

REFERENCE TITLE: **unborn children; homicide; assault; jurisdiction.**

State of Arizona
House of Representatives
Fifty-sixth Legislature
First Regular Session
2023

HB 2706

Introduced by
Representatives McGarr: Parker B

AN ACT

AMENDING SECTION 12-611, ARIZONA REVISED STATUTES; AMENDING TITLE 13, CHAPTER 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-112; AMENDING SECTIONS 13-412, 13-1101, 13-1102, 13-1103, 13-1104 AND 13-1105, ARIZONA REVISED STATUTES; AMENDING TITLE 13, CHAPTER 11, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-1106; AMENDING TITLE 13, CHAPTER 12, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 13-1217 AND 13-1218; RELATING TO UNBORN CHILDREN.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 12-611, Arizona Revised Statutes, is amended to
3 read:

4 12-611. Liability; definition

5 A. When death of a person is caused by wrongful act, neglect or
6 default, and the act, neglect or default is such as would, if death had
7 not ensued, have entitled the party injured to maintain an action to
8 recover damages in respect thereof, then, and in every such case, the
9 person who or the corporation which would have been liable if death had
10 not ensued shall be liable to an action for damages, notwithstanding the
11 death of the person injured, and although the death was caused under such
12 circumstances as amount in law to murder in the first or second degree or
13 manslaughter.

14 B. FOR THE PURPOSES OF THIS SECTION, "PERSON" INCLUDES A LIVING
15 HUMAN UNBORN CHILD AT EVERY STAGE OF DEVELOPMENT FROM FERTILIZATION UNTIL
16 BIRTH.

17 Sec. 2. Title 13, chapter 1, Arizona Revised Statutes, is amended
18 by adding section 13-112, to read:

19 13-112. Immunity for accidental or unintentional injury to or
20 death of unborn child

21 A PERSON MAY NOT BE CHARGED WITH A VIOLATION OF THIS TITLE FOR
22 MEDICAL CARE OR TREATMENT THAT IS PROVIDED WITH THE REQUISITE CONSENT BY A
23 LICENSED PHYSICIAN TO AVERT THE DEATH OF A PREGNANT FEMALE IF THE MEDICAL
24 CARE OR TREATMENT RESULTS IN THE ACCIDENTAL OR UNINTENTIONAL INJURY TO OR
25 DEATH OF THE PREGNANT FEMALE'S UNBORN CHILD AND ALL REASONABLE
26 ALTERNATIVES TO SAVE THE LIFE OF THE UNBORN CHILD WERE ATTEMPTED OR NONE
27 WERE AVAILABLE.

28 Sec. 3. Section 13-412, Arizona Revised Statutes, is amended to
29 read:

30 13-412. Duress

31 A. Conduct ~~which~~ THAT would otherwise constitute an offense is
32 justified if a reasonable person would believe that he was compelled to
33 engage in the proscribed conduct by the threat or use of immediate
34 physical force against his person or the person of another ~~which~~ THAT
35 resulted or could result in serious physical injury ~~which~~ THAT a
36 reasonable person in the situation would not have resisted.

37 B. The defense provided by subsection A OF THIS SECTION is
38 unavailable if the person intentionally, knowingly or recklessly placed
39 himself in a situation in which it was probable that he would be subjected
40 to duress.

41 C. The defense provided by subsection A OF THIS SECTION is
42 unavailable for offenses involving homicide or serious physical injury
43 UNLESS THE VICTIM IS AN UNBORN CHILD AND THE DEFENDANT IS THE UNBORN
44 CHILD'S MOTHER.

1 Sec. 4. Section 13-1101, Arizona Revised Statutes, is amended to
2 read:

3 13-1101. Definitions

4 In this chapter, unless the context otherwise requires:

5 ~~4.~~ 1. "Adequate provocation" means conduct or circumstances
6 sufficient to deprive a reasonable person of self-control.

7 2. "Homicide" means first degree murder, second degree murder,
8 manslaughter or negligent homicide.

9 3. "Person" means a human being, **INCLUDING A LIVING HUMAN UNBORN**
10 **CHILD AT EVERY STAGE OF DEVELOPMENT FROM FERTILIZATION UNTIL BIRTH.**

11 ~~4.~~ 4. "Premeditation" means that the defendant acts with either
12 the intention or the knowledge that he will kill another human being, when
13 such intention or knowledge precedes the killing by any length of time to
14 permit reflection. Proof of actual reflection is not required, but an act
15 is not done with premeditation if it is the instant effect of a sudden
16 quarrel or heat of passion.

17 Sec. 5. Section 13-1102, Arizona Revised Statutes, is amended to
18 read:

19 13-1102. Negligent homicide; classification

20 A. A person commits negligent homicide if with criminal negligence
21 the person causes the death of another person, including an unborn child.

