

House Bill 63

By: Representative Franklin of the 17th

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 6 of Chapter 5 of Title 16 of the Official Code of Georgia Annotated,
2 relating to feticide, so as to enact the "Due Process and Equal Protection Restoration Act of
3 2003"; to define certain terms; to provide that any person seeking to have an abortion
4 performed shall first seek a grand jury indictment against the fetus for an applicable capital
5 offense; to provide that only if the grand jury returns an indictment against the fetus for the
6 commission of a capital offense shall the court appoint a guardian ad litem and shall a
7 criminal prosecution of the fetus commence; to provide for a jury trial; to provide that no
8 execution shall take place without an adjudication of the fetus's guilt and unless a court has
9 issued a death warrant; to provide for an expedited appeal; to provide for penalties; to
10 provide for automatic repeal; to provide for related matters; to provide an effective date; to
11 repeal conflicting laws; and for other purposes.

12 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

13 **SECTION 1.**

14 This Act shall be known and may be cited as the "Due Process and Equal Protection
15 Restoration Act of 2003."

16 **SECTION 2.**

17 Article 6 of Chapter 5 of Title 16 of the Official Code of Georgia Annotated, relating to
18 feticide, is amended by inserting at the end thereof the following:

19 "16-5-81.

20 (a) As used in this Code section, the term:

21 (1) 'Abortion' means the intentional termination of human pregnancy with an intention
22 other than to produce a live birth or to remove a dead fetus; provided, however, that if a
23 physician makes a medically justified effort to save the lives of both the mother and the
24 fetus and the fetus does not survive, such action shall not be an abortion.

25 (2) 'Capital offense' means any offense for which the death penalty may be imposed.

1 (3) 'Death warrant' means an order of a superior court providing that an execution may
2 proceed.

3 (4) 'Execution' means an abortion.

4 (5) 'Fetus' means a person at any point of development from and including the moment
5 of conception through the moment of birth.

6 (b) No physician shall perform an execution in this state unless a death warrant has been
7 issued as provided in this Code section.

8 (c) Any person seeking to have an execution performed shall first seek a grand jury
9 indictment against the fetus for the commission of an offense for which the death penalty
10 can be given, including the offense of murder as defined in Code Section 16-5-1,
11 kidnapping as defined in Code Section 16-5-40, hijacking an aircraft as defined in Code
12 Section 16-5-44, rape as defined in Code Section 16-6-1, armed robbery as defined in Code
13 Section 16-8-41, or treason as defined in Code Section 16-11-1. Each district attorney in
14 the state is directed to cooperate with any such person in presenting the case before the
15 grand jury. Only if the grand jury returns an indictment against the fetus for the
16 commission of one or more such capital offenses shall the court appoint a guardian ad litem
17 to protect the rights of the fetus and shall the criminal prosecution against the fetus
18 commence. The guardian ad litem shall be authorized to demand a jury trial to determine
19 the guilt or innocence of the fetus, and the court shall hold such a trial within 30 days after
20 the return of the indictment. If the finder of fact determines that the fetus is not guilty of
21 the charges, the execution shall not be performed, and the fetus shall be permitted to
22 continue through the stage of birth.

23 (d) If the matter is tried before the court as finder of fact, the court shall issue written and
24 specific factual findings and legal conclusions supporting its decision and shall order that
25 a record of the evidence be maintained. The court shall render its decision within 24 hours
26 of the conclusion of the hearing, and a certified copy of the same shall be furnished
27 immediately to the parties. The court shall issue a death warrant no earlier than 24 hours
28 after a notice of an adjudication of guilt. No death warrant shall be issued while any appeal
29 on behalf of the convicted fetus is pending. At such time as 24 hours from the notice of an
30 adjudication of guilt has passed and no appeal is pending on behalf of the convicted fetus,
31 a death warrant shall be issued immediately.

32 (e) An expedited appeal of the final order shall be available. The appellate courts are
33 authorized and requested to issue promptly such rules as are necessary to ensure the
34 expeditious disposition of procedures provided by this Code section.

35 (f) Any physician performing an execution without the issuance of a death warrant shall
36 be guilty of a felony and, upon conviction, shall be punished as provided in subsection (d)
37 of Code Section 16-5-1. The license of any physician indicted for an alleged violation of

1 this Code section shall be suspended until resolution of the matter. The license of any
2 physician convicted of a violation of this Code section shall be permanently revoked. The
3 provisions of this Code section shall be in addition to any other provisions relating to the
4 killing of a fetus or any other person."

5 **SECTION 3.**

6 This Act shall be automatically repealed on the day following the day the United States
7 Supreme Court issues a decision expressly declaring the overturn of Roe v. Wade, 410 U.S.
8 113 (1973).

9 **SECTION 4.**

10 This Act shall become effective upon its approval by the Governor or upon its becoming law
11 without such approval.

12 **SECTION 5.**

13 All laws and parts of laws in conflict with this Act are repealed.