HOUSE DOCKET, NO. 489 FILED ON: 1/11/2019

HOUSE . . . . . No. 3432

The Commonwealth of Massachusetts

PRESENTED BY:

Elizabeth A. Poirier

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to unborn victims of violence.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
Elizabeth A. Poirier	*14th Bristol*	*1/11/2019*
Joseph D. McKenna	*18th Worcester*	*1/30/2019*

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By Mrs. Poirier of North Attleborough, a petition (accompanied by bill, House, No. 3432) of Elizabeth A. Poirier and Joseph D. McKenna relative to the injury or termination of human embryos and fetuses prior to birth. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. *935* OF 2017-2018.]

The Commonwealth of Massachusetts

In the One Hundred and Ninety-First General Court
(2019-2020)

An Act relative to unborn victims of violence.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

The General Laws are hereby amended by inserting after chapter 265 the following chapter 265A;-

Section 1. This chapter shall be known and may be cited as the "Unborn Victims of Violence Act."

Section 2. For purposes of this Act, unless the context indicates otherwise, the following words shall have the following meanings:

"Another," the unborn child or any human being other than the actor.

"Bodily injury," substantial impairment of the physical condition, including any burn, fracture of any bone, subdural hematoma, injury to any internal organ, any injury which occurs

as the result of repeated harm to any bodily function or organ including human skin or any physical condition which substantially imperils an unborn child's health or welfare.

"Serious bodily injury," bodily injury which results in a permanent disfigurement; loss or impairment of a bodily function, limb or organ; or a substantial risk of death.

" Substantial bodily injury," bodily injury which creates a permanent disfigurement; protracted loss or impairment of function of a body member, limb or organ; or substantial risk of death and includes, but is not limited to, the birth of the unborn child prior to 37 weeks gestational age if the child weighs 2,500 grams or less at the time of birth. "Substantial bodily injury," as used in this section, does not include the inducement of the unborn child's birth when done for bona fide medical purposes.

"Unborn child," the individual human life in existence and developing from implantation of the embryo in the uterus until birth.

"Whoever" does not include the pregnant mother whose unborn child is killed or injured.

"Without lawful justification," acting under circumstances in which the use of lethal force is not legally justified.

Section 3. Murder of an unborn child; punishment.

(a) Whoever, without lawful justification, causes the death of an unborn child commits murder of an unborn child in the first degree if that person acts with deliberately premeditated malice aforethought, or with extreme atrocity or cruelty, or in the commission or attempted commission of a crime punishable with death or imprisonment for life.

(b) Whoever, without lawful justification, commits murder of an unborn child that does not appear to be murder in the first degree commits murder of an unborn child in the second degree.

(c) The degree of murder shall be found by the jury.

(d) Except as provided in subsection (e), any person who is found guilty of murder of an unborn child in the first degree shall be punished by imprisonment in the state prison for life and shall not be eligible for parole pursuant to section 133A of chapter 127.

(e) Any person who is found guilty of murder of an unborn child in the first degree, who committed the offense on or after the person's fourteenth birthday and before the person's eighteenth birthday, shall be punished by imprisonment in the state prison for life and shall be eligible for parole after the term of years fixed by the court pursuant to section 24 of chapter 279.

(f) Any person who is found guilty of murder of an unborn child in the second degree shall be punished by imprisonment in the state prison for life and shall be eligible for parole after the term of years fixed by the court pursuant section 24 of chapter 279.

(g) Any person whose sentence for murder of an unborn child is commuted by the governor and council pursuant to section 152 of chapter 127 shall thereafter be subject to the laws governing parole.

Section 4. Voluntary manslaughter of an unborn child punishment.

Voluntary manslaughter of an unborn child is punishable by imprisonment in the state prison for not more than 20 years or by a fine or not more than $1000 and imprisonment in jail or a house of correction for not more than 2½ years.

Section 5. Involuntary manslaughter of an unborn child punishment.

Involuntary manslaughter of an unborn child is punishable by imprisonment in the state prison for not more than 20 years or by a fine or not more than $1000 and imprisonment in jail or a house of correction for not more than 2½ years.

Section 6. Assault upon an unborn child; punishment.

(a) Whoever, without legal justification, does any of the following commits assault upon an unborn child:

(1) does any act with the intent to cause fear in a pregnant woman of immediate bodily harm to herself or with the intent to cause fear in a pregnant woman of the death of her unborn child; or

(2) intentionally inflicts or attempts to inflict bodily injury on an unborn child who is subsequently born alive.

(b) Assault upon an unborn child shall be punished by imprisonment for not more than 2½ years in a house of correction or by a fine of not more than $1000.

Section 7. Battery upon an unborn child; punishment.

(a) Whoever, without legal justification, inflicts serious or substantial bodily injury upon an unborn child, who is subsequently born alive, by intentionally or knowingly touching a pregnant woman without her consent commits battery of an unborn child.

(b) Battery of an unborn child resulting in bodily injury shall be punished by imprisonment in the state prison for not more than 5 years or imprisonment in the house of correction for not more than 2½ years.

Section 8. Assault and battery upon an unborn child punishment.

(a) Whoever commits an assault and battery upon an unborn child and by such assault and battery causes bodily injury shall be punished by imprisonment in the state prison for not more than 5 years or imprisonment in the house of correction for not more than 2½ years or by a fine of not more than $5000, or by both such fine and imprisonment.

(b) Whoever commits an assault and battery upon an unborn child and by such assault

and battery causes substantial bodily injury shall be punished by imprisonment in the state prison for not more than 15 years or imprisonment in the house of correction for not more than 2½ years or by a fine of not more than $15,000 or by both such fine and imprisonment.

Section 9. Exceptions. This Act does not apply to:

(a) Acts which cause the death of an unborn child if those acts were committed during a legal abortion to which the pregnant woman consented.

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

Section 9. Other convictions not barred.

A prosecution for or conviction under this Act is not a bar to conviction of or punishment for any other crime committed by the defendant as part of the same conduct.