22 B. An offense under this section applies to an unborn child ~~in the~~
23 ~~womb~~ at any stage of ~~its~~ **THE UNBORN CHILD'S** development. ~~A person may not~~
24 ~~be prosecuted under this section if any of the following applies:~~

25 ~~1. The person was performing an abortion for which the consent of~~
26 ~~the pregnant woman, or a person authorized by law to act on the pregnant~~
27 ~~woman's behalf, has been obtained or for which the consent was implied or~~
28 ~~authorized by law.~~

29 ~~2. The person was performing medical treatment on the pregnant~~
30 ~~woman or the pregnant woman's unborn child.~~

31 ~~3. The person was the unborn child's mother.~~

32 C. Negligent homicide is a class 4 felony.

33 Sec. 6. Section 13-1103, Arizona Revised Statutes, is amended to
34 read:

35 13-1103. Manslaughter; classification

36 A. A person commits manslaughter by doing any of the following:

37 1. Recklessly causing the death of another person.

38 2. Committing second degree murder as prescribed in section
39 13-1104, subsection A on a sudden quarrel or heat of passion resulting
40 from adequate provocation by the victim.

41 3. Intentionally providing the physical means that another person
42 uses to die by suicide, with the knowledge that the person intends to die
43 by suicide.

44 4. Committing second degree murder as prescribed in section
45 13-1104, subsection A, paragraph 3, while being coerced to do so by the

1 use or threatened immediate use of unlawful deadly physical force on the
2 person or a third person that a reasonable person in his situation would
3 have been unable to resist.

4 5. Knowingly or recklessly causing the death of an unborn child by
5 any physical injury to the mother.

6 B. A person who is at least eighteen years of age commits
7 manslaughter by intentionally providing advice or encouragement that a
8 minor uses to die by suicide with the knowledge that the minor intends to
9 die by suicide.

10 C. An offense under subsection A, paragraph 5 of this section
11 applies to an unborn child ~~in the womb~~ at any stage of ~~its~~ **THE UNBORN**
12 **CHILD'S** development. ~~A person shall not be prosecuted under subsection A,~~
13 ~~paragraph 5 of this section if any of the following applies:~~

14 ~~1. The person was performing an abortion for which the consent of~~
15 ~~the pregnant woman, or a person authorized by law to act on the pregnant~~
16 ~~woman's behalf, has been obtained or for which the consent was implied or~~
17 ~~authorized by law.~~

18 ~~2. The person was performing medical treatment on the pregnant~~
19 ~~woman or the pregnant woman's unborn child.~~

20 ~~3. The person was the unborn child's mother.~~

21 D. Manslaughter is a class 2 felony.

22 Sec. 7. Section 13-1104, Arizona Revised Statutes, is amended to
23 read:

24 **13-1104. Second degree murder; classification**

25 A. A person commits second degree murder if, without premeditation,
26 **THE PERSON DOES ANY OF THE FOLLOWING:**

27 1. ~~The person~~ Intentionally causes the death of another person,
28 including an unborn child or, as a result of intentionally causing the
29 death of another person, causes the death of an unborn child. ~~;~~~~or~~

30 2. Knowing that the person's conduct will cause death or serious
31 physical injury, ~~the person~~ causes the death of another person, including
32 an unborn child or, as a result of knowingly causing the death of another
33 person, causes the death of an unborn child. ~~;~~~~or~~

34 3. Under circumstances manifesting extreme indifference to human
35 life, ~~the person~~ recklessly engages in conduct that creates a grave risk
36 of death and thereby causes the death of another person, including an
37 unborn child or, as a result of recklessly causing the death of another
38 person, causes the death of an unborn child.

39 B. An offense under this section applies to an unborn child ~~in the~~
40 ~~womb~~ at any stage of ~~its~~ **THE UNBORN CHILD'S** development. ~~A person may not~~
41 ~~be prosecuted under this section if any of the following applies:~~

42 ~~1. The person was performing an abortion for which the consent of~~
43 ~~the pregnant woman, or a person authorized by law to act on the pregnant~~
44 ~~woman's behalf, has been obtained or for which the consent was implied or~~
45 ~~authorized by law.~~

1 ~~2. The person was performing medical treatment on the pregnant~~
2 ~~woman or the pregnant woman's unborn child.~~

3 ~~3. The person was the unborn child's mother.~~

4 C. Second degree murder is a class 1 felony and is punishable as
5 provided by section 13-705 if the victim is under fifteen years of age or
6 is an unborn child, section 13-706, subsection A or section 13-710.

7 Sec. 8. Section 13-1105, Arizona Revised Statutes, is amended to
8 read:

9 13-1105. First degree murder; classification

10 A. A person commits first degree murder if **ANY OF THE FOLLOWING**
11 **APPLIES:**

12 1. Intending or knowing that the person's conduct will cause death,
13 the person causes the death of another person, including an unborn child,
14 with premeditation or, as a result of causing the death of another person
15 with premeditation, causes the death of an unborn child.

