



125th MAINE LEGISLATURE

FIRST REGULAR SESSION-2011

Legislative Document

No. 1463

S.P. 454

In Senate, April 12, 2011

An Act Regarding Offenses against an Unborn Child

Reference to the Committee on Criminal Justice and Public Safety suggested and ordered printed.

Joseph G. Carleton Jr.

JOSEPH G. CARLETON, JR.
Secretary of the Senate

Presented by Senator PLOWMAN of Penobscot.
Cosponsored by Senator: WHITTEMORE of Somerset.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 17-A MRSA c. 10** is enacted to read:

3 **CHAPTER 10**

4 **OFFENSES AGAINST UNBORN CHILD**

5 **§221. Definitions**

6 As used in this chapter, unless the context otherwise indicates, the following terms
7 have the following meanings.

8 1. "Abortion" has the same meaning as set forth in Title 22, section 1598, subsection
9 2, paragraph A.

10 2. "Person" does not include the pregnant woman whose unborn child is killed or
11 injured.

12 3. "Unborn child" means an individual of the human species from the state of fetal
13 development when the life of the fetus may be continued indefinitely outside the womb
14 by natural or artificial life-supportive systems until birth.

15 **§222. Murder of unborn child**

16 1. A person is guilty of murder of an unborn child if the person:

17 A. Intentionally or knowingly causes the death of an unborn child; or

18 B. Engages in conduct that manifests a depraved indifference to the value of an
19 unborn child's life and that in fact causes the death of an unborn child.

20 2. For purposes of subsection 1, paragraph B, when the crime of depraved
21 indifference murder is charged, the crime of criminally negligent manslaughter is deemed
22 to be charged.

23 3. The sentence for murder of an unborn child is as authorized in chapter 51.

24 4. It is an affirmative defense to a prosecution under subsection 1, paragraph A that
25 the person caused the death while under the influence of extreme anger or extreme fear
26 brought about by adequate provocation.

27 5. For purposes of subsection 4, provocation is adequate if:

28 A. It is not induced by the person; and

29 B. It is reasonable for the person to react to the provocation with extreme anger or
30 extreme fear; however, evidence demonstrating only that the person has a tendency
31 towards extreme anger or extreme fear is not sufficient, in and of itself, to establish
32 the reasonableness of the person's reaction.

33 6. This section does not apply to:

1 A. Acts that cause the death of an unborn child if those acts are committed during
2 an abortion, lawful or unlawful, to which the pregnant woman consents; or

3 B. Acts that are committed pursuant to usual and customary standards of medical
4 practice during diagnostic testing or therapeutic treatment.

5 7. Nothing contained in subsection 4 may constitute a defense to a prosecution for,
6 or preclude conviction of, manslaughter or any other crime. Prosecution of a person
7 under this section does not prohibit the prosecution of the person under section 208-C or
8 any other law.

9 **§223. Felony murder of unborn child**

10 1. A person is guilty of felony murder of an unborn child if, acting alone or with
11 one or more other persons in the commission of, or an attempt to commit, or immediate
12 flight after committing or attempting to commit, murder, robbery, burglary, kidnapping,
13 arson, gross sexual assault or escape, the person or another participant in fact causes the
14 death of an unborn child and the death is a reasonably foreseeable consequence of such
15 commission, attempt or flight.

16 2. It is an affirmative defense to prosecution under this section that the defendant:

17 A. Did not commit the homicidal act or in any way solicit, command, induce,
18 procure or aid the commission thereof;

19 B. Was not armed with a dangerous weapon or other weapon that under the
20 circumstances indicated a readiness to inflict serious bodily injury;

21 C. Reasonably believed that no other participant was armed with a weapon; and

22 D. Reasonably believed that no other participant intended to engage in conduct likely
23 to result in death or serious bodily injury.

24 3. This section does not apply to:

25 A. Acts that cause the death of an unborn child if those acts are committed during an
26 abortion, lawful or unlawful, to which the pregnant woman consents; or

27 B. Acts that are committed pursuant to usual and customary standards of medical
28 practice during diagnostic testing or therapeutic treatment.

29 4. Felony murder of an unborn child is a Class A crime.

30 5. Prosecution of a person under this section does not prohibit the prosecution of
31 the person under section 208-C or any other law.

