

4897

2009-2010 Regular Sessions

I N S E N A T E

April 27, 2009

Introduced by Sen. AUBERTINE -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the penal law, in relation to the unborn victims of violence act

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Legislative intent. The legislature hereby finds and
2 declares that a significant loophole exists in state law, denying
3 protection to pregnant women and certain children. Currently, an offender
4 may not be held criminally responsible for the harm caused to a
5 child unless that child has first been born alive. Therefore, an assailant
6 who shoots a woman who is seven months pregnant, and kills both the
7 woman and her child, may only be charged with the homicide of the mother;
8 the infant is not considered a legal victim of the crime.
9 New York state policy lags behind most states in this area of crime
10 victims' protection. Thirty-one states now provide protection and
11 justice for pregnant women and their unborn children who are victims of
12 violence.
13 The legislature further finds and declares that current statistics
14 demonstrate that domestic abuse and violence against women increases
15 during pregnancy. It is estimated that one in five women will be abused
16 during pregnancy. A study in the Journal of the American Medical Association
17 found that in the state of Maryland, a pregnant woman is more
18 likely to be a victim of a homicide than to die of any other cause.
19 Thus, rather than pregnancy being a peaceful time of preparation and the
20 growth of a healthy child, for many women it can be a time of violence,
21 grief and loss.
22 Compounding this tragedy is the loophole in current law, which denies
23 effective protection and remedy to women and their children. When a
24 woman makes a conscious choice to keep her baby and has the choice violently
25 taken away from her by a violent perpetrator, justice demands that

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets [] is old law to be omitted.

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1 someone be punished for that crime. Indeed, mothers will bury their
2 baby's body, mark the grave for their child for the rest of their lives,
3 but New York law tells them their loved one never existed.

4 The legislature does not intend this law to apply to any abortion to
5 which a woman has consented, or to any act of the mother herself, or to
6 any form of medical treatment. The legislature finds that the current
7 legal right to abortion does not protect, and does not confer on an
8 assailant, a third-party unilateral right to destroy an unborn child.

9 The legislature recognizes that a federal "unborn victims of violence"
10 law was enacted in 2004, yet believes the law to be limited in applying
11 only to unborn children injured or killed during the course of specified
12 federal crimes of violence.

13 It is the intent of the legislature that the affirmative right of a
14 pregnant woman to carry her child to term be protected, and that perpe-
15 trators of crimes against pregnant women and their unborn children be
16 held accountable for their crimes.

17 S 2. Short title. This act shall be known as and may be cited as the
18 "unborn victims of violence act".

19 S 3. The penal law is amended by adding two new sections 120.75 and
20 120.80 to read as follows:

21 S 120.75 ASSAULT AND RELATED OFFENSES; DEFINITION.

22 THE FOLLOWING DEFINITION IS APPLICABLE TO SECTIONS 120.00, 120.03,
23 120.04, 120.05, 120.06, 120.07, 120.10 AND 120.12 OF THIS ARTICLE:

24 "PERSON," WHEN REFERRING TO THE VICTIM OF ANY ASSAULT, AGGRAVATED
25 ASSAULT OR VEHICULAR ASSAULT, MEANS A HUMAN BEING WHO HAS BEEN BORN AND
26 IS ALIVE, OR AN UNBORN CHILD AT ANY STAGE OF GESTATION.

27 S 120.80 ASSAULT AND RELATED OFFENSES; DEFINED.

28 NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO PERMIT THE PROSECUTION:

29 1. OF ANY PERSON FOR CONDUCT RELATING TO A JUSTIFIABLE ABORTIONAL ACT
30 FOR WHICH THE CONSENT OF THE PREGNANT WOMAN HAS BEEN OBTAINED;

31 2. OF ANY PERSON FOR ANY MEDICAL TREATMENT OF THE PREGNANT WOMAN OR
32 HER UNBORN CHILD; OR

33 3. OF ANY WOMAN WITH RESPECT TO HER UNBORN CHILD EXCEPT A PROSECUTION
34 FOR VIOLATING SECTION 125.50 OR 125.55 OF THIS TITLE.

35 S 4. Section 125.00 of the penal law is amended to read as follows:

36 S 125.00 Homicide defined.

37 1. Homicide means conduct which causes the death of a person or an
38 unborn child [with which a female has been pregnant for more than twen-
39 ty-four weeks] AT ANY STAGE OF GESTATION under circumstances constitut-
40 ing murder IN THE FIRST DEGREE, MURDER IN THE SECOND DEGREE, manslaught-
41 er in the first degree, manslaughter in the second degree, VEHICULAR
42 MANSLAUGHTER IN THE FIRST DEGREE, VEHICULAR MANSLAUGHTER IN THE SECOND
43 DEGREE OR criminally negligent homicide, abortion in the first degree or
44 self-abortion in the first degree.

45 2. NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO PERMIT THE PROSE-
46 CUTION:

47 (A) OF ANY PERSON FOR CONDUCT RELATING TO A JUSTIFIABLE ABORTIONAL ACT
48 FOR WHICH THE CONSENT OF THE PREGNANT WOMAN, OR A PERSON AUTHORIZED BY
49 LAW TO ACT ON HER BEHALF, HAS BEEN OBTAINED OR FOR WHICH SUCH CONSENT IS
50 IMPLIED BY LAW;

51 (B) OF ANY PERSON FOR ANY MEDICAL TREATMENT OF THE PREGNANT WOMAN OR
52 HER UNBORN CHILD; OR

53 (C) OF ANY WOMAN WITH RESPECT TO HER UNBORN CHILD EXCEPT A PROSECUTION
54 FOR VIOLATING SECTION 125.50 OR 125.55 OF THIS ARTICLE.

55 S 5. Subdivision 1 of section 125.05 of the penal law is amended to
56 read as follows:

1 1. "Person," when referring to the victim of a homicide, means a
2 human being who has been born and is alive, OR AN UNBORN CHILD AT ANY
3 STAGE OF GESTATION.
4 S 6. This act shall take effect on the first of November next succeed-
5 ing the date on which it shall have become a law.