

No. 1997-44

AN ACT

SB 45

Amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, further providing for territorial applicability, for classes of offenses, for limitation of actions and for sentencing for murder; providing for crimes against the unborn; and further providing for harassment and stalking.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Sections 102(c), 106(a)(1) and (b)(1), 108 and 1102 of Title 18 of the Pennsylvania Consolidated Statutes are amended to read:

§ 102. Territorial applicability.

* * *

(c) Homicide.—When the offense is homicide *or homicide of an unborn child*, either the death of the victim, *including an unborn child*, or the bodily impact causing death constitutes a “result[,]” within the meaning of paragraph (a)(1) of this section, and if the body of a homicide victim, *including an unborn child*, is found within this Commonwealth, it is presumed that such result occurred within this Commonwealth.

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§ 106. Classes of offenses.

(a) General rule.—An offense defined by this title for which a sentence of death or of imprisonment is authorized constitutes a crime. The classes of crime are:

(1) Murder of the first degree [or], of the second degree *or of the third degree, first degree murder of an unborn child, second degree murder of an unborn child or third degree murder of an unborn child.*

* * *

(b) Classification of crimes.—

(1) A crime is a murder of the first degree [or], of the second degree *or of the third degree* if it is so designated in this title or if a person convicted of criminal homicide may be sentenced in accordance with the provisions of section 1102 [of this title] (relating to sentence for murder *and murder of an unborn child*). *A crime is first degree murder of an unborn child, second degree murder of an unborn child or third degree murder of an unborn child if it is so designated in this title or if a person convicted of criminal homicide of an unborn child may be sentenced in accordance with the provisions of section 1102.*

* * *

§ 108. Time limitations.

[A] (a) *General rule.*—*Except as set forth in subsection (b), a prosecution for any offense under this title must be commenced within the period, if any, limited by Chapter 55 of Title 42 (relating to limitation of time).*

(b) *Offenses against unborn child.*

(1) *A prosecution for criminal homicide of an unborn child may be commenced at any time.*

(2) *A prosecution for an offense under section 2606 (relating to aggravated assault of unborn child) must be commenced within five years after it is committed.*

§ 1102. Sentence for murder *and murder of an unborn child.*

(a) [Murder of the first] *First degree.*—

(1) *A person who has been convicted of a murder of the first degree shall be sentenced to death or to a term of life imprisonment in accordance with 42 Pa.C.S. § 9711 (relating to sentencing procedure for murder of the first degree).*

(2) *The sentence for a person who has been convicted of first degree murder of an unborn child shall be the same as the sentence for murder of the first degree, except that the death penalty shall not be imposed. This paragraph shall not affect the determination of an aggravating circumstance under 42 Pa.C.S. § 9711(d)(17) for the killing of a pregnant woman.*

(b) [Murder of the second] *Second degree.*—*A person who has been convicted of murder of the second degree or of second degree murder of an unborn child shall be sentenced to a term of life imprisonment.*

(c) *Attempt, solicitation and conspiracy to commit murder or murder of an unborn child.*—*Notwithstanding section 1103(1) (relating to sentence of imprisonment for felony), a person who has been convicted of attempt, solicitation or conspiracy to commit murder or murder of an unborn child where serious bodily injury results may be sentenced to a term of imprisonment which shall be fixed by the court at not more than 40 years. Where serious bodily injury does not result, the person may be sentenced to a term of imprisonment which shall be fixed by the court at not more than 20 years.*

(d) [Murder of the third] *Third degree.*—*Notwithstanding section 1103, a person who has been convicted of murder of the third degree or of third degree murder of an unborn child shall be sentenced to a term which shall be fixed by the court at not more than 40 years.*

Section 2. Title 18 is amended by adding a chapter to read:

CHAPTER 26
CRIMES AGAINST UNBORN CHILD

Sec.

- 2601. Short title of chapter.
- 2602. Definitions.
- 2603. Criminal homicide of unborn child.
- 2604. Murder of unborn child.
- 2605. Voluntary manslaughter of unborn child.
- 2606. Aggravated assault of unborn child.
- 2607. Culpability.
- 2608. Nonliability and defenses.
- 2609. Construction.

§ 2601. Short title of chapter.

This chapter shall be known and may be cited as the Crimes Against the Unborn Child Act.

§ 2602. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Abortion.” As defined in section 3203 (relating to definitions).

“Intentional killing.” Killing by means of poison, or by lying in wait, or by any other kind of willful, deliberate and premeditated killing.

“Murder.” As used in this chapter, the term includes the same element of malice which is required to prove murder under Chapter 25 (relating to criminal homicide).

“Perpetration of a felony.” As defined in section 2502(d) (relating to murder).

“Principal.” As defined in section 2502(d) (relating to murder).

“Serious bodily injury.” Bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ.

“Serious provocation.” As defined in section 2301 (relating to definitions).