32 **§224. Manslaughter of unborn child**

33 1. A person is guilty of manslaughter of an unborn child if that person:

34 A. Recklessly, or with criminal negligence, causes the death of an unborn child.
35 Violation of this paragraph is a Class A crime;

1 B. Intentionally or knowingly causes the death of an unborn child under
2 circumstances that do not constitute murder because the person causes the death
3 while under the influence of extreme anger or extreme fear brought about by
4 adequate provocation. Adequate provocation has the same meaning as in section
5 222, subsection 5. The fact that the person causes the death of an unborn child while
6 under the influence of extreme anger or extreme fear brought about by adequate
7 provocation constitutes a mitigating circumstance reducing murder to manslaughter
8 and need not be proved in any prosecution initiated under this subsection. Violation
9 of this paragraph is a Class A crime; or

10 C. Has direct and personal management or control of any employment, place of
11 employment or other employee and intentionally or knowingly violates any
12 occupational safety or health standard of this State or the Federal Government and
13 that violation in fact causes the death of an employee's unborn child and that death is
14 a reasonably foreseeable consequence of the violation. This paragraph does not apply
15 to:

16 (1) Any person who performs a public function either on a volunteer basis or for
17 minimal compensation for services rendered; or

18 (2) Any public employee responding to or acting at a life-threatening situation
19 who is forced to make and does make a judgment reasonably calculated to save
20 the life of a human being.

21 Violation of this paragraph is a Class C crime.

22 2. This section does not apply to:

23 A. Acts that cause the death of an unborn child if those acts are committed during an
24 abortion, lawful or unlawful, to which the pregnant woman consents; or

25 B. Acts that are committed pursuant to usual and customary standards of medical
26 practice during diagnostic testing or therapeutic treatment.

27 3. Prosecution of a person under this section does not prohibit the prosecution of the
28 person under section 208-C or any other law.

29 **§225. Assault on unborn child**

30 1. A person is guilty of assault on an unborn child if the person intentionally,
31 knowingly or recklessly causes bodily injury to an unborn child.

32 2. This section does not apply to:

33 A. Acts that cause bodily injury to an unborn child if those acts are committed during
34 an abortion, lawful or unlawful, to which the pregnant woman consents; or

35 B. Acts that are committed pursuant to usual and customary standards of medical
36 practice during diagnostic testing or therapeutic treatment.

37 3. Assault on an unborn child is a Class D crime.

1 4. Prosecution of a person under this section does not prohibit the prosecution of
2 the person under section 208-C or any other law.

3 **§226. Aggravated assault on unborn child**

4 1. A person is guilty of aggravated assault on an unborn child if the person, in
5 committing assault on an unborn child, intentionally or knowingly causes:

6 A. Serious bodily injury to the unborn child;

7 B. Bodily injury to the unborn child with use of a dangerous weapon; or

8 C. Bodily injury to the unborn child under circumstances manifesting extreme
9 indifference to the value of the unborn child's life. Such circumstances include, but
10 are not limited to, the number, location or nature of the injuries and the manner or
11 method inflicted.

12 2. This section does not apply to:

13 A. Acts that cause bodily injury to an unborn child if those acts are committed during
14 an abortion, lawful or unlawful, to which the pregnant woman consents; or

15 B. Acts that are committed pursuant to usual and customary standards of medical
16 practice during diagnostic testing or therapeutic treatment.

17 3. Aggravated assault on an unborn child is a Class B crime.

18 4. Prosecution of a person under this section does not prohibit the prosecution of
19 the person under section 208-C or any other law.

20 **§227. Elevated aggravated assault on unborn child**

21 1. A person is guilty of elevated aggravated assault on an unborn child if that
22 person:

23 A. Intentionally or knowingly causes serious bodily injury to an unborn child with
24 the use of a dangerous weapon;

25 B. Engages in conduct that manifests a depraved indifference to the value of an
26 unborn child's life and that in fact causes serious bodily injury to an unborn child with
27 the use of a dangerous weapon; or

28 C. With terroristic intent engages in conduct that in fact causes serious bodily injury
29 to an unborn child.

30 2. This section does not apply to:

31 A. Acts that cause bodily injury to an unborn child if those acts are committed during
32 an abortion, lawful or unlawful, to which the pregnant woman consents; or

33 B. Acts that are committed pursuant to usual and customary standards of medical
34 practice during diagnostic testing or therapeutic treatment.

35 3. Elevated aggravated assault on an unborn child is a Class A crime.

