
Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

SFA**BILL ANALYSIS**

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bill 21 (as introduced 1-8-97)
Sponsor: Senator William Van Regenmorter
Committee: Judiciary

Date Completed: 2-28-97

CONTENT

The bill would create “The Prenatal Protection Act” to establish penalties for causing the death of or serious injury to an “unborn child” through various actions. The bill specifies that it would not apply to any of the following:

- An act committed by the unborn child’s mother.
- A medical procedure performed by a physician or other licensed medical professional at the request of the mother of an unborn child or the mother’s legal guardian, or the lawful dispensation or administration of lawfully prescribed medication.
- An act that was committed in lawful self-defense or the defense of another, or was otherwise legally justified or excused.

“Unborn child” would mean “the live unborn offspring of a human being at any time or stage of development from conception until birth”.

The imposition of a criminal penalty for a violation of the bill would not preclude the prosecution and sentencing of a person for any other applicable criminal violation.

The bill would take effect on May 1, 1997.

Causing Death

Maliciousness. Except as otherwise provided in the bill, maliciously causing the death of an unborn child by any assault or infliction of injury upon the unborn child’s mother, or by any other means or action, would be a felony punishable by imprisonment for life or any term of years. If the assault, infliction of injury, or other action causing the death of the unborn child were committed with a premeditated intent to cause death to the unborn child, the mother, or another person, the offender would have to be punished by imprisonment for life or any term of years, but not less than 25 years. Similarly, if the assault, infliction of injury, or other action were committed in the perpetration or attempted perpetration a criminal offense involving “arson”; first-, second-, or third-degree criminal sexual conduct; first-degree child abuse; a “major controlled substance offense”; robbery; home invasion; larceny; extortion; or kidnapping, the offender would have to be punished by imprisonment for life or any term of years, but not less than 25 years.

“Maliciously” would mean any of the following:

- With the intent to cause the death of the unborn child, the unborn child’s mother, or another person.

- With the intent to cause great bodily harm to the unborn child, the unborn child's mother, or another person.
- In willful or reckless disregard of the likelihood that the natural tendency of the assault, infliction of injury, or other action taken would be to cause the death of, or great bodily harm to, the unborn child, the unborn child's mother, or another person.

"Arson" would mean any felony violation of Chapter X of the Michigan Penal Code, which includes various types of arson offenses. "Major controlled substance offense" would mean the manufacture, creation, possession with intent to deliver, or possession of 50 grams or more of a mixture containing a Schedule 1 or 2 narcotic or cocaine, or a conspiracy to commit any of those offenses.

Assault/Gross Negligence. Except as otherwise provided in the bill, causing the death of an unborn child by any assault or intentional infliction of injury upon the mother of the unborn child would be a felony punishable by up to 15 years' imprisonment, a maximum fine of \$7,500, or both.

Except as otherwise provided in the bill, committing a grossly negligent act that was a direct and substantial cause of the death of an unborn child would be a felony punishable by up to 15 years' imprisonment, a maximum fine of \$7,500, or both.

Assaulting or inflicting an injury upon a woman, known by the assailant to be pregnant, with the intent to cause the death of the woman's unborn child, would be a felony punishable by imprisonment for life or any term of years.

Traffic-Related. Causing the death of an unborn child by the operation of any vehicle upon any highway or other property, public or private, at an immoderate rate of speed or in a careless, reckless, or negligent manner, but not willfully or wantonly, would be a misdemeanor punishable by up to two years' imprisonment, a maximum fine of \$2,000, or both.

Causing the death of an unborn child by the operation of a motor vehicle while the operator was under the influence of or impaired by alcohol or a controlled substance, or by the operation of a vessel on Michigan waters while the operator was under the influence of alcohol or a controlled substance, would be a felony punishable by up to 15 years' imprisonment and/or a fine of not less than \$2,500 or more than \$10,000.

Causing Injury

Assault. Assaulting or inflicting an injury upon a woman, known by the assailant to be pregnant, with the intent to cause great bodily harm to the unborn child would be a felony punishable by up to 10 years' imprisonment, a maximum fine of \$5,000, or both.

Except as otherwise provided in the bill, causing an aggravated injury to an unborn child by any assault or intentional infliction of injury upon the mother of the unborn child would be a misdemeanor punishable by up to one year's imprisonment, a maximum fine of \$1,000, or both.

Traffic-Related. Causing great bodily harm to an unborn child, but not causing death, by driving a vehicle upon a highway carelessly and heedlessly in willful and wanton disregard of the rights or safety of others, or without due caution and circumspection and at a speed or in a manner that would endanger or be likely to endanger any person or property would be a felony punishable by up to two years' imprisonment, a maximum fine of \$2,000, or both.

Causing great bodily harm to an unborn child by the operation of a motor vehicle while the operator was under the influence of or impaired by alcohol or a controlled substance, or by the operation of a vessel on Michigan waters while the operator was under the influence of alcohol or a controlled

substance, would be a felony punishable by up to five years' imprisonment and/or a fine of not less than \$1,000 or more than \$5,000.

Evidence

In a prosecution of a violation committed during the first trimester of pregnancy, the prosecutor would have to prove the existence of an unborn child by admissible evidence of a laboratory analysis or by testimony of a physician or other licensed medical professional. In a prosecution for an alleged violation of the bill, evidence proving the pregnancy would give rise to a rebuttable presumption that the unborn child was alive at the time of the alleged violation.

Legislative Analyst: P. Affholter

FISCAL IMPACT

The bill would have an indeterminate, yet potentially increased cost to State government.

There are currently two sections of law that prescribe penalties for causing the death of an unborn child, and both are defined as manslaughter (MCL 750.322 and 750.323). In 1994, there were two individuals tried, convicted, and sentenced to prison under these sections; there were no reported convictions in 1995.

The bill essentially would provide increased penalties and increased opportunities for seeking convictions of injuring or causing the death of an unborn child. To the extent that these new violations and new penalties resulted in increased prison commitments, costs for the Department of Corrections would increase. There are no data currently available that would indicate how many individuals are involved in acts that result in the injury or death of an unborn child which would be punishable under the bill. If, for example, the bill resulted in two additional prison commitments each year with an average minimum sentence of 25 years, costs for the Department would increase by approximately \$30,000 the first year and reach \$750,000 by the 25th year.

Fiscal Analyst: M. Hansen

S9798\S21SA

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.