

JAN 23 2009

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:

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.** (a) 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 (1) 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 of, or do great bodily harm to, the unborn
2 child;

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

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

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

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

12 § -3 **Voluntary manslaughter of an unborn child.** (a) 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 (1) 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 (2) 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 (3) 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 (b) Voluntary manslaughter of an unborn child is a class B
9 felony.

10 § -4 **Involuntary manslaughter of an unborn child.** (a) 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 (1) Creates an unreasonable risk by culpable negligence
16 and consciously takes a chance of causing death or
17 great bodily harm to another;

18 (2) Sets a spring gun, pit fall, deadfall, snare, or other
19 similar dangerous weapon or device; or

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

5 § -5 **Battery of an unborn child.** (a) 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 subsequently
8 born alive, by intentionally or knowingly touching a pregnant
9 woman without consent and without lawful justification, is
10 guilty of battery of an unborn child.

11 (b) 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 (c) Battery of an unborn child is a misdemeanor.

20 § -6 **Assault of an unborn child.** (a) 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 (1) Commits any act with the intent to cause fear in a
2 pregnant woman of immediate bodily harm to the
3 pregnant woman or with the intent to cause fear in a
4 pregnant woman of the death of the unborn child; or
5 (2) Intentionally inflicts or attempts to inflict bodily
6 harm on an unborn child who is subsequently born
7 alive.

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

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

- 10 (1) 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; or
13 (2) 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 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



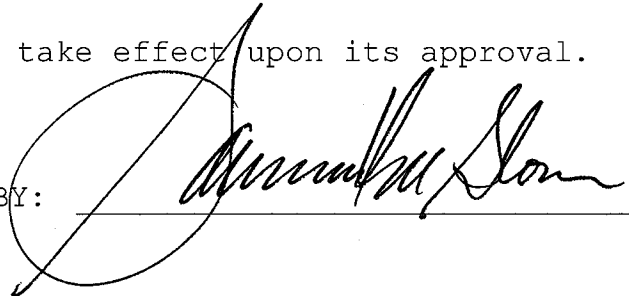
1 applications of the Act, which can be given effect without the
2 invalid provision or application, and to this end the provisions
3 of this Act are severable.

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: _____



Report Title:

Penal Code; Crimes Against Unborn Children

Description:

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

