

S.116

Introduced by Senators Williams, Hart and Heffernan

Referred to Committee on

Date:

Subject: Crimes and criminal procedure; unborn child

Statement of purpose of bill as introduced: This bill proposes to deem an unborn child a person for purposes of criminal offenses of this State when the unborn child suffers bodily injury or death as a result of a criminal offense.

An act relating to crimes against an unborn child

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

Sec. 1. LEGISLATIVE FINDINGS AND PURPOSE

(a) The General Assembly finds that courts have determined there is a distinction as to whether a viable fetus is considered a person under Vermont law. In *Vaillancourt v. Medical Center Hospital of Vermont, Inc.*, 139 Vt. 138 (1980), the Court held that “there exists statutory wrongful death liability for the negligently caused death of an unborn, viable fetus.” However, in *State v. Oliver*, 151 Vt. 626 (1989), the Court found that “an unborn fetus is not a person within the meaning of [Vermont’s criminal statutes].” The Court in *Oliver* stated that if a fetus is to be considered a person for purposes of the criminal statutes, the “task must be accomplished by the legislature.”

1 (b) The purpose of this act is to protect the right of a pregnant woman to
2 carry a child to term and to hold perpetrators of crimes against an unborn child
3 fully accountable.

4 Sec. 2. 13 V.S.A. § 15 is added to read:

5 § 15. CRIMES AGAINST AN UNBORN CHILD

6 (a) As used in this section, “unborn child” means the offspring of human
7 beings prior to birth. Except as provided in subsection (c) of this section, an
8 unborn child shall be deemed a person for purposes of criminal offenses of this
9 State when the unborn child suffers bodily injury or death as a result of a
10 criminal offense.

11 (b) Prosecution for a criminal offense that causes bodily injury to, or the
12 death of, an unborn child shall not require the State to prove:

13 (1) that the person who engaged in the conduct knew or should have
14 known that the mother of the unborn child was pregnant; or

15 (2) that the person intended to cause bodily injury to, or the death of, the
16 unborn child.

17 (c) Nothing in this section shall be construed to permit the prosecution of:

18 (1) a woman for actions with respect to her unborn child;

19 (2) any person for conduct relating to an abortion for which the consent
20 of the pregnant woman, or a person authorized to make medical decisions on
21 her behalf, has been obtained; or

1 (3) any person for any medical treatment of the pregnant woman or her
2 unborn child.

3 Sec. 3. RIGHT OF INTERVENTION

4 The General Assembly, by joint resolution, may appoint one or more of its
5 members who cosponsored this act to intervene as a matter of right in any case
6 in which the constitutionality of the act is challenged.

7 Sec. 4. EFFECTIVE DATE

8 This act shall take effect on passage.