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INJURY TO PREGNANT WOMAN: SEPARATE CRIME

**House Bill 4476 as introduced
First Analysis (6-9-98)**

**Sponsor: Rep. Laura Baird
Committee: Judiciary**

THE APPARENT PROBLEM:

Many people believe that there is a gap in current state law that does not provide adequate legal remedies in cases where pregnant women who wish to carry their pregnancies to term suffer a pregnancy loss through the criminal or negligent actions of a third party. (See BACKGROUND INFORMATION.) Though there have been numerous bills introduced to address this issue, the problem has been writing legislation that would address the issue in the midst of the highly emotionally charged abortion debate. Earlier this session, legislation dealing with this issue was reported from the House Judiciary Committee (see House Legislative Analysis Section analysis of House Bill 4524 and Senate Bill 21) that focuses on fetal injuries. Alternative legislation that focuses on injury to pregnant women also has been introduced.

THE CONTENT OF THE BILL:

The bill would amend the Michigan Penal Code to create a new felony and a new misdemeanor for causing injury to a pregnant woman. More specifically, it would be a felony to injure a pregnant woman during the commission of or attempt to commit a crime where the offender knew or had reason to know that the woman was pregnant and the injury resulted in miscarriage or serious physical injury to the fetus. Causing the same injury to a pregnant woman through the negligent (but not willful or wanton) operation of a vehicle on a highway or other public property would be a misdemeanor. The bill would define "serious physical injury to the fetus" to mean an injury that caused substantial bodily disfigurement to or seriously impaired the function of a body organ or limb of the child that develops from the fetus.

The felony created by the bill would be punishable by imprisonment for not more than ten years, while the misdemeanor would be punishable by imprisonment for not more than one year and/or a fine of \$1,000. In either instance, the offender could be convicted and imprisoned for both the crime created in the bill and any underlying crime or attempt to commit a crime; however, the term of imprisonment for injuring a pregnant woman would have to be served concurrently with any prison term for the underlying crime or attempted crime. In addition, when prosecuting a violation under the bill that occurred during the woman's first trimester of pregnancy, the prosecuting attorney would be required to prove the existence of the pregnancy through laboratory analysis and the testimony of a physician or other licensed medical professional.

The bill's provisions would not apply to the performance of a lawful abortion nor would they apply to any acts committed by the pregnant woman herself.

MCL 750.90a

BACKGROUND INFORMATION:

Under the Michigan Penal Code (MCL 750.322) "[t]he wilful killing of an unborn quick child by any injury to the mother of such child, which would be murder if it resulted in the death of such mother, shall be deemed manslaughter." Manslaughter, under the penal code, is a felony punishable by imprisonment for not more than 15 years or by a fine of not more than \$7,500, or both. The Revised Judicature Act allows civil actions to be brought for "wrongful death," when a person, by his or her negligent actions, causes the

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death of another person. However, the courts have routinely held when interpreting this law, that a nonviable fetus is not a "person" under the wrongful death laws, and, therefore, that a wrongful death lawsuit cannot be brought against someone for injuries to a human fetus unless the fetus was viable at the time the injuries occurred.

FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:

For:

Most people would agree that if a woman chooses to be and to remain pregnant, and if someone injures her in such a way as to cause her to lose that wanted pregnancy, then the person causing the injury should be subject to both civil and criminal penalties. Many people further believe that there currently is a gap in state law that does not allow adequate civil recourse or criminal penalties when an action against a pregnant woman causes the woman to miscarry or results in a stillbirth, or injures the embryo or fetus. Currently, for example, if a third party causes a pregnant woman to miscarry or give birth to a stillborn infant, there is no way for the woman or her family to file for civil damages, since current law allows for "wrongful death" actions only for persons and viable fetuses that are not born alive. Additionally, the only criminal statute applying to cases where an injury to a pregnant woman causes the death of her fetus is the crime of manslaughter (punishable by up to 15 years imprisonment or a fine up to \$7,500, or both) in the case of "the wilful killing of an unborn quick child by any injury to the mother of such child, which would be murder if it resulted in the death of such mother." The bill would make it a separate crime -- a felony punishable by imprisonment for up to ten years -- to injure a pregnant woman during the commission of (or attempt to commit) a crime where the offender knew (or had reason to know) that the woman was pregnant and the injury to the pregnant woman resulted in miscarriage or "serious physical injury" to the fetus. Causing the same injury to a pregnant women through the negligent (but not willful or wanton) operation of a vehicle on a highway or other public property would be a misdemeanor punishable by imprisonment for up to one year, a fine of \$1,000, or both. The bill would, further, define "serious physical injury to the fetus" to

mean an injury that caused substantial bodily disfigurement to, or seriously impaired the function of, a body organ or limb of the child that developed from the fetus. In addition, if a prosecuting attorney prosecuted someone under the bill for a violation that occurred against a pregnant woman during the first trimester, the bill would require the prosecuting attorney to prove the existence of the pregnancy through laboratory analysis and the testimony of a physician or other licensed medical professional.

The bill would avoid some of the serious legal -- including constitutional -- problems present in other legislation acted on earlier in this session regarding fetal injury. Unlike the earlier fetal injury legislation, the bill would define what "serious physical injury to the fetus" would mean, thereby avoiding the problems with vagueness that the other bills face by not defining their terminology (which refers, without defining the language, to "great bodily harm," "serious or aggravated injury," and "physical injury" to "the embryo or fetus"). By defining "serious physical injury to the fetus," House Bill 4476 would provide an injury standard that would causally relate postpartum deformities or impairments to earlier fetal injuries, and avoid an otherwise major legal problem with vagueness. The bill further would avoid a number of other problems present in the other bills dealing with fetal injury by requiring that there be a crime, either attempted or actual, against the pregnant women in order for the new crime to be established; requiring that the offender know or have reason to know that the woman against whom the crime is committed or attempted is pregnant before the offender could be charged with a felony under the bill; imposing penalties for the new crimes that were appropriately proportionate to the injuries caused to a fetus; and creating a standard to be met for the prosecution of a crime committed or attempted against a pregnant woman during her first trimester.

Against:

The bill would allow someone to be convicted of a misdemeanor for negligent driving that injured a pregnant woman and that resulted in a miscarriage or in serious injury to the fetus, even if the person causing the injury did not know that the woman was pregnant. In addition, requiring both laboratory evidence and medical testimony to establish the existence of a pregnancy during the first trimester could pose problems for poor pregnant women, many of whom do not have regular, early prenatal care from a medical professional.

POSITIONS:

Planned Parenthood Affiliates of Michigan supports the bill. (6-5-98)

The American Civil Liberties Union of Michigan opposes the bill because knowledge of a woman's pregnancy is not required for the bill's negligence misdemeanor. (6-4-98) 372-8503

Right to Life of Michigan opposes the bill. (6-8-98)

Analyst: S. Ekstrom

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.