

HOUSE No. 1535

The Commonwealth of Massachusetts

PRESENTED BY:

David F. DeCoste

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:
<i>David F. DeCoste</i>	<i>5th Plymouth</i>	<i>2/18/2021</i>
<i>Alan Silvia</i>	<i>7th Bristol</i>	<i>2/23/2021</i>
<i>Joseph D. McKenna</i>	<i>18th Worcester</i>	<i>2/23/2021</i>
<i>Colleen M. Garry</i>	<i>36th Middlesex</i>	<i>3/1/2021</i>

HOUSE No. 1535

By Mr. DeCoste of Norwell, a petition (accompanied by bill, House, No. 1535) of David F. DeCoste and others relative to the injury or termination of human embryos and fetuses prior to birth. The Judiciary.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Second General Court
(2021-2022)

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:

1 SECTION 1. The General Laws are hereby amended by inserting after chapter 265 the
2 following chapter 265A

3 CHAPTER 265A

4 UNBORN VICTIMS OF VIOLENCE

5 Section 1. This chapter shall be known and may be cited as the “Unborn Victims of
6 Violence Act.”

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

9 “Bodily injury”: a substantial impairment of the physical condition, including any burn,
10 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 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 an unborn child prior to thirty-seven weeks gestational age, if the child weighs 2,500 grams or less at the time of birth. As used in this section, “serious bodily injury,” 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 conception until death.

“Any person”: does not include the pregnant woman whose unborn child is killed or injured.

“Without lethal justification”: acting under circumstances in which the use of lethal force is not legally justified.

Section 3. Murder of an unborn child; punishment

(a) Any person, who 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) Any person, who 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 a 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 that 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 to 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 twenty years, or by a fine of not more than one thousand dollars and imprisonment in jail or a house of correction for not more than two and half 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 twenty years or by a fine of not more than one thousand dollars and imprisonment in jail or a house of correction for not more than two and a half years.

Section 6. Assault upon an unborn child; punishment.

(a) Any person, who without legal justification, does any of the following commits assault upon an unborn child: (1) does any act with the intent to cause fear of immediate bodily harm to a woman, knowing or having reason to know that she is pregnant, or with the intent to cause fear of the death of her unborn child to a woman, knowing or having reason to know that she is pregnant; or (2) intentionally inflicts, or attempts to inflict, bodily injury on an unborn child, who is subsequently born alive.

(b) Assault upon on unborn child shall be punished by imprisonment for not more than two and a half years in a house of correction, or by a fine of not more than one thousand dollars.

Section 7. Battery upon an unborn child; punishment.

(a) Any person, who without legal justification, inflicts serious bodily injury upon an unborn child, who is subsequently born alive, by intentionally or knowingly touching a woman without her consent, knowing or having reason to know that she is pregnant, commits battery of an unborn child.

(b) Battery of an unborn child, resulting in serious bodily injury shall be punished by imprisonment in the state prison for not more than five years or imprisonment in a house of correction for not more than two and a half years or by a fine of not more than five thousand dollars, or by both such fine and imprisonment.

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

(a) Any person who 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 five years or imprisonment in a house of correction for not more than two and a half years, or by a fine of not more than five thousand dollars, or by both such fine and imprisonment.

(b) Any person who commits and assault and battery upon an unborn child and by such assault and battery causes serious bodily injury shall be punished by imprisonment in the state prison for not more than fifteen years or imprisonment in a house of correction for not more than two and a half years, or by a fine of not more than five thousand dollars, 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.

91 Section 10. Other convictions not barred.

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