

STATE OF NEW YORK

5729

2021-2022 Regular Sessions

IN ASSEMBLY

February 24, 2021

Introduced by M. of A. CUSICK, FITZPATRICK, GOODELL, PALMESANO, WALCZYK
-- Multi-Sponsored by -- M. of A. McDONOUGH, RA -- read once and
referred 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 Assem-
bly, 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 offen-
4 der may not be held criminally responsible for the harm caused to a
5 child unless that child has first been born alive. Therefore, an assai-
6 lant 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 since 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 Asso-
17 ciation 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 viol-

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

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1 ently taken away from her by a violent perpetrator, justice demands that
2 someone be punished for that crime. Indeed, mothers will bury their
3 baby's body and mark the grave for their child for the rest of their
4 lives, but New York law tells them their loved one never existed.

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

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

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

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

20 § 3. The penal law is amended by adding two new sections 120.75 and
21 120.80 to read as follows:

22 § 120.75 Assault and related offenses; definition.

23 The following definition is applicable to sections 120.00, 120.03,
24 120.04, 120.05, 120.06, 120.07, 120.10 and 120.12 of this article:

25 "Person," when referring to the victim of any assault, aggravated
26 assault or vehicular assault, means a human being who has been born and
27 is alive, or an unborn child at any stage of gestation.

28 § 120.80 Assault and related offenses; defined.

29 Nothing in this article shall be construed to permit the prosecution:
30 1. of any person for conduct relating to a justifiable abortifacient act
31 for which the consent of the pregnant woman has been obtained; or
32 2. of any person for any medical treatment of the pregnant woman or
33 her unborn child.

34 § 4. Section 125.00 of the penal law, as amended by chapter 1 of the
35 laws of 2019, is amended to read as follows:

36 § 125.00 Homicide defined.

37 1. Homicide means conduct which causes the death of a person or an
38 unborn child at any stage of gestation under circumstances constituting
39 murder in the first degree, murder in the second degree, manslaughter in
40 the first degree, manslaughter in the second degree, vehicular
41 manslaughter in the first degree, vehicular manslaughter in the second
42 degree, or criminally negligent homicide.

43 2. Nothing in this article shall be construed to permit the prose-
44 cution:

45 (a) of any person for conduct relating to a justifiable abortifacient act
46 for which the consent of the pregnant woman or a person authorized by
47 law to act on her behalf, has been obtained or for which such consent is
48 implied by law; or

49 (b) of any person for any medical treatment of a pregnant woman or her
50 unborn child.

51 § 5. Section 125.05 of the penal law, the section heading, opening
52 paragraph and closing paragraph as amended by chapter 1 of the laws of
53 2019, is amended to read as follows:

54 § 125.05 Homicide and related offenses; definition.

55 The following definition is applicable to this article:

1 "Person," when referring to the victim of a homicide, means a human
2 being who has been born and is alive or an unborn child at any stage of
3 gestation.

4 § 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.