

HOUSE BILL NO. 730

INTRODUCED BY J. PATTISON

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A BILL FOR AN ACT ENTITLED: "AN ACT ADOPTING THE PROTECTION FOR THE UNBORN CHILD ACT;
CREATING CRIMINAL OFFENSES INVOLVING DEATH OR INJURY TO AN UNBORN CHILD; PROVIDING
PENALTIES; MAKING CERTAIN EXCEPTIONS; AND AMENDING SECTION 41-1-103, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Short title.** [Sections 1 through 8] may be cited as the "Protection for the
Unborn Child Act".

NEW SECTION. **Section 2. Definition.** As used in [sections 1 through 8], "unborn child" means a
human who is conceived but is not yet born.

NEW SECTION. **Section 3. Deliberate homicide of unborn child.** (1) A person commits the offense
of deliberate homicide of an unborn child if the person attempts to commit, commits, or is legally accountable
for the attempt or commission of any offense listed in 45-5-102(1)(b) or any other forcible felony and in the
course of the forcible felony or flight after committing a forcible felony, the person or any person legally
accountable for the crime causes the death of an unborn child.

(2) A person convicted of the offense of deliberate homicide of an unborn child shall be punished by
imprisonment in a state prison for a term of not less than 10 years or more than 100 years, except as provided
in 46-18-219 and 46-18-222.

NEW SECTION. **Section 4. Mitigated deliberate homicide of unborn child.** (1) A person commits
the offense of mitigated deliberate homicide of an unborn child when the person purposely or knowingly causes
the death of an unborn child but does so under the influence of extreme mental or emotional stress for which
there is a reasonable explanation or excuse. The reasonableness of the explanation or excuse must be
determined from the viewpoint of a reasonable person in the actor's situation.

(2) It is an affirmative defense that the defendant acted under the influence of extreme mental or

1 emotional stress as provided in subsection (1). This defense constitutes a mitigating circumstance reducing
2 deliberate homicide of an unborn child to mitigated deliberate homicide of an unborn child and must be proved
3 by the defendant by a preponderance of the evidence.

4 (3) Mitigated deliberate homicide of an unborn child is not an included offense of deliberate homicide
5 of an unborn child as described in [section 3(1)].

6 (4) A person convicted of mitigated deliberate homicide of an unborn child shall be imprisoned in a state
7 prison for a term of not less than 2 years or more than 40 years and may be fined an amount not more than
8 \$50,000, except as provided in 46-18-219 and 46-18-222.

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10 **NEW SECTION. Section 5. Assault on unborn child.** (1) A person commits the offense of assault
11 on an unborn child if the person inflicts substantial bodily harm upon the unborn child, who is subsequently born
12 alive, by purposely or knowingly making physical contact of an insulting or provoking nature with a pregnant
13 woman without the woman's consent.

14 (2) As used in this section, "substantial bodily harm" includes but is not limited to the birth of an unborn
15 child prior to 37 weeks of gestation if the child weighs 2,500 grams or less at the time of birth. Substantial bodily
16 harm does not include the inducement of the unborn child's birth when done for bona fide medical purposes.

17 (3) A person convicted of assault on an unborn child shall be fined an amount not to exceed \$500 or
18 be imprisoned in the county jail for a term not to exceed 6 months, or both.

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20 **NEW SECTION. Section 6. Aggravated assault on unborn child.** (1) A person commits the offense
21 of aggravated assault on an unborn child if the person inflicts serious bodily harm upon the unborn child, who
22 is subsequently born alive, by purposely or knowingly making physical contact of an insulting or provoking nature
23 with a pregnant woman without the woman's consent.

24 (2) A person convicted of aggravated assault on an unborn child shall be imprisoned in the state prison
25 for a term of not less than 2 years or more than 20 years and may be fined an amount not more than \$50,000,
26 except as provided in 46-18-219 and 46-18-222.

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28 **NEW SECTION. Section 7. Harm to unborn child -- exceptions.** [Sections 1 through 8] do not apply
29 to:

30 (1) acts that cause the death of an unborn child if those acts were committed during a legal abortion

1 to which the pregnant woman consented;

2 (2) acts that are committed pursuant to usual and customary standards of medical practice during
3 diagnostic testing or therapeutic treatment; or

4 (3) acts involving the mother taking prescription or nonprescription medication.

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6 **NEW SECTION. Section 8. Other convictions not barred.** A prosecution for or conviction under
7 [sections 1 through 8] is not a bar to conviction of or punishment for any other crime committed by the defendant
8 as part of the same conduct.

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10 **Section 9.** Section 41-1-103, MCA, is amended to read:
11 **"41-1-103. Unborn children.** ~~A~~ Except as provided in [sections 1 through 8], a child conceived but not
12 yet born is ~~to be deemed~~ considered an existing person, so far as may be necessary for its interests in the event
13 of its subsequent birth."
14

15 **NEW SECTION. Section 10. Severability.** If a part of [this act] is invalid, all valid parts that are
16 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
17 the part remains in effect in all valid applications that are severable from the invalid applications.

18
19 **NEW SECTION. Section 11. Codification instruction.** [Sections 1 through 8] are intended to be
20 codified as an integral part of Title 45, chapter 5, and the provisions of Title 45, chapter 5, apply to [sections 1
21 through 8].

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