

HB454 INTRODUCED



1 7B3OVE-1
2 By Representatives Yarbrough, Harrison, Butler, Gidley,
3 Whorton
4 RFD: Judiciary
5 First Read: 09-May-23
6
7 2023 Regular Session



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SYNOPSIS:

Under existing law, duress is not a defense available in a prosecution for murder.

This bill would allow duress as a defense in a prosecution for murder, provided the victim is an unborn child and the defendant is the child's mother.

Under existing law, a person may not be prosecuted for homicide or assault if the victim is an unborn child in utero and the death or injury results from certain lawful medical care or medication.

This bill would expand the definition of person for the purposes of the criminal code to include an unborn child from the moment of fertilization.

This bill would provide that a person may not be prosecuted for homicide or assault if the victim is an unborn child and death or injury is incidentally or accidentally caused by certain lawful medical care or treatment, provided the care or treatment is to avert the death of the pregnant woman and all other reasonable alternatives to the medical care or treatment have been exhausted.

Under existing law, no person may be prosecuted for homicide or assault relating to a lawful abortion, and no woman may be prosecuted for the homicide or assault of her own unborn child.



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29 This bill would repeal the provision that
30 prohibits the prosecution of homicide or assault
31 following any abortion and the provision that prohibits
32 the prosecution of homicide or assault against any
33 woman with respect to her own unborn child.

34 This bill would also provide that prosecutions
35 of homicide or assault where the victim is an unborn
36 child shall be treated the same as prosecutions of
37 homicide or assault of a person born alive.

38 Section 111.05 of the Constitution of Alabama of
39 2022, prohibits a general law whose purpose or effect
40 would be to require a new or increased expenditure of
41 local funds from becoming effective with regard to a
42 local governmental entity without enactment by a 2/3
43 vote unless: it comes within one of a number of
44 specified exceptions; it is approved by the affected
45 entity; or the Legislature appropriates funds, or
46 provides a local source of revenue, to the entity for
47 the purpose.

48 The purpose or effect of this bill would be to
49 require a new or increased expenditure of local funds
50 within the meaning of the amendment. However, the bill
51 does not require approval of a local governmental
52 entity or enactment by a 2/3 vote to become effective
53 because it comes within one of the specified exceptions
54 contained in the amendment.

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A BILL

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TO BE ENTITLED

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AN ACT

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Relating to abortion; to amend Sections 13A-3-30 and

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13A-6-1, Code of Alabama 1975; to provide legislative

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findings; to amend the definition of "person" to include an

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unborn child from the moment of fertilization; to provide

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duress as a defense to a murder charge against a woman for the

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death of her unborn child; to prohibit certain criminal

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prosecutions for certain medical care resulting in incidental

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or unintentional death or injury to an unborn child, provided

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all other reasonable alternatives to the medical care were

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exhausted; to repeal provisions prohibiting certain

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prosecutions for lawful abortions and against any woman with

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respect to her unborn child; to provide that prosecutions of

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homicide or assault where the victim is unborn shall be

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treated the same as if he or she were born alive; and in

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connection therewith would have as its purpose or effect the

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requirement of a new or increased expenditure of local funds

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within the meaning of Section 111.05 of the Constitution of

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Alabama of 2022.

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BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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Section 1. This act shall be known and may be cited as

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the Equal Protection Act.

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Section 2. The Legislature finds and declares the



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85 following:

86 (1) That the sanctity of innocent human life, created
87 in the image of God, is acknowledged and should be equally
88 protected from fertilization to natural death.

89 (2) That all preborn children from the moment of
90 fertilization have the right to life and equal protection of
91 the laws.

92 (3) That the Constitution of the United States requires
93 that "no state...shall deny to any person within its
94 jurisdiction the equal protection of the laws," and that to
95 fulfill this equal protection requirement, the lives of
96 preborn individuals must be protected with the same criminal
97 and civil laws protecting the lives of born individuals.

98 (4) That all persons potentially subject to such laws
99 are entitled to due process protections.

100 Section 3. Sections 13A-3-30 and 13A-6-1, Code of
101 Alabama 1975, are amended to read as follows:

102 "§13A-3-30

103 (a) It is a defense to prosecution that the actor
104 engaged in the proscribed conduct because he was compelled to
105 do so by the threat of imminent death or serious physical
106 injury to himself or another.

107 (b) The defense provided by this section is unavailable
108 if the actor intentionally or recklessly placed himself in a
109 situation in which it was probable that he would be subjected
110 to duress. The defense is also unavailable if he was negligent
111 in placing himself in such a situation, whenever negligence
112 suffices to establish culpability for the offense charged.



