

FILED MAR 04 '04

SENATE FILE 2254
BY COMMITTEE ON HUMAN
RESOURCES

(SUCCESSOR TO SSB 3130)

Passed Senate, Date _____ Passed House, 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:

SENATE FILE 2254

S-5129

1 Amend Senate File 2254 as follows:

2 1. By striking everything after the enacting
3 clause and inserting the following:

4 "Section 1. NEW SECTION. 707.11A APPLICATION.

5 1. For the purposes of sections 707.1, 707.2,
6 707.3, 707.4, and 707.11, as it pertains to the victim
7 of a crime, "person" includes a member of the species
8 homo sapiens, at any stage of development when carried
9 in the womb or after birth.

10 2. Sections 707.1, 707.2, 707.3, 707.4, and 707.11
11 shall not apply to a legal abortion to which the
12 pregnant woman or a person legally authorized to act
13 on the pregnant woman's behalf consented, or for which
14 consent is implied by law."

15 2. Title page, lines 1 and 2, by striking the
16 words "an unborn child, providing for a repeal, and
17 providing penalties" and inserting the following:
18 "members of the species homo sapiens at any stage of
19 development".

By NANCY BOETTGER

S-5129 FILED MARCH 23, 2004

SF 2254
HUMAN RESOURCES

1 Section 1. Section 707.7, Code 2003, is amended by
2 striking the section and inserting in lieu thereof the
3 following:

4 707.7 CRIMES AGAINST AN UNBORN CHILD.

5 1. This section shall be known and may be cited as the
6 "Unborn Victims of Violence Act".

7 2. For the purposes of this section, unless the context
8 otherwise requires:

9 a. "Another" means the unborn child or any human being
10 other than the person committing the act.

11 b. "Any person" means the person committing the act, but
12 does not include the pregnant woman whose unborn child is
13 killed or injured.

14 c. "Forcible felony" means forcible felony as defined in
15 section 702.11.

16 d. "Great bodily harm" includes, but is not limited to,
17 permanent disability or disfigurement.

18 e. "Substantial bodily harm" includes, but is not limited
19 to, causing the birth of a child prior to thirty-seven weeks'
20 gestation if the child weighs two thousand five hundred grams
21 or less, but does not include the inducement of a child's
22 birth when inducement is performed for bona fide medical
23 purposes.

24 f. "Unborn child" means a member of the species homo
25 sapiens being carried in the womb at any stage of development
26 prior to birth.

27 g. "Without lawful justification" means acting under
28 circumstances in which the use of lethal force is not legally
29 justified.

30 3. Any person who without lawful justification causes the
31 death of an unborn child is guilty of murder in the first
32 degree of an unborn child if the person does either of the
33 following:

34 a. Willfully, deliberately, and with premeditation causes
35 the death of or does great bodily harm to another or knows

1 that the person's acts will cause great bodily harm to
2 another, resulting in the death of an unborn child.

3 b. Attempts to commit or commits a forcible felony,
4 resulting in the death of an unborn child.

5 Murder in the first degree of an unborn child is a class
6 "A" felony.

7 4. Any person who without lawful justification causes the
8 death of an unborn child is guilty of murder in the second
9 degree of an unborn child if the person does any of the
10 following:

11 a. Perpetrates an act eminently dangerous to another and
12 evinces a depraved mind, without regard to human life or the
13 life of an unborn child, resulting in the death of an unborn
14 child.

15 b. Knows that the person's acts create a strong
16 probability of death or great bodily harm to another,
17 resulting in the death of an unborn child.

18 Murder of an unborn child in the second degree is a class
19 "B" felony.

20 5. Any person who without lawful justification causes the
21 death of an unborn child is guilty of voluntary manslaughter
22 of an unborn child if the person does any of the following:

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

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

34 c. Intends to cause the death of an unborn child because
35 the person is coerced by threats and the threats cause the

1 person to reasonably believe that the person's act is the only
2 means of preventing imminent death to the person or another,
3 resulting in the death of an unborn child.

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

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

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

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

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

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

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

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

32 Assault of an unborn child is an aggravated misdemeanor.

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

34 a. An act which causes the death of an unborn child if the
35 act was committed during a legal abortion to which the

1 pregnant woman or a person legally authorized to act on the
2 pregnant woman's behalf consented or for which consent is
3 implied by law.

