

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

HOUSE BILL 215
RATIFIED BILL

AN ACT TO CREATE CRIMINAL OFFENSES FOR ACTS THAT CAUSE THE DEATH OR INJURY OF AN UNBORN CHILD OR ARE COMMITTED AGAINST A PREGNANT WOMAN, AND TO PROVIDE THAT THE ACT SHALL BE ENTITLED "THE UNBORN VICTIMS OF VIOLENCE ACT/ETHEN'S LAW."

The General Assembly of North Carolina enacts:

SECTION 1. This act shall be known as the "Unborn Victims of Violence Act/Ethen's Law."

SECTION 2. Chapter 14 of the General Statutes is amended by adding a new Article to read:

"Article 6A.
"Unborn Victims.

"§ 14-23.1. Definition.

As used in this Article only, "unborn child" means a member of the species homo sapiens, at any stage of development, who is carried in the womb.

"§ 14-23.2. Murder of an unborn child; penalty.

(a) A person who unlawfully causes the death of an unborn child is guilty of the separate offense of murder of an unborn child if the person does any one of the following:

- (1) Willfully and maliciously commits an act with the intent to cause the death of the unborn child.
- (2) Causes the death of the unborn child in perpetration or attempted perpetration of any of the criminal offenses set forth under G.S. 14-17.
- (3) Commits an act causing the death of the unborn child that is inherently dangerous to human life and is done so recklessly and wantonly that it reflects disregard of life.

(b) Penalty. – An offense under:

- (1) Subdivision (a)(1) or (a)(2) of this section shall be a Class A felony, and any person who commits such offense shall be punished with imprisonment in the State's prison for life without parole.
- (2) Subdivision (a)(3) of this section shall be subject to the same sentence as if the person had been convicted of second degree murder pursuant to G.S. 14-17.

"§ 14-23.3. Voluntary manslaughter of an unborn child; penalty.

(a) A person is guilty of the separate offense of voluntary manslaughter of an unborn child if the person unlawfully causes the death of an unborn child by an act that would be voluntary manslaughter if it resulted in the death of the mother.

(b) Penalty. – Any person who commits an offense under this section shall be guilty of a Class D felony.

"§ 14-23.4. Involuntary manslaughter of an unborn child; penalty.

(a) A person is guilty of the separate offense of involuntary manslaughter of an unborn child if the person unlawfully causes the death of an unborn child by an act that would be involuntary manslaughter if it resulted in the death of the mother.

(b) Penalty. – Any person who commits an offense under this section shall be guilty of a Class F felony.

"§ 14-23.5. Assault inflicting serious bodily injury on an unborn child; penalty.

(a) A person is guilty of the separate offense of assault inflicting serious bodily injury on an unborn child if the person commits a battery on the mother of the unborn child and the child is subsequently born alive and suffered serious bodily harm as a result of the battery.



(b) For purposes of this section, "serious bodily harm" is defined as bodily injury that creates a substantial risk of death, or that causes serious permanent disfigurement, coma, a permanent or protracted condition that causes extreme pain, or permanent or protracted loss or impairment of the function of any bodily member or organ, or that results in prolonged hospitalization, or causes the birth of the unborn child prior to 37-weeks gestation, if the child weighs 2,500 grams or less at the time of birth.

(c) Penalty. – Any person who commits an offense under this section shall be guilty of a Class F felony.

"§ 14-23.6. Battery on an unborn child.

(a) A person is guilty of the separate offense of battery on an unborn child if the person commits a battery on a pregnant woman. This offense is a lesser-included offense of G.S. 14-23.5.

(b) Penalty. – Any person who commits an offense under this section is guilty of a Class A1 misdemeanor.

"§ 14-23.7. Exceptions.

Nothing in this Article shall be construed to permit the prosecution under this Article of any of the following:

- (1) Acts which cause the death of an unborn child if those acts were lawful, pursuant to the provisions of G.S. 14-45.1.
- (2) Acts which are committed pursuant to usual and customary standards of medical practice during diagnostic testing or therapeutic treatment.
- (3) Acts committed by a pregnant woman with respect to her own unborn child, including, but not limited to, acts which result in miscarriage or stillbirth by the woman. The following definitions shall apply in this section:
 - a. Miscarriage. – The interruption of the normal development of an unborn child, other than by a live birth, and which is not an induced abortion permitted under G.S. 14-45.1, resulting in the complete expulsion or extraction from a pregnant woman of the unborn child.
 - b. Stillbirth. – The death of an unborn child prior to the complete expulsion or extraction from a woman, irrespective of the duration of pregnancy and which is not an induced abortion permitted under G.S. 14-45.1.

"§ 14-23.8. Knowledge not required.

Except for an offense under G.S. 14-23.2(a)(1), an offense under this Article does not require proof of either of the following:

- (1) The person engaging in the conduct had knowledge or should have had knowledge that the victim of the underlying offense was pregnant.
- (2) The defendant intended to cause the death of, or bodily injury to, the unborn child."

SECTION 3. G.S. 14-18.2 is repealed.

SECTION 4. This act shall not be construed to impose criminal liability on an expectant mother who is the victim of acts of domestic violence which cause injury or death to her unborn child. The term "domestic violence" is defined in Chapter 50B of the General Statutes.

SECTION 5. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

SECTION 6. If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

SECTION 7. 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.

SECTION 8. This act becomes effective December 1, 2011, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 20th day of April, 2011.

Walter H. Dalton
President of the Senate

Thom Tillis
Speaker of the House of Representatives

Beverly E. Perdue
Governor

Approved _____ .m. this _____ day of _____, 2011