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113 (c) It is no defense that a person acted at the command
114 or persuasion of his or her spouse, unless such compulsion
115 would establish a defense under this section. The presumption
116 that a woman is subject to compulsion when acting in the
117 presence of her husband is abolished.

118 (d) ~~The~~ Except where the victim is an unborn child and
119 the defendant is the child's mother, the defense provided by
120 this section is unavailable in a prosecution for either of the
121 following:

122 (1) ~~murder; or~~ Murder.

123 (2) ~~any~~ Any killing of another under aggravated
124 circumstances, as provided by Article 2 of Chapter 5 of this
125 title."

126 "§13A-6-1

127 (a) As used in Article 1 and Article 2, the following
128 terms ~~shall~~ have the following meanings ~~ascribed to them by~~
129 ~~this section~~:

130 (1) CRIMINAL HOMICIDE. Murder, manslaughter, or
131 criminally negligent homicide.

132 (2) FERTILIZATION. The fusion of a human spermatozoon
133 with a human ovum.

134 ~~(2)~~ (3) HOMICIDE. A person commits criminal homicide if
135 he intentionally, knowingly, recklessly, or with criminal
136 negligence causes the death of another person.

137 ~~(3)~~ (4) PERSON. The term, when referring to the victim
138 of a criminal homicide or assault, means a human being,
139 including an unborn child ~~in utero~~ from the moment of
140 fertilization at any stage of development, regardless of



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141 viability.

142 (b) (1) Article 1 or Article 2 shall not apply to ~~the~~
143 ~~death or injury to an unborn child alleged to be caused by~~
144 ~~medication or medical care or treatment provided to a pregnant~~
145 ~~woman when performed by a physician or other licensed health~~
146 ~~care provider~~ the incidental, accidental, or unintentional
147 injury or death to an unborn child caused by medical care or
148 treatment lawfully provided by a licensed physician to avert
149 the death of a pregnant woman, provided all reasonable
150 alternatives to save the life of the unborn child were
151 attempted, or no alternatives were available.

152 (2) Mistake~~r~~ or unintentional error on the part of a
153 licensed physician or other licensed health care provider or
154 his or her employee or agent or any person acting on behalf of
155 the patient shall not subject the licensed physician or other
156 licensed health care provider or person acting on behalf of
157 the patient to any criminal liability under this section.

158 (3) Medical care or treatment includes, but is not
159 limited to, ordering, dispensation, or ~~administration of~~
160 administering prescribed medications and medical procedures.

161 (c) A victim of domestic violence or sexual assault may
162 not be charged under Article 1 or Article 2 for the injury or
163 death of an unborn child caused by a crime of domestic
164 violence or rape perpetrated upon her.

165 (d) Notwithstanding any other law to the contrary, both
166 of the following apply in any prosecution under Article 1 or
167 Article 2 where the victim is an unborn child:

168 (1) Enforcement shall be subject to the same legal



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169 principles as would apply if the victim were a person who had
170 been born alive, including the same legal presumptions,
171 defenses, justifications, laws of parties, immunities, and
172 clemencies.

173 (2) District attorneys and the Attorney General shall
174 have concurrent authority to prosecute criminal cases and to
175 perform any duty that necessarily appertains to such
176 authority.

177 ~~(d) Nothing in Article 1 or Article 2 shall permit the~~
178 ~~prosecution of (1) any person for conduct relating to an~~
179 ~~abortion for which the consent of the pregnant woman or a~~
180 ~~person authorized by law to act on her behalf has been~~
181 ~~obtained or for which consent is implied by law or (2) any~~
182 ~~woman with respect to her unborn child.~~

183 ~~(e) Nothing in this section shall make it a crime to~~
184 ~~perform or obtain an abortion that is otherwise legal. Nothing~~
185 ~~in this section shall be construed to make an abortion legal~~
186 ~~which is not otherwise authorized by law."~~

187 Section 4. The changes in law made by this act apply
188 only to conduct that occurs on or after the effective date of
189 this act. Conduct that occurs before the effective date of
190 this act is governed by the law in effect immediately before
191 the effective date of this act, and that law is continued in
192 effect for that purpose.

193 Section 5. Although this bill would have as its purpose
194 or effect the requirement of a new or increased expenditure of
195 local funds, the bill is excluded from further requirements
196 and application under Section 111.05 of the Constitution of



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197 Alabama of 2022, because the bill defines a new crime or
198 amends the definition of an existing crime.

199 Section 6. This act shall become effective immediately
200 following its passage and approval by the Governor, or its
201 otherwise becoming law.