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

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

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

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

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

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

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

20 EXPLANATION

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

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

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

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

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

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

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

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

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SENATE FILE 2254

S-5142

1 Amend the amendment, S-5129, to Senate File 2254 as
2 follows:
3 1. Page 1, by striking lines 2 through 19, and
4 inserting the following:
5 "____. Page 4, by striking lines 10 through 15,
6 and inserting the following:
7 "9. An offense under this section requires proof
8 that the person engaging in the act knew or should
9 have known that the victim of the underlying offense
10 was pregnant.
11 9A. An offense under this section does not require
12 proof that the person engaging in the act intended to
13 cause the death of or bodily harm to the unborn
14 child."

By JACK HATCH

S-5142 FILED MARCH 24, 2004
WITHDRAWN

SENATE FILE 2254

S-5144

1 Amend the amendment, S-5129, to Senate File 2254 as
2 follows:
3 1. Page 1, by striking lines 4 through 19 and
4 inserting the following:
5 ""Section 1. Section 707.8, Code 2003, is amended
6 by adding the following new subsections before
7 subsection 1 and renumbering the subsequent
8 subsections:
9 NEW SUBSECTION. 0A. A person who commits murder
10 in the first degree against a pregnant woman which
11 also results in the termination of the human pregnancy
12 also commits murder in the first degree against the
13 human pregnancy. Murder in the first degree against a
14 human pregnancy is a class "A" felony.
15 NEW SUBSECTION. 0B. A person who commits murder
16 in the second degree against a pregnant woman which
17 also results in the termination of the human pregnancy
18 also commits murder in the second degree against the
19 human pregnancy. Murder in the second degree against
20 a human pregnancy is a class "B" felony punishable by
21 the maximum sentence prescribed pursuant to section
22 707.3."
23 _____. Title page, lines 1 and 2, by striking the
24 words "an unborn child, providing for a repeal," and
25 inserting the following: "a human pregnancy"."

By KEITH A. KREIMAN

S-5144 FILED MARCH 24, 2004
LOST

**Fiscal Services Division
Legislative Services Agency
Fiscal Note**

SF 2254 - Unborn Child, Death or Injury (LSB 6275 SV)

Analyst: Beth Lenstra (Phone: (515) 281-6301 (beth.lenstra@legis.state.ia.us))

Fiscal Note Version - New

Description

Senate File 2254 amends Section 707.7, Code of Iowa, (feticide) by eliminating current provisions and replacing them with a section to be known and cited as the "Unborn Victims of Violence Act." The Bill repeals Section 707.8, Code of Iowa, which relates to nonconsensual termination – serious injury to a human pregnancy. Senate File 2254 enhances existing penalties and creates new offenses and imposes Class B, Class C, and Class D penalties.

Assumptions

1. There were three convictions under Section 707.8, Code of Iowa, in FY 2003. Two were Class C felony convictions and one was an aggravated misdemeanor conviction.
2. There were no convictions under Section 707.7, Code of Iowa, in FY 2003.
3. State costs for one Class A felony conviction is approximately \$94,000.
4. State costs for one Class B felony conviction for a crime against a person ranges from \$5,000 to \$61,000.
5. State costs for one Class C felony conviction for a crime against a person ranges from \$3,000 to \$23,000.
6. State costs for one Class D felony conviction for a crime against a person ranges from \$2,000 to \$12,000.
7. The costs stated above include the Judicial Branch holding a trial; indigent defense; and supervision while on probation, parole, or prison, if applicable. The costs will be incurred across multiple fiscal years.

Correctional Impact

The correctional impact is not anticipated to be significant given the low number of convictions under current law.

Fiscal Impact

The fiscal impact of SF 2254 cannot be determined due to insufficient information.

The State's increased cost for one conviction for the enhanced penalties is:

- From a Class B to a Class A felony conviction, the range is \$33,000 to \$89,000.
- From a Class C to a Class A felony conviction, the range is \$71,000 to \$91,000.
- From a Class C felony to a Class B felony conviction, the range is \$2,000 to \$38,000.

The cost of one conviction for the new Class A felony offense is approximately \$94,000. The cost of one conviction for the new Class B offense ranges from \$5,000 to \$61,000. The cost of one conviction for the new Class C offense ranges from \$3,000 to \$23,000. The cost of one conviction for the new Class D offense ranges from \$2,000 to \$12,000.

Sources

Department of Human Rights, Criminal and Juvenile Justice Planning Division
Department of Corrections
Judicial Branch
Office of the State Public Defender

Dennis C Prouty

March 8, 2004

The fiscal note and correctional impact statement for this bill was prepared pursuant to Joint Rule 17 and pursuant to Section 2.56, Code of Iowa. Data used in developing this fiscal note and correctional impact statement are available from the Fiscal Services Division, Legislative Services Agency to members of the Legislature upon request.

