

HOUSE BILL 802

Unofficial Copy
E1

2004 Regular Session
4lr0226
CF 4lr1373

By: **Delegates Frank, Amedori, Anderson, Aumann, Bartlett, Bates, Boschert, Boteler, Boutin, Bromwell, Burns, Cluster, Conroy, Costa, C. Davis, DeBoy, Donoghue, Dwyer, Eckardt, Edwards, Elliott, Elmore, Fulton, Gilleland, Glassman, Haddaway, Hennessy, Hogan, Impallaria, Jameson, Jennings, Kach, Kelly, Krebs, Krysiak, Leopold, McComas, McConkey, McDonough, McKee, McMillan, Miller, Minnick, Mitchell, Myers, O'Donnell, Owings, Parker, Parrott, Proctor, Shank, Smigiel, Sophocleus, Sossi, Stocksdale, Stull, Trueschler, Walkup, Weir, Weldon, and Wood**

Introduced and read first time: February 9, 2004
Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Unborn Victims of Violence Act**

3 FOR the purpose of providing that the laws relating to murder, manslaughter,
4 homicide, assault, reckless endangerment, life threatening injury by motor
5 vehicle or vessel, and poisoning apply to an unborn child; establishing that
6 certain laws prohibiting murder, manslaughter, homicide, assault, reckless
7 endangerment, life threatening injury by motor vehicle or vessel, and poisoning
8 against an unborn child do not apply to acts committed by the mother of the
9 unborn child, acts committed during a certain legal abortion, or acts committed
10 in accordance with certain medical practices; providing that a person may not be
11 sentenced to death for certain murders; providing that a certain murder may not
12 be considered for purposes of a certain aggravating circumstance; specifying the
13 manner of stating the name of a victim on charging documents if the victim is an
14 unborn child; providing for the dismissal of a certain charge on the agreement of
15 the mother of an unborn child and the defendant; defining certain terms; and
16 generally relating to crimes against an unborn child.

17 BY repealing and reenacting, without amendments,
18 Article - Criminal Law
19 Section 2-101(a) and 3-201(a)
20 Annotated Code of Maryland
21 (2002 Volume and 2003 Supplement)

22 BY adding to
23 Article - Criminal Law
24 Section 2-101(d), 2-103, 2-104, 2-202(b)(3), 3-201(d) and (e), 3-201.1, and

1 3-201.2
2 Annotated Code of Maryland
3 (2002 Volume and 2003 Supplement)

4 BY repealing and reenacting, with amendments,
5 Article - Criminal Law
6 Section 3-201(b), 3-203, and 3-207
7 Annotated Code of Maryland
8 (2002 Volume and 2003 Supplement)

9 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
10 MARYLAND, That the Laws of Maryland read as follows:

11 **Article - Criminal Law**

12 2-101.

13 (a) In this title the following words have the meanings indicated.

14 (D) "UNBORN CHILD" MEANS AN UNBORN HUMAN BEING WHO IS CONCEIVED
15 BUT NOT YET COMPLETELY BORN.

16 2-103.

17 (A) SUBJECT TO THE PROVISIONS OF THIS SECTION, THIS TITLE APPLIES TO
18 THE KILLING OF AN UNBORN CHILD BY A PERSON OTHER THAN THE MOTHER OF THE
19 UNBORN CHILD.

20 (B) THIS TITLE DOES NOT APPLY TO AN ACT WHICH CAUSES THE DEATH OF
21 AN UNBORN CHILD IF THE ACT IS COMMITTED DURING A LEGAL ABORTION TO
22 WHICH THE MOTHER OF THE UNBORN CHILD CONSENTS.

23 (C) THIS TITLE DOES NOT APPLY TO AN ACT WHICH CAUSES THE DEATH OF
24 AN UNBORN CHILD IF THE ACT IS COMMITTED IN ACCORDANCE WITH USUAL AND
25 CUSTOMARY STANDARDS OF MEDICAL PRACTICE DURING DIAGNOSTIC TESTING OR
26 THERAPEUTIC TREATMENT.

