

The Senate Health and Human Services Committee offered the following substitute to SB 77:

A BILL TO BE ENTITLED
AN ACT

To amend Chapter 5 of Title 16 of the Official Code of Georgia Annotated, relating to crimes against the person, so as to revise the definition of feticide; to prohibit the voluntary manslaughter of an unborn child; to prohibit assaults and batteries of unborn children under certain circumstances; to provide for punishment for persons convicted of such offenses; to amend Article 15 of Chapter 6 of Title 40 of the Official Code of Georgia Annotated, relating to serious traffic offenses, so as to remove the requirement that an unborn child be quick in the definition of feticide by vehicle; to amend Article 1 of Chapter 7 of Title 52 of the Official Code of Georgia Annotated, relating to general provisions concerning registration, operation, and sale of watercraft, so as to remove the requirement that an unborn child be quick in the definition of feticide by vessel; to provide for definitions; to provide for exceptions; to provide for applicability; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 5 of Title 16 of the Official Code of Georgia Annotated, relating to crimes against the person, is amended by adding at the end of Article 2, relating to assault and battery, new Code Sections 16-5-28 and 16-5-29 to read as follows:

"16-5-28.

(a) For the purposes of this Code section, the term 'unborn child' means a member of the species homo sapiens at any stage of development who is carried in the womb.

(b) A person commits the offense of assault of an unborn child when such person, without legal justification, attempts to inflict violent injury to an unborn child who is subsequently born alive.

(c) Any person convicted of the offense of assault of an unborn child shall be guilty of a misdemeanor.

(d) The provisions of this Code section shall not apply to acts committed pursuant to usual and customary standards of medical practice during diagnostic testing or therapeutic treatment.

16-5-29.

(a) For the purposes of this Code section, the term 'unborn child' means a member of the species homo sapiens at any stage of development who is carried in the womb.

(b) A person commits the offense of battery of an unborn child when such person, without legal justification, intentionally inflicts physical harm upon an unborn child who is subsequently born alive.

(c) A person convicted of the offense of battery of an unborn child shall be guilty of a misdemeanor.

(d) The provisions of this Code section shall not apply to acts committed pursuant to usual and customary standards of medical practice during diagnostic testing or therapeutic treatment."

SECTION 2.

Said chapter is further amended by striking Code Section 16-5-80, relating to feticide, and inserting in lieu thereof a new Code Section 16-5-80 to read as follows:

"16-5-80.

(a) For the purposes of this Code section, the term 'unborn child' means a member of the species homo sapiens at any stage of development who is carried in the womb.

(b) A person commits the offense of feticide if he or she willfully kills and without legal justification causes the death of an unborn child so far developed as to be ordinarily called 'quick' by any injury to the mother of such child, which would be murder if it resulted in the death of such mother, or if he or she, when in the commission of a felony, causes the death of an unborn child.

(c) A person convicted of the offense of feticide shall be punished by imprisonment for life.

(d) A person commits the offense of voluntary manslaughter of an unborn child when such person causes the death of an unborn child under circumstances which would otherwise be feticide and if such person acts solely as the result of a sudden, violent, and irresistible passion resulting from serious provocation sufficient to excite such passion in a reasonable person; provided, however, that, if there should have been an interval between the provocation and the killing sufficient for the voice of reason and humanity to be heard, of which the jury in all cases shall be the judge, the killing shall be attributed to deliberate revenge and be punished as feticide.

(e) A person convicted of the offense of voluntary manslaughter of an unborn child shall be guilty of a felony and shall be punished by imprisonment for not less than one nor more than 20 years.

(f) This Code section shall not apply to:

(1) Acts which cause the death of an unborn child if those acts were committed during a legal abortion to which the pregnant woman consented; and

(2) Acts committed pursuant to usual and customary standards of medical practice during diagnostic testing or therapeutic treatment."

SECTION 3.

