

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 353

Short Title: Unborn Victims of Violence Act. (Public)

Sponsors: Senators Daniel, Harrington, Gunn; Allran, Apodaca, Bingham, Blake, Brock, Brown, Brunstetter, Clary, Davis, Forrester, Goolsby, Hise, Hunt, Jackson, Jenkins, Newton, Preston, Rabon, Soucek, Stevens, and Tucker.

Referred to: Judiciary II.

March 17, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO CREATE CRIMINAL OFFENSES FOR ACTS THAT CAUSE THE DEATH
3 OR INJURY OF AN UNBORN CHILD OR ARE COMMITTED AGAINST A
4 PREGNANT WOMAN, AND TO PROVIDE THAT THE ACT SHALL BE ENTITLED
5 "THE UNBORN VICTIMS OF VIOLENCE ACT."

6 Whereas, on April 1, 2004, the federal Unborn Victims of Violence Act was signed
7 into law; and

8 Whereas, the federal Unborn Victims of Violence Act recognizes an unborn child as
9 a second victim under sixty-eight violent federal crimes; and

10 Whereas, thirty-five states have laws recognizing an unborn child as a second victim
11 under certain crimes of violence; and

12 Whereas, North Carolina does not have laws recognizing separate criminal offenses
13 for the death or injury of an unborn child resulting from a violent crime against the pregnant
14 mother; Now, therefore,

15 The General Assembly of North Carolina enacts:

16 **SECTION 1.** This act shall be known as "The Unborn Victims of Violence Act."

17 **SECTION 2.** Chapter 14 of the General Statutes is amended by adding a new
18 Article to read:

19 "Article 6A.

20 "Unborn Victims.

21 **"§ 14-23.1. Definition.**

22 As used in this Article, unless the context requires otherwise, "unborn child" means a
23 member of the species homo sapiens, at any stage of development, who is carried in the womb.

24 **"§ 14-23.2. Murder of an unborn child; penalty.**

25 (a) Any person who unlawfully causes the death of an unborn child is guilty of murder
26 of an unborn child if the person does any one of the following:

27 (1) Willfully and maliciously commits an act with the intent to cause the death
28 of the unborn child.

29 (2) Commits an act causing the death of the unborn child that is inherently
30 dangerous to human life and is done so recklessly and wantonly that it
31 reflects disregard of life.

32 (3) Causes the death of the unborn child in perpetration or attempted
33 perpetration of any of the criminal offenses set forth under G.S. 14-17.



1 (b) Penalty. – An offense under this section shall be a Class A felony, and any person
2 who commits such offense shall be punished with imprisonment in the State's prison for life
3 without parole.

4 **"§ 14-23.3. Voluntary manslaughter of an unborn child; penalty.**

5 (a) A person is guilty of the offense of voluntary manslaughter as defined in the
6 common law if the person unlawfully causes the death of an unborn child by an act that would
7 be voluntary manslaughter if it resulted in the death of the mother.

8 (b) Penalty. – Any person who commits an offense under this section shall be guilty of
9 a Class D felony.

10 **"§ 14-23.4. Involuntary manslaughter of an unborn child; penalty.**

11 (a) A person is guilty of the offense of involuntary manslaughter as defined in the
12 common law if the person unlawfully causes the death of an unborn child by an act that would
13 be involuntary manslaughter if it resulted in the death of the mother.

14 (b) Penalty. – Any person who commits an offense under this section shall be guilty of
15 a Class F felony.

16 **"§ 14-23.5. Assault inflicting serious bodily injury on an unborn child; penalty.**

17 (a) Any person who unlawfully inflicts serious bodily harm upon an unborn child, who
18 is subsequently born alive, by a battery of the mother of the child is guilty of assault inflicting
19 serious bodily injury on an unborn child.

20 (b) For purposes of this section, "serious bodily harm" is defined as bodily injury that
21 creates a substantial risk of death, or that causes serious permanent disfigurement, coma, a
22 permanent or protracted condition that causes extreme pain, or permanent or protracted loss or
23 impairment of the function of any bodily member or organ, or that results in prolonged
24 hospitalization, or causes the birth of the unborn child prior to 37 weeks gestation.

25 (c) Penalty. – Any person who commits an offense under this section shall be guilty of
26 a Class F felony.

27 **"§ 14-23.6. Assault on an unborn child.**

28 (a) Any person who unlawfully commits any assault, assault and battery, or affray is
29 guilty of assault on an unborn child if, in the course of the assault, assault and battery, or affray,
30 the person assaults a pregnant woman.

31 (b) Penalty. – Any person who commits an offense under this section is guilty of a
32 Class H felony.

33 **"§ 14-23.7. Exceptions.**

34 This act does not apply to any of the following:

35 (1) Acts which cause the death of an unborn child if those acts were lawful,
36 pursuant to the provisions of G.S. 14-45.1.

37 (2) Acts which are committed pursuant to usual and customary standards of
38 medical practice during diagnostic testing or therapeutic treatment.

39 (3) Acts committed by a pregnant woman which result in miscarriage or
40 stillbirth by the woman. The following definitions shall apply in this section:

41 a. Miscarriage. – The interruption of the normal development of the
42 unborn child, other than by a live birth, and which is not an induced
43 abortion permitted under G.S. 14-45.1, resulting in the complete
44 expulsion or extraction from a pregnant woman of the unborn child.

45 b. Stillbirth. – The death of an unborn child prior to the complete
46 expulsion or extraction from a woman, irrespective of the duration of
47 pregnancy and which is not an induced abortion permitted under
48 G.S. 14-45.1.

49 **"§ 14-23.8. Knowledge not required.**

50 Except for an offense under G.S. 14-23.2(a)(1), an offense under this Article does not
51 require proof that:

- 1 (1) The person engaging in the conduct had knowledge or should have had
2 knowledge that the victim of the underlying offense was pregnant, or
- 3 (2) The defendant intended to cause the death of, or bodily injury to, the unborn
4 child."

5 **SECTION 3.** G.S. 14-18.2 is repealed.

6 **SECTION 4.** This act shall not be construed to impose criminal liability on an
7 expectant mother who is the victim of acts of domestic violence which cause injury or death to
8 her unborn child. The term "domestic violence" is defined as that term is defined in Chapter
9 50B of the General Statutes.

10 **SECTION 5.** Prosecutions for offenses committed before the effective date of this
11 act are not abated or affected by this act, and the statutes that would be applicable but for this
12 act remain applicable to those prosecutions.

13 **SECTION 6.** If any provision of this act or its application is held invalid, the
14 invalidity does not affect other provisions or applications of this act that can be given effect
15 without the invalid provisions or application, and to this end the provisions of this act are
16 severable.

17 **SECTION 7.** A prosecution for or conviction under this act is not a bar to
18 conviction of or punishment for any other crime committed by the defendant as part of the
19 same conduct.

20 **SECTION 8.** This act becomes effective July 1, 2011, and applies to offenses
21 committed on or after that date.