

1 S.276

2 Introduced by Senators Williams and Starr

3 Referred to Committee on

4 Date:

5 Subject: Crimes; homicide; DUI; grossly negligent operation of a motor  
6 vehicle; fetus as victim

7 Statement of purpose: This bill proposes to establish that a fetus be treated as a  
8 victim under State homicide law and for purposes of DUI with death resulting  
9 and grossly negligent operation of a motor vehicle with death resulting.

10 An act relating to crimes against an unborn child

11 It is hereby enacted by the General Assembly of the State of Vermont:

12 Sec. 1. 13 V.S.A. § 2312 is added to read:

13 § 2312. FETUS; TREATMENT AS VICTIM

14 (a) Except as provided in subsection (b) of this section, a prosecution may  
15 be maintained for a violation of section 2301 (murder) or 2304 (manslaughter)  
16 of this chapter when the victim of the homicide is a fetus.

17 (b) This section shall not apply to acts performed during an abortion or  
18 pursuant to usual and customary standards of medical practice during  
19 diagnostic testing or therapeutic treatment or to acts committed by a pregnant  
20 woman toward her own fetus.

1        (c) This section shall not be construed to confer, deny, expand, or contract  
2        the legal status or legal rights of a fetus.

3        Sec. 2. 23 V.S.A. § 1091(b) is amended to read:

4        (b) Grossly negligent operation.

5            (1) A person who operates a motor vehicle on a public highway in a  
6        grossly negligent manner shall be guilty of grossly negligent operation.

7            (2) The standard for a conviction for grossly negligent operation in  
8        violation of this subsection shall be gross negligence, examining whether the  
9        person engaged in conduct that involved a gross deviation from the care that a  
10       reasonable person would have exercised in that situation.

11           (3) A person who violates this subsection shall be imprisoned not more  
12       than two years or fined not more than \$5,000.00, or both. If the person has  
13       previously been convicted of a violation of this section, the person shall be  
14       imprisoned not more than four years or fined not more than \$10,000.00, or  
15       both. If serious bodily injury to or death of any person other than the operator  
16       results, the operator shall be imprisoned for not more than 15 years or fined not  
17       more than \$15,000.00, or both. If serious bodily injury or death results to more  
18       than one person other than the operator, the operator may be convicted of a  
19       separate violation of this subdivision for each decedent or person injured.

20           (4)(A) A prosecution may be maintained for grossly negligent operation  
21       of a motor vehicle with death resulting in violation of this subsection when the

1 victim of the violation is a fetus.

2 (B) This subdivision (4) shall not be construed to confer, deny,  
3 expand, or contract the legal status or legal rights of a fetus.

4 Sec. 3. 23 V.S.A. § 1210(f) is amended to read:

5 (f) Death resulting.

6 (1) If the death of any person results from a violation of section 1201 of  
7 this title, the person convicted of the violation shall be fined not more than  
8 \$10,000.00 or imprisoned not less than one year nor more than 15 years, or  
9 both. The provisions of this subsection do not limit or restrict prosecutions for  
10 manslaughter.

11 (2) If the death of more than one person results from a violation of  
12 section 1201 of this title, the operator may be convicted of a separate violation  
13 of this subdivision for each decedent.

14 (3)(A) If the death of any person results from a violation of section 1201  
15 of this title and the person convicted of the violation previously has been  
16 convicted two or more times of a violation of that section, a sentence ordered  
17 pursuant to this subsection shall, except as provided in subdivision (B) of this  
18 subdivision (3), include at least a five-year term of imprisonment. The five-  
19 year minimum term of imprisonment required by this subdivision shall be  
20 served and may not be suspended, deferred, or served as a supervised sentence.

1 The defendant shall not be eligible for probation, parole, furlough, or any other  
2 type of early release until the expiration of the five-year term of imprisonment.

3 (B) Notwithstanding subdivision (A) of this subdivision (3), if the  
4 death of any person results from a violation of section 1201 of this title and the  
5 person convicted of the violation previously has been convicted two or more  
6 times of a violation of that section, the court may impose a sentence that does  
7 not include a term of imprisonment or that includes a term of imprisonment of  
8 less than five years if the court makes written findings on the record that such a  
9 sentence will serve the interests of justice and public safety.

10 (4)(A) A prosecution may be maintained for operating a motor vehicle  
11 under the influence of alcohol or drugs with death resulting in violation of this  
12 section and section 1201 of this title when the victim of the violation is a fetus.

13 (B) This subsection (f) shall not be construed to confer, deny,  
14 expand, or contract the legal status or legal rights of a fetus.

15 Sec. 4. EFFECTIVE DATE

16 This act shall take effect upon passage.