Article 15 of Chapter 6 of Title 40 of the Official Code of Georgia Annotated, relating to serious traffic offenses, is amended by striking Code Section 40-6-393.1, relating to feticide by vehicle, and inserting in lieu thereof a new Code Section 40-6-393.1 to read as follows:
"40-6-393.1.

(a) For the purposes of this Code section, the term 'unborn child' means a member of the species homo sapiens at any stage of development who is carried in the womb.

~~(a)(b)~~(1) A person commits the offense of feticide by vehicle in the first degree if he or she causes the death of an unborn child ~~so far developed as to be ordinarily called 'quick'~~ by any injury to the mother of such child through the violation of Code Section 40-6-390 or 40-6-391, which would be homicide by vehicle in the first degree as provided in subsection (a) or (c) of Code Section 40-6-393 if it resulted in the death of such mother.
(2) A person convicted of the offense of feticide by vehicle in the first degree shall be punished by imprisonment for not less than two years nor more than 15 years.

~~(b)(c)~~(1) A person commits the offense of feticide by vehicle in the second degree if he or she causes the death of an unborn child ~~so far developed as to be ordinarily called 'quick'~~ by any injury to the mother of such child by violating any provision of this title other than Code Section 40-6-390 or 40-6-391, which would be homicide by vehicle in the second degree as provided in subsection (b) of Code Section 40-6-393 if it resulted in the death of such mother.

(2) A person convicted of the offense of feticide by vehicle in the second degree shall be punished as provided in Code Section 17-10-3."

SECTION 4.

Article 1 of Chapter 7 of Title 52 of the Official Code of Georgia Annotated, relating to general provisions concerning registration, operation, and sale of watercraft, is amended by striking Code Section 52-7-12.3, relating to feticide by vessel, and inserting in lieu thereof a new Code Section 52-7-12.3 to read as follows:

1 "52-7-12.3.

2 (a) For the purposes of this Code section, the term 'unborn child' means a member of the
3 species homo sapiens at any stage of development who is carried in the womb.

4 ~~(a)~~(b)(1) A person commits the offense of feticide by vessel in the first degree if he or
5 she causes the death of an unborn child ~~so far developed as to be ordinarily called 'quick'~~
6 by any injury to the mother of such child through the violation of subsection (j) of Code
7 Section 52-7-8.2 or Code Section 52-7-12 or Code Section 52-7-12.1 or subsection (b)
8 of Code Section 52-7-13 or subsection (a) of Code Section 52-7-14 or subsection (c) of
9 Code Section 52-7-25, which would be homicide by vessel in the first degree as provided
10 in subsection (a) of Code Section 52-7-12.2 if it resulted in the death of such mother.

11 (2) A person convicted of the offense of feticide by vessel in the first degree shall be
12 guilty of a felony and shall be punished by imprisonment for not less than two years nor
13 more than 15 years.

14 ~~(b)~~(c)(1) A person commits the offense of feticide by vessel in the second degree if he
15 or she causes the death of an unborn child ~~so far developed as to be ordinarily called~~
16 ~~'quick'~~ by any injury to the mother of such child by violating any provision of this title
17 other than subsection (j) of Code Section 52-7-8.2 or Code Section 52-7-12 or Code
18 Section 52-7-12.1 or subsection (b) of Code Section 52-7-13 or subsection (a) of Code
19 Section 52-7-14 or subsection (c) of Code Section 52-7-25, which would be homicide by
20 vessel in the second degree as provided in subsection (b) of Code Section 52-7-12.2 if it
21 resulted in the death of such mother.

22 (2) A person convicted of the offense of feticide by vessel in the second degree shall be
23 guilty of a misdemeanor and shall be punished as provided in Code Section 17-10-3."

24 **SECTION 5.**

25 This Act shall become effective on July 1, 2006, and shall apply to all offenses committed
26 on or after such date.

27 **SECTION 6.**

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