

JAN 24 2007

---

---

# A BILL FOR AN ACT

RELATING TO CRIMES AGAINST UNBORN CHILDREN.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1 SECTION 1. The Hawaii Revised Statutes is amended by  
2 adding a new chapter to be appropriately designated and to read  
3 as follows:

4 "CHAPTER

5 UNBORN VICTIMS OF VIOLENCE ACT

6 § -1 Definitions. As used in this Act, the terms:

7 "Unborn child" means the unborn offspring of a human being  
8 from conception until birth, but not yet completely born.

9 "Without lawful justification" means acting under  
10 circumstances in which the use of lethal force is not legally  
11 justified.

12 § -2 Murder of an unborn child. (1) A person who causes  
13 the death of an unborn child is guilty of murder of an unborn  
14 child if the person, who is not the unborn child's mother, and  
15 without lawful justification:

16 (a) Intends to cause the death of or do great bodily harm  
17 to the unborn child, or knows that the acts will cause



1           the death, or do great bodily harm to the unborn  
2           child;

3           (b) Knows that the acts create a strong probability of  
4           death or great bodily harm to another;

5           (c) Attempts or commits a felonious act that involves a  
6           high risk of violence; or

7           (d) Perpetrates an act eminently dangerous to another and  
8           evinces a depraved mind, without regard for human or  
9           fetal life.

10          (2) Murder of an unborn child is murder in the second  
11          degree.

12          §   -3 Voluntary manslaughter of an unborn child. (1) A  
13          person who causes the death of an unborn child is guilty of  
14          voluntary manslaughter of an unborn child if the person, who is  
15          not the unborn child's mother, and without lawful justification:

16          (a) Intends to cause the death of another in an immediate  
17          response provoked by such words or acts of another as  
18          would provoke a person of ordinary self-control under  
19          like circumstances;

20          (b) Commits or attempts to commit, a misdemeanor or gross  
21          misdemeanor offense with such force or violence, that



1 the death of or great bodily harm to another was  
2 reasonably foreseeable; or

3 (c) Intends to cause the death of an unborn child because  
4 the actor is coerced by threats made by someone other  
5 than a coconspirator and which causes the actor to  
6 reasonably believe that the act is the only means of  
7 preventing imminent death to the actor or another.

8 (2) Voluntary manslaughter of an unborn child is a class B  
9 felony.

10 § -4 Involuntary manslaughter of an unborn child. (1) A  
11 person who causes the death of an unborn child is guilty of  
12 involuntary manslaughter of an unborn child if the person, who  
13 is not the unborn child's mother, and without lawful  
14 justification:

15 (a) Creates an unreasonable risk by culpable negligence  
16 and consciously takes a chance of causing death or  
17 great bodily harm to another;

18 (b) Sets a spring gun, pit fall, deadfall, snare, or  
19 other-like dangerous weapon or device; or

20 (c) Negligently permits any animal known by the actor to  
21 have vicious propensities, or to have caused great or  
22 substantial bodily harm in the past, to run



1           uncontrolled off the owner's premises, or negligently  
2           fails to keep that animal properly confined.

3           (2) Involuntary manslaughter of an unborn child is a  
4 class C felony.

5           § -5 **Battery of an unborn child.** (1) A person, who is  
6 not the unborn child's mother, and who inflicts great or  
7 substantial bodily harm upon an unborn child, who is  
8 subsequently born alive, by intentionally or knowingly touching  
9 a pregnant woman without her consent and without lawful  
10 justification, is guilty of battery of an unborn child.

11           (2) As used in this section

12           "Great bodily harm" includes, but is not limited to,  
13 permanent disability or disfigurement.

14           "Substantial bodily harm" includes, but is not limited to,  
15 the birth of the unborn child prior to thirty-seven weeks  
16 gestation if the child weighs 2,500 grams or less at the time of  
17 birth. The term does not include the inducement of the unborn  
18 child's birth when done for bona fide medical purposes.

19           (3) Battery of an unborn child is a misdemeanor

20           § -6 **Assault of an unborn child.** (1) A person, who is  
21 not the unborn child's mother, and who does any of the following  
22 without lawful justification commits assault of an unborn child:



1 (a) Commits any act with the intent to cause fear in a  
2 pregnant woman of immediate bodily harm to herself or  
3 with the intent to cause fear in a pregnant woman of  
4 the death of her unborn child; or

5 (b) Intentionally inflicts or attempts to inflict bodily  
6 harm on an unborn child who is subsequently born  
7 alive.

8 (2) Assault of an unborn child is a petty misdemeanor.

9 § -7 Exceptions. This chapter does not apply to:

10 (a) Acts which cause the death of an unborn child if those  
11 acts were committed during a legal abortion to which  
12 the pregnant woman consented.

13 (b) Acts which are committed pursuant to usual and  
14 customary standards of medical practice during  
15 diagnostic testing or therapeutic treatment.

16 § -8 Other convictions not barred. A prosecution for or  
17 conviction under this chapter is not a bar to conviction of or  
18 punishment for any other crime committed by the defendant as  
19 part of the same conduct."

20 SECTION 2. If any provision of this Act, or the  
21 application thereof to any person or circumstance is held  
22 invalid, the invalidity does not affect other provisions or



1 applications of the Act, which can be given effect without the  
2 invalid provision or application, and to this end the provisions  
3 of this Act are severable.

4 SECTION 3. This Act does not affect rights and duties that  
5 matured, penalties that were incurred, and proceedings that were  
6 begun, before its effective date.

7 SECTION 4. This Act shall take effect upon its approval.  
8

INTRODUCED BY:

*[Handwritten signatures]*  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



**Report Title:**

Penal Code; Crimes Against Unborn Children

**Description:**

Creates new criminal offenses of murder, voluntary manslaughter, involuntary manslaughter, and battery of an unborn child; defines unborn child.

