

ENGROSSED HOUSE
BILL NO. 1257

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(Fred), Nance, Newport,
Perry, Reynolds, Smaligo,
Steele, Thompson, Tibbs,
Trebilcock and Winchester
of the House

and

Wilcoxson of the Senate

An Act relating to crimes and punishments; creating the Oklahoma Unborn Victims of Violence Act of 2005; amending 12 O.S. 2001, Section 1053, which relates to limitation of actions for wrongful death; providing for recovery of damages for death of unborn child; providing for exceptions; prohibiting prosecution of mother of unborn child; amending 21 O.S. 2001, Sections 652, 713, 714 and 715, which relate to crimes against the person; expanding scope of crimes to include death of unborn child; providing for exceptions; prohibiting prosecution of mother of unborn child; adding penalty for causing death of an unborn child; exempting certain requirements for establishment of proof; providing for codification; providing for noncodification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

Sections 1 through 7 of this act shall be known and may be cited as the "Oklahoma Unborn Victims of Violence Act of 2005".

SECTION 2. AMENDATORY 12 O.S. 2001, Section 1053, is amended to read as follows:

Section 1053. A. When the death of one is caused by the wrongful act or omission of another, the personal representative of the former may maintain an action therefor against the latter, or

his or her personal representative if he or she is also deceased, if the former might have maintained an action, had he or she lived, against the latter, or his or her representative, for an injury for the same act or omission. The action must be commenced within two (2) years.

B. The damages recoverable in actions for wrongful death as provided in this section shall include the following: Medical and burial expenses, which shall be distributed to the person or governmental agency as defined in Section ~~200~~ 5051.1 of Title ~~56~~ 63 of the Oklahoma Statutes, who paid these expenses, or to the decedent's estate if paid by the estate.

The loss of consortium and the grief of the surviving spouse, which shall be distributed to the surviving spouse.

The mental pain and anguish suffered by the decedent, which shall be distributed to the surviving spouse and children, if any, or next of kin in the same proportion as personal property of the decedent.

The pecuniary loss to the survivors based upon properly admissible evidence with regard thereto including, but not limited to, the age, occupation, earning capacity, health habits, and probable duration of the decedent's life, which must inure to the exclusive benefit of the surviving spouse and children, if any, or next of kin, and shall be distributed to them according to their pecuniary loss.

The grief and loss of companionship of the children and parents of the decedent, which shall be distributed to them according to their grief and loss of companionship.

C. In proper cases, as provided by Section 9 of Title 23 of the Oklahoma Statutes, punitive or exemplary damages may also be recovered against the person proximately causing the wrongful death or his representative if such person be deceased. Such damages, if recovered, shall be distributed to the surviving spouse and

children, if any, or next of kin in the same proportion as personal property of the decedent.

D. Where the recovery is to be distributed according to a person's pecuniary loss or loss of companionship, the judge shall determine the proper division.

E. The above-mentioned distributions shall be made after the payment of legal expenses and costs of the action.

F. 1. The provisions of this section shall also be available for the death of an unborn child as defined in Section 1-730 of Title 63 of the Oklahoma Statutes.

2. The provisions of this subsection shall 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, or
- b. acts which are committed pursuant to the usual and customary standards of medical practice during diagnostic testing or therapeutic treatment.

3. Under no circumstances shall the mother of the unborn child be prosecuted or found liable for causing the death of the unborn child.

SECTION 3. AMENDATORY 21 O.S. 2001, Section 652, is amended to read as follows:

Section 652. A. Every person who intentionally and wrongfully shoots another with or discharges any kind of firearm, with intent to kill any person, including an unborn child as defined in Section 1-730 of Title 63 of the Oklahoma Statutes, shall upon conviction be guilty of a felony punishable by imprisonment in the State Penitentiary not exceeding life.

B. Every person who uses any vehicle to facilitate the intentional discharge of any kind of firearm, crossbow or other weapon in conscious disregard for the safety of any other person or persons, including an unborn child as defined in Section 1-730 of

Title 63 of the Oklahoma Statutes, shall upon conviction be guilty of a felony punishable by imprisonment in the State Penitentiary for a term of not less than two (2) years nor more than twenty (20) years.

C. Any person who commits any assault and battery upon another, including an unborn child as defined in Section 1-730 of Title 63 of the Oklahoma Statutes, by means of any deadly weapon, or by such other means or force as is likely to produce death, or in any manner attempts to kill another, including an unborn child as defined in Section 1-730 of Title 63 of the Oklahoma Statutes, or in resisting the execution of any legal process, shall upon conviction be guilty of a felony punishable by imprisonment in the State Penitentiary not exceeding twenty (20) years.

D. The provisions of this section shall not apply to:

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

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

E. Under no circumstances shall the mother of the unborn child be prosecuted or found guilty for causing the death of the unborn child.

SECTION 4. AMENDATORY 21 O.S. 2001, Section 713, is amended to read as follows:

Section 713. ~~The willful killing of A.~~ Except as otherwise provided by law, any person who willfully kills an unborn quick child by any injury committed upon the person of the mother of such child, and not prohibited in the next following section is, as defined in Section 1-730 of Title 63 of the Oklahoma Statutes, shall, upon conviction, be guilty of manslaughter in the first degree or such greater penalty as may be applicable under law.

B. The provisions of this section shall not apply to:

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

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

C. Under no circumstances shall the mother of an unborn child be prosecuted or found guilty for causing the death of the unborn child.

SECTION 5. AMENDATORY 21 O.S. 2001, Section 714, is amended to read as follows:

Section 714. ~~Every~~ A. Any person who administers to any woman pregnant with ~~a quick~~ an unborn child as defined in Section 1-730 of Title 63 of the Oklahoma Statutes, or who prescribes for ~~such the~~ the woman, or advises or procures ~~any such the~~ the woman to take any medicine, drug or any other substance ~~whatever,~~ or who uses or employs any instrument or other means with intent thereby to destroy ~~such the unborn~~ the unborn child, unless the same shall have been necessary to preserve the life of ~~such the~~ the mother, ~~is guilty in case the death of the child or of the mother is thereby produced,~~ shall, upon conviction, be guilty of manslaughter in the first degree.

B. The provisions of this section shall not apply to:

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

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

C. Under no circumstances shall the mother of an unborn child be prosecuted or found guilty for causing the death of the unborn child.

SECTION 6. AMENDATORY 21 O.S. 2001, Section 715, is amended to read as follows:

Section 715. ~~Any~~ A. Except as provided in subsection B of this section, any person guilty of manslaughter in the first degree shall be guilty of a felony punishable by imprisonment in the State Penitentiary for not less than four (4) years.

B. Any person guilty of violating the provisions of Sections 713 and 714 of this title shall be guilty of a felony punishable by imprisonment in the State Penitentiary for no more than life.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 723 of Title 21, unless there is created a duplication in numbering, reads as follows:

Any offense committed pursuant to the provisions of Sections 652, 713, 714 and 715 of Title 21 of the Oklahoma Statutes does not require proof that the person engaging in the conduct had knowledge or should have had knowledge that the victim of the underlying offense was pregnant or that the offender intended to cause the death or bodily injury to the unborn child.

SECTION 8. This act shall become effective November 1, 2005.

Passed the House of Representatives the 2nd day of March, 2005.

Presiding Officer of the House of
Representatives

Passed the Senate the ____ day of _____, 2005.

Presiding Officer of the Senate