

HOUSE BILL NO. 730  
INTRODUCED BY J. PATTISON

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 emotional stress as provided in subsection (1). This defense constitutes a mitigating circumstance reducing

deliberate homicide of an unborn child to mitigated deliberate homicide of an unborn child and must be proved by the defendant by a preponderance of the evidence.

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

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

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

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

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

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

(2) A person convicted of aggravated assault on an unborn child shall be imprisoned in the state prison 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, except as provided in 46-18-219 and 46-18-222.

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

(1) acts that cause the death of an unborn child if those acts were committed during a legal abortion to which the pregnant woman consented;

(2) acts that are committed pursuant to usual and customary standards of medical practice during

diagnostic testing or therapeutic treatment; or

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

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

**Section 9.** Section 41-1-103, MCA, is amended to read:

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

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

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

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