27 2-104.

28 IN THIS TITLE, IF THE NAME OF A VICTIM IS REQUIRED IN A CHARGING
29 DOCUMENT AND THE VICTIM IS AN UNBORN CHILD, THE NAME OF THE VICTIM
30 SHALL BE STATED AS "THE UNBORN CHILD OF" FOLLOWED BY THE NAME OF THE
31 UNBORN CHILD'S MOTHER.

32 2-202.

33 (b) (3) (I) FOR A MURDER IN WHICH THE VICTIM WAS AN UNBORN CHILD,
34 A DEFENDANT MAY NOT BE SENTENCED TO DEATH.

1 (II) A MURDER IN WHICH THE VICTIM WAS AN UNBORN CHILD MAY
2 NOT BE CONSIDERED WHEN DETERMINING WHETHER THE DEFENDANT COMMITTED
3 MORE THAN ONE MURDER AS AN AGGRAVATING CIRCUMSTANCE FOR PURPOSES OF
4 DEATH PENALTY ELIGIBILITY.

5 3-201.

6 (a) In this subtitle the following words have the meanings indicated.

7 (b) (1) "Assault" means the crimes of assault, battery, and assault and
8 battery, which retain their judicially determined meanings.

9 (2) "ASSAULT" INCLUDES AN ASSAULT AGAINST AN UNBORN CHILD BY A
10 PERSON OTHER THAN THE UNBORN CHILD'S MOTHER.

11 (D) "UNBORN CHILD" HAS THE MEANING STATED IN § 2-101 OF THIS ARTICLE.

12 (E) (1) THE DEFINITION IN THIS SUBSECTION APPLIES ONLY TO §§ 3-202,
13 3-203, 3-204, 3-211, AND 3-213 OF THIS TITLE.

14 (2) "ANOTHER" INCLUDES AN UNBORN CHILD.

15 3-201.1.

16 (A) THIS SUBTITLE DOES NOT APPLY TO AN ACT COMMITTED AGAINST AN
17 UNBORN CHILD IF THE ACT IS COMMITTED DURING A LEGAL ABORTION TO WHICH
18 THE MOTHER OF THE UNBORN CHILD CONSENTS.

19 (B) THIS SUBTITLE DOES NOT APPLY TO AN ACT COMMITTED AGAINST AN
20 UNBORN CHILD IF THE ACT IS COMMITTED IN ACCORDANCE WITH USUAL AND
21 CUSTOMARY STANDARDS OF MEDICAL PRACTICE DURING DIAGNOSTIC TESTING OR
22 THERAPEUTIC TREATMENT.

23 3-201.2.

24 IN THIS SUBTITLE, IF THE NAME OF A VICTIM IS REQUIRED IN A CHARGING
25 DOCUMENT AND THE VICTIM IS AN UNBORN CHILD, THE NAME OF THE VICTIM
26 SHALL BE STATED AS "THE UNBORN CHILD OF" FOLLOWED BY THE NAME OF THE
27 UNBORN CHILD'S MOTHER.

28 3-203.

29 (a) A person may not commit an assault AGAINST ANOTHER.

30 (b) A person who violates this section is guilty of the misdemeanor of assault
31 in the second degree and on conviction is subject to imprisonment not exceeding 10
32 years or a fine not exceeding \$2,500 or both.

1 3-207.

2 (a) On a pretrial motion of the State, a court may dismiss a charge of assault
3 if:

4 (1) the victim OR, IN THE CASE OF AN UNBORN CHILD, THE VICTIM'S
5 MOTHER and the defendant agree to the dismissal; and

6 (2) the court considers the dismissal proper.

7 (b) The defendant shall pay the costs that would have been incurred if the
8 defendant had been found guilty.

9 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
10 October 1, 2004.