Senate Bill 77

By: Senators Unterman of the 45th, Hudgens of the 47th, Schaefer of the 50th, Goggans of the 7th, Shafer of the 48th and others

AS PASSED

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 striking Code Section 16-5-20, relating to simple assault, and inserting a new Code Section 16-5-20 and 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:

"16-5-20.

(a) A person commits the offense of simple assault when he or she either:

(1) Attempts to commit a violent injury to the person of another; or

(2) Commits an act which places another in reasonable apprehension of immediately receiving a violent injury.

(b) Except as provided in subsections (c) through ~~(f)~~ (h) of this Code section, a person who commits the offense of simple assault shall be guilty of a misdemeanor.

(c) Any person who commits the offense of simple assault in a public transit vehicle or station shall, upon conviction thereof, be punished for a misdemeanor of a high and aggravated nature. For purposes of this Code section, 'public transit vehicle' means a bus, van, or rail car used for the transportation of passengers within a system which receives a subsidy from tax revenues or is operated under a franchise contract with a county or municipality of this state.

(d) If the offense of simple assault is committed between past or present spouses, persons who are parents of the same child, parents and children, stepparents and stepchildren, foster parents and foster children, or other persons excluding siblings living or formerly living in the same household, the defendant shall be punished for a misdemeanor of a high and aggravated nature. In no event shall this subsection be applicable to corporal punishment administered by a parent or guardian to a child or administered by a person acting in loco parentis.

(e) Any person who commits the offense of simple assault against a person who is 65 years of age or older shall, upon conviction thereof, be punished for a misdemeanor of a high and aggravated nature.

(f) Any person who commits the offense of simple assault against an employee of a public school system of this state while such employee is engaged in official duties or on school property shall, upon conviction of such offense, be punished for a misdemeanor of a high and aggravated nature. For purposes of this Code section, 'school property' shall include public school buses and stops for public school buses as designated by local school boards of education.

(g) Any person who commits the offense of simple assault against a female who is pregnant at the time of the offense shall, upon conviction thereof, be punished for a misdemeanor of a high and aggravated nature.

(h) Nothing in this Code section shall be construed to permit the prosecution of:

(1) Any person for conduct relating to an abortion for which the consent of the pregnant woman, or person authorized by law to act on her behalf, has been obtained or for which such consent is implied by law;

(2) Any person for any medical treatment of the pregnant woman or her unborn child; or

(3) Any woman with respect to her unborn child.

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

″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.

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

(d) Nothing in this Code section shall be construed to permit the prosecution of:

(1) Any person for conduct relating to an abortion for which the consent of the pregnant woman, or person authorized by law to act on her behalf, has been obtained or for which such consent is implied by law;

(2) Any person for any medical treatment of the pregnant woman or her unborn child; or

(3) Any woman with respect to her unborn child.

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.

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

(d) Nothing in this Code section shall be construed to permit the prosecution of:

(1) Any person for conduct relating to an abortion for which the consent of the pregnant woman, or person authorized by law to act on her behalf, has been obtained or for which such consent is implied by law;

(2) Any person for any medical treatment of the pregnant woman or her unborn child; or

(3) Any woman with respect to her unborn child.″

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.

~~(a)~~(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.

~~(b)~~ (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) Nothing in this Code section shall be construed to permit the prosecution of:

(1) Any person for conduct relating to an abortion for which the consent of the pregnant woman, or person authorized by law to act on her behalf, has been obtained or for which such consent is implied by law;

(2) Any person for any medical treatment of the pregnant woman or her unborn child; or

(3) Any woman with respect to her unborn child.″

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:

″52-7-12.3.

(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 vessel 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 subsection (j) of Code Section 52-7-8.2 or Code Section 52-7-12 or Code Section 52-7-12.1 or subsection (b) of Code Section 52-7-13 or subsection (a) of Code Section 52-7-14 or subsection (c) of Code Section 52-7-25, which would be homicide by vessel in the first degree as provided in subsection (a) of Code Section 52-7-12.2 if it resulted in the death of such mother.

(2) A person convicted of the offense of feticide by vessel in the first degree shall be guilty of a felony and 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 vessel 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 subsection (j) of Code Section 52-7-8.2 or Code Section 52-7-12 or Code Section 52-7-12.1 or subsection (b) of Code Section 52-7-13 or subsection (a) of Code Section 52-7-14 or subsection (c) of Code Section 52-7-25, which would be homicide by

vessel in the second degree as provided in subsection (b) of Code Section 52-7-12.2 if it resulted in the death of such mother.

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

SECTION 5.

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

SECTION 6.

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