S T A T E O F N E W Y O R K

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:

Section 1. Legislative intent. The legislature hereby finds and declares that a significant loophole exists in state law, denying protection to pregnant women and certain children. Currently, an offender may not be held criminally responsible for the harm caused to a child unless that child has first been born alive. Therefore, an assailant who shoots a woman who is seven months pregnant, and kills both the woman and her child, may only be charged with the homicide of the mother; the infant is not considered a legal victim of the crime.

New York state policy lags behind most states in this area of crime victims' protection. Thirty-one states now provide protection and justice for pregnant women and their unborn children who are victims of violence.

The legislature further finds and declares that current statistics demonstrate that domestic abuse and violence against women increases during pregnancy. It is estimated that one in five women will be abused during pregnancy. A study in the Journal of the American Medical Association found that in the state of Maryland, a pregnant woman is more likely to be a victim of a homicide than to die of any other cause. Thus, rather than pregnancy being a peaceful time of preparation and the growth of a healthy child, for many women it can be a time of violence, grief and loss.

Compounding this tragedy is the loophole in current law, which denies effective protection and remedy to women and their children. When a woman makes a conscious choice to keep her baby and has the choice violently 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.

LBD05346-01-9

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

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

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

It is the intent of the legislature that the affirmative right of a pregnant woman to carry her child to term be protected, and that perpetrators of crimes against pregnant women and their unborn children be held accountable for their crimes.

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

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

S 120.75 ASSAULT AND RELATED OFFENSES; DEFINITION.

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

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

S 120.80 ASSAULT AND RELATED OFFENSES; DEFINED.

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

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

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

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

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

S 125.00 Homicide defined.

1. Homicide means conduct which causes the death of a person or an unborn child [with which a female has been pregnant for more than twenty-four weeks] AT ANY STAGE OF GESTATION under circumstances constituting murder IN THE FIRST DEGREE, MURDER IN THE SECOND DEGREE, manslaughter in the first degree, manslaughter in the second degree, VEHICULAR MANSLAUGHTER IN THE FIRST DEGREE, VEHICULAR MANSLAUGHTER IN THE SECOND DEGREE OR criminally negligent homicide, abortion in the first degree or self-abortion in the first degree.

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

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

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

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

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

1. "Person," when referring to the victim of a homicide, means a human being who has been born and is alive, OR AN UNBORN CHILD AT ANY STAGE OF GESTATION.

S 6. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.