SENATE FILE 2254
BY COMMITTEE ON HUMAN
RESOURCES

(SUCCESSOR TO SSB 3130)

(AS AMENDED AND PASSED BY THE SENATE MARCH 24, 2004)

ALL New Language by the Senate

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

A BILL FOR

1 An Act relating to crimes against members of the species homo
2 sapiens at any stage of development.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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S.F. 2254

1 Section 1. NEW SECTION. 707.11A APPLICATION.

2 1. For the purposes of sections 707.1, 707.2, 707.3,
3 707.4, and 707.11, as it pertains to the victim of a crime,
4 "person" includes a member of the species homo sapiens, at any
5 stage of development when carried in the womb or after birth.

6 2. Sections 707.1, 707.2, 707.3, 707.4, and 707.11 shall
7 not apply to a legal abortion to which the pregnant woman or a
8 person legally authorized to act on the pregnant woman's
9 behalf consented, or for which consent is implied by law.

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Boettger
Hosch
Holveck

2254 SSB# 3130
Human Resources

SENATE FILE _____

BY (PROPOSED COMMITTEE ON
HUMAN RESOURCES BILL BY
CHAIRPERSON VEENSTRA)

Passed Senate, Date _____

Passed House, 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:

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1 Section 1. Section 707.7, Code 2003, is amended by
2 striking the section and inserting in lieu thereof the
3 following:

4 707.7 CRIMES AGAINST AN UNBORN CHILD.

5 1. This section shall be known and may be cited as the
6 "Unborn Victims of Violence Act".

7 2. For the purposes of this section, unless the context
8 otherwise requires:

9 a. "Another" means the unborn child or any human being
10 other than the person committing the act.

11 b. "Any person" means the person committing the act, but
12 does not include the pregnant woman whose unborn child is
13 killed or injured.

14 c. "Forcible felony" means forcible felony as defined in
15 section 702.11.

16 d. "Great bodily harm" includes, but is not limited to,
17 permanent disability or disfigurement.

18 e. "Substantial bodily harm" includes, but is not limited
19 to, causing the birth of a child prior to thirty-seven weeks'
20 gestation if the child weighs two thousand five hundred grams
21 or less, but does not include the inducement of a child's
22 birth when inducement is performed for bona fide medical
23 purposes.

24 f. "Unborn child" means a member of the species homo
25 sapiens being carried in the womb at any stage of development
26 prior to birth.

27 g. "Without lawful justification" means acting under
28 circumstances in which the use of lethal force is not legally
29 justified.

30 3. Any person who without lawful justification causes the
31 death of an unborn child is guilty of murder in the first
32 degree of an unborn child if the person does either of the
33 following:

34 a. Willfully, deliberately, and with premeditation causes
35 the death of or does great bodily harm to another or knows

1 that the person's acts will cause great bodily harm to
2 another, resulting in the death of an unborn child.

3 b. Attempts to commit or commits a forcible felony,
4 resulting in the death of an unborn child.

5 Murder in the first degree of an unborn child is a class
6 "A" felony.

7 4. Any person who without lawful justification causes the
8 death of an unborn child is guilty of murder in the second
9 degree of an unborn child if the person does any of the
10 following:

11 a. Perpetrates an act eminently dangerous to another and
12 evinces a depraved mind, without regard to human life or the
13 life of an unborn child, resulting in the death of an unborn
14 child.

15 b. Knows that the person's acts create a strong
16 probability of death or great bodily harm to another,
17 resulting in the death of an unborn child.

18 Murder of an unborn child in the second degree is a class
19 "B" felony.

20 5. Any person who without lawful justification causes the
21 death of an unborn child is guilty of voluntary manslaughter
22 of an unborn child if the person does any of the following:

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

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

34 c. Intends to cause the death of an unborn child because
35 the person is coerced by threats and the threats cause the

1 person to reasonably believe that the person's act is the only
2 means of preventing imminent death to the person or another,
3 resulting in the death of an unborn child.

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

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

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

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

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

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

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

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

32 Assault of an unborn child is an aggravated misdemeanor.

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

34 a. An act which causes the death of an unborn child if the
35 act was committed during a legal abortion to which the

1 pregnant woman or a person legally authorized to act on the
2 pregnant woman's behalf consented or for which consent is
3 implied by law.

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

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

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

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

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

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

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

20 EXPLANATION

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

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

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

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

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

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

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

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

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