborn child.

6 1 The bill also provides that a prosecution or conviction
6 2 under the new Code section is not a bar to prosecution or
6 3 conviction of a person for any other crime committed by the
6 4 person stemming from the same act.

6 5 The bill also repeals Code section 707.8, the section of
6 6 the Code relating to the crime of nonconsensual termination or
6 7 serious injury to a human pregnancy.

6 8 LSB 6275YC 80

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