16 2. Acting either alone or with one or more other persons the person
17 commits or attempts to commit sexual conduct with a minor under section
18 13-1405, sexual assault under section 13-1406, molestation of a child
19 under section 13-1410, terrorism under section 13-2308.01, marijuana
20 offenses under section 13-3405, subsection A, paragraph 4, dangerous drug
21 offenses under section 13-3407, subsection A, paragraphs 4 and 7,
22 narcotics offenses under section 13-3408, subsection A, paragraph 7 that
23 equal or exceed the statutory threshold amount for each offense or
24 combination of offenses, involving or using minors in drug offenses under
25 section 13-3409, drive by shooting under section 13-1209, kidnapping under
26 section 13-1304, burglary under section 13-1506, 13-1507 or 13-1508, arson
27 under section 13-1703 or 13-1704, robbery under section 13-1902, 13-1903
28 or 13-1904, escape under section 13-2503 or 13-2504, child abuse under
29 section 13-3623, subsection A, paragraph 1 or unlawful flight from a
30 pursuing law enforcement vehicle under section 28-622.01 and, in the
31 course of and in furtherance of the offense or immediate flight from the
32 offense, the person or another person causes the death of any person.

33 3. Intending or knowing that the person's conduct will cause death
34 to a law enforcement officer, the person causes the death of a law
35 enforcement officer who is in the line of duty.

36 B. Homicide, as prescribed in subsection A, paragraph 2 of this
37 section, requires no specific mental state other than what is required for
38 the commission of any of the enumerated felonies.

39 C. An offense under subsection A, paragraph 1 of this section
40 applies to an unborn child ~~in the womb~~ at any stage of ~~its~~ **THE UNBORN**
41 **CHILD'S** development. ~~A person shall not be prosecuted under subsection A,~~
42 ~~paragraph 1 of this section if any of the following applies:~~

43 ~~1. The person was performing an abortion for which the consent of~~
44 ~~the pregnant woman, or a person authorized by law to act on the pregnant~~

1 ~~woman's behalf, has been obtained or for which the consent was implied or~~
2 ~~authorized by law.~~

3 ~~2. The person was performing medical treatment on the pregnant~~
4 ~~woman or the pregnant woman's unborn child.~~

5 ~~3. The person was the unborn child's mother.~~

6 D. First degree murder is a class 1 felony and is punishable by
7 death or life imprisonment as provided by sections 13-751 and 13-752.

8 Sec. 9. Title 13, chapter 11, Arizona Revised Statutes, is amended
9 by adding section 13-1106, to read:

10 13-1106. Concurrent jurisdiction; homicide of unborn child

11 THE ATTORNEY GENERAL AND THE COUNTY ATTORNEY HAVE CONCURRENT
12 JURISDICTION TO PROSECUTE VIOLATIONS OF THIS CHAPTER IF THE VICTIM IS AN
13 UNBORN CHILD.

14 Sec. 10. Title 13, chapter 12, Arizona Revised Statutes, is amended
15 by adding sections 13-1217 and 13-1218, to read:

16 13-1217. Definition of unborn child

17 IN THIS CHAPTER, "PERSON" INCLUDES A LIVING HUMAN UNBORN CHILD AT
18 EVERY STAGE OF DEVELOPMENT FROM FERTILIZATION UNTIL BIRTH.

19 13-1218. Concurrent jurisdiction; assault of unborn child

20 THE ATTORNEY GENERAL AND THE COUNTY ATTORNEY HAVE CONCURRENT
21 JURISDICTION TO PROSECUTE VIOLATIONS OF THIS CHAPTER IF THE VICTIM IS AN
22 UNBORN CHILD.

23 Sec. 11. Intent

24 The Legislature intends to:

25 1. Acknowledge the sanctity of innocent human life that is created
26 in the image of God.

27 2. Apply the protections contained in section 1-219, Arizona
28 Revised Statutes, to all unborn children at every stage of development in
29 this state.

30 3. Follow the Constitution of the United States, which requires
31 that "no state . . . shall deny to any person within its jurisdiction the
32 equal protection of the laws."

33 4. Fulfill the equal protection requirement by protecting the lives
34 of preborn persons with the same criminal and civil laws that protect the
35 lives of born persons by repealing provisions of law that permit wilful
36 prenatal homicide or assault.

37 5. Ensure that any person who is potentially subject to a violation
38 of a law that involves the homicide or assault of an unborn child is
39 entitled to due process protections, including the same or greater
40 presumptions, defenses, justifications, laws of parties, immunities and
41 clemencies as would apply to the homicide or assault of a person who had
42 been born alive.

43 6. Abolish abortion in this state.

1 Sec. 12. Applicability

2 Pursuant to article II, section 25, Constitution of Arizona, this
3 act applies only to conduct that occurs after the effective date of this
4 act and does not affect any rights and duties that matured and proceedings
5 that began before the effective date of this act.

6 Sec. 13. Short title

7 This act may be cited as the "Abolition of Abortion in Arizona Act".

8 Sec. 14. Emergency

9 This act is an emergency measure that is necessary to preserve the
10 public peace, health or safety and is operative immediately as provided by
11 law.