“Unborn child.” As defined in section 3203 (relating to definitions).

§ 2603. Criminal homicide of unborn child.

(a) Offense defined.—An individual commits criminal homicide of an unborn child if the individual intentionally, knowingly, recklessly or negligently causes the death of an unborn child in violation of section 2604 (relating to murder of unborn child) or 2605 (relating to voluntary manslaughter of unborn child).

(b) Classification.—Criminal homicide of an unborn child shall be classified as murder of an unborn child or voluntary manslaughter of an unborn child.

§ 2604. Murder of unborn child.

(a) First degree murder of unborn child.—

(1) A criminal homicide of an unborn child constitutes first degree murder of an unborn child when it is committed by an intentional killing.

(2) The penalty for first degree murder of an unborn child shall be imposed in accordance with section 1102(a)(2) (relating to sentence for murder and murder of an unborn child).

(b) Second degree murder of unborn child.—

(1) A criminal homicide of an unborn child constitutes second degree murder of an unborn child when it is committed while the defendant was engaged as a principal or an accomplice in the perpetration of a felony.

(2) The penalty for second degree murder of an unborn child shall be the same as for murder of the second degree.

(c) Third degree murder of unborn child.—

(1) All other kinds of murder of an unborn child shall be third degree murder of an unborn child.

(2) The penalty for third degree murder of an unborn child is the same as the penalty for murder of the third degree.

§ 2605. Voluntary manslaughter of unborn child.

(a) Offense defined.—A person who kills an unborn child without lawful justification commits voluntary manslaughter of an unborn child if at the time of the killing he is acting under a sudden and intense passion resulting from serious provocation by:

(1) the mother of the unborn child whom the actor endeavors to kill, but he negligently or accidentally causes the death of the unborn child; or

(2) another whom the actor endeavors to kill, but he negligently or accidentally causes the death of the unborn child.

(b) Unreasonable belief killing justifiable.—A person who intentionally or knowingly kills an unborn child commits voluntary manslaughter of an unborn child if at the time of the killing he believes the circumstances to be such that, if they existed, would justify the killing under Chapter 5 (relating to general principles of justification) but his belief is unreasonable.

(c) Penalty.—The penalty for voluntary manslaughter of an unborn child shall be the same as the penalty for voluntary manslaughter.

§ 2606. Aggravated assault of unborn child.

(a) Offense.—A person commits aggravated assault of an unborn child if he attempts to cause serious bodily injury to the unborn child or causes such injury intentionally, knowingly or recklessly under circumstances manifesting extreme indifference to the life of the unborn child.

(b) Grading.—Aggravated assault of an unborn child is a felony of the first degree.

§ 2607. Culpability.

In any criminal prosecution pursuant to this chapter, the provisions of Chapter 3 (relating to culpability) shall apply, except that:

(1) The term “different person” as used in section 303(b) and (c) (relating to causal relationship between conduct and result) shall also include an unborn child.

(2) The term “victim” as used in section 311 (relating to consent) shall not include the mother of the unborn child.

§ 2608. Nonliability and defenses.

(a) Nonliability.—Nothing in this chapter shall impose criminal liability:

(1) For acts committed during any abortion or attempted abortion, whether lawful or unlawful, in which the pregnant woman cooperated or consented.

(2) For the consensual or good faith performance of medical practice, including medical procedures, diagnostic testing or therapeutic treatment, the use of an intrauterine device or birth control pill to inhibit or prevent ovulation, fertilization or the implantation of a fertilized ovum within the uterus.

(3) Upon the pregnant woman in regard to crimes against her unborn child.

(b) Defenses.—In any prosecution pursuant to this chapter, it shall be a defense that:

(1) The use of force that caused death or serious bodily injury to the unborn child would have been justified pursuant to Chapter 5 (relating to general principles of justification) if it caused death or serious bodily injury to the mother.

(2) Death or serious bodily injury to the unborn child was caused by the use of force which would have been justified pursuant to Chapter 5 if the same level of force was used upon or toward the mother.

§ 2609. Construction.

The provisions of this chapter shall not be construed to prohibit the prosecution of an offender under any other provision of law.

Section 3. Section 2709 of Title 18 is amended by adding a subsection to read:

§ 2709. Harassment and stalking.

* * *

(e.1) Course of conduct.—Acts indicating a course of conduct which occur in more than one jurisdiction may be used by any other jurisdiction in which an act occurred as evidence of a continuing pattern of conduct or a course of conduct.

* * *

Section 4. The provisions of this act are severable. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application.

Section 5. This act shall take effect as follows:

(1) The following provisions shall take effect immediately:

(i) Section 4 of this act.

(ii) This section.

(2) The addition of 18 Pa.C.S. § 2709(e.1) shall take effect in 60 days.

(3) The remainder of this act shall take effect in 180 days.

APPROVED—The 2nd day of October, A.D. 1997.

THOMAS J. RIDGE