



Am. H.B. 37*

123rd General Assembly
(As Reported by S. Judiciary)

Reps. Taylor, Mottley, Metelsky, Winkler, Grendell, Thomas, Roman, Evans, Corbin, Patton, Allen, Hartnett, Van Vyven, Flannery, Young, Terwilleger, DePiero, Bender, Tiberi, Goodman, Buehrer, Willamowski, Maier, Haines, O'Brien, Pringle, Brading, Verich, Cates

Sens. Latta, Blessing, Herington

BILL SUMMARY

- Creates the offense of "reckless homicide," which is committed when a person recklessly causes the death of another or the unlawful termination of another's pregnancy.

CONTENT AND OPERATION

Reckless homicide

Existing law contains seven homicide offenses (see **COMMENT 1**). The most serious of those offenses (aggravated murder, murder, and voluntary manslaughter) prohibit a person from *purposely* or *knowingly* (see **COMMENT 2**) causing the death of another or the "unlawful termination of another's pregnancy" (see **COMMENT 3**), in specified circumstances.

The bill enacts a provision that prohibits a person from *recklessly* (see **COMMENT 2**) causing the death of another or the unlawful termination of another's pregnancy. A person who violates the prohibition is guilty of reckless homicide, a felony of the third degree. (Sec. 2903.041.)

* *This analysis was prepared before the report of the Senate Judiciary Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

COMMENT

1. The seven existing homicide offenses, unchanged by the bill, are as follows:

Aggravated murder. The offense consists of three prohibitions: (a) a prohibition against *purposely* (see **COMMENT 2**), *and with prior calculation and design*, causing the death of another or the "unlawful termination of another's pregnancy" (see **COMMENT 3**), (b) a prohibition against *purposely* causing the death of another or the unlawful termination of another's pregnancy while committing or attempting to commit, or while fleeing immediately after committing or attempting to commit kidnapping, rape, aggravated arson or arson, aggravated robbery or robbery, aggravated burglary or burglary, or escape, and (c) a prohibition against *purposely* causing the death of another who is under 13 years of age at the time of the commission of the offense. Aggravated murder is punishable by death, life imprisonment without parole, life imprisonment with parole eligibility after 30 full years, life imprisonment with parole eligibility after 25 full years, or life imprisonment with parole eligibility after 20 years. (Secs. 2903.01, 2929.02, and 2929.03.)

Murder. The offense consists of two prohibitions: (a) a prohibition against *purposely* causing the death of another or the unlawful termination of another's pregnancy and (b) a prohibition against causing the death of another as a proximate result of the offender's committing or attempting to commit an offense of violence that is a felony of the first or second degree, other than voluntary manslaughter or involuntary manslaughter, and that does not become a felony of the first or second degree only if the offender previously has been convicted of that offense or another specified offense. Murder generally is punishable by an indefinite term of 15 years to life. (Secs. 2903.02 and 2929.02.)

Voluntary manslaughter. The offense consists of a prohibition against *knowingly* (see **COMMENT 2**) causing the death of another or the unlawful termination of another's pregnancy while under the influence of sudden passion or in a sudden fit of rage, either of which is brought on by serious provocation occasioned by the victim that is reasonably sufficient to incite the offender into using deadly force. Voluntary manslaughter is a felony of the first degree. (Sec. 2903.03.)

Involuntary manslaughter. The offense consists of two prohibitions: (a) a prohibition against causing the death of another or the unlawful termination of another's pregnancy *as a proximate result* of the offender's committing or attempting to commit a felony and (b) a prohibition against causing the death of

another or the unlawful termination of another's pregnancy *as a proximate result* of the offender's committing or attempting to commit a misdemeanor of the first, second, third, or fourth degree or a minor misdemeanor. A violation of the first prohibition is a felony of the first degree, and a violation of the second prohibition is a felony of the third degree. Special, additional sanctions apply if the felony or misdemeanor that resulted in the death or the termination is an OMVI-related offense. (Sec. 2903.04.)

Negligent homicide. The offense consists of a prohibition against *negligently* (see **COMMENT 2**) causing the death of another or the unlawful termination of another's pregnancy by means of a deadly weapon or dangerous ordnance. Negligent homicide is a misdemeanor of the first degree. (Sec. 2903.05.)

Aggravated vehicular homicide. The offense consists of a prohibition against *recklessly* (see **COMMENT 2**) causing the death of another or the unlawful termination of another's pregnancy while operating or participating in the operation of a motor vehicle, motorcycle, snowmobile, locomotive, watercraft, or aircraft. The offense generally is a felony of the third degree. If the offender previously has been convicted of a specified vehicular offense, the offense is a felony of the second degree; if specified circumstances apply other specified penalties may be imposed. (Sec. 2903.06.)

Vehicular homicide. The offense consists of a prohibition against *negligently* causing the death of another or the unlawful termination of another's pregnancy while operating or participating in the operation of a motor vehicle, motorcycle, snowmobile, locomotive, watercraft, or aircraft. The offense is a misdemeanor of the first degree. If the offender previously has been convicted of a specified vehicular offense, the offense is a felony of the fourth degree; if specified circumstances apply other specified penalties may be imposed. (Sec. 2903.07.)

2. Section 2901.22, not in the bill, describes the culpable mental states that apply under the Criminal Code. It specifies that:

(a) A person acts *purposely* when it is his or her specific intention to cause a certain result, or, when the gist of the offense is a prohibition against conduct of a certain nature, regardless of what the offender intends to accomplish thereby, it is his or her specific intention to engage in conduct of that nature.

(b) A person acts *knowingly*, regardless of his or her purpose, when the person is aware that his or her conduct will probably cause a certain result or will

probably be of a certain nature; a person has knowledge of circumstances when he or she is aware that such circumstances probably exist.

(c) A person acts *recklessly* when, with heedless indifference to the consequences, he or she perversely disregards a known risk that his or her conduct is likely to cause a certain result or is likely to be of a certain nature. A person is reckless with respect to circumstances when, with heedless indifference to the consequences, he or she perversely disregards a known risk that such circumstances are likely to exist.

(d) A person acts *negligently* when, because of a substantial lapse from due care, he or she fails to perceive or avoid a risk that his or her conduct may cause a certain result or may be of a certain nature. A person is negligent with respect to circumstances when, because of a substantial lapse from due care, he or she fails to perceive or avoid a risk that such circumstances may exist.

(e) When the section defining an offense provides that *negligence suffices* to establish an element thereof, then recklessness, knowledge, or purpose is also sufficient culpability for such element. When *recklessness suffices* to establish an element of an offense, then knowledge or purpose is also sufficient culpability for such element. When *knowledge suffices* to establish an element of an offense, then purpose is also sufficient culpability for such element.

3. Section 2903.09, not in the bill, provides that, for purposes of the existing homicide offenses described in **COMMENT 1** and other specified existing assault and menacing offenses:

(a) "Unlawful termination of another's pregnancy" means causing the death of an unborn member of the species *Homo Sapiens*, who is or was carried in the womb of another, as a result of injuries inflicted during the period that begins with fertilization and that continues unless and until live birth occurs.

(b) "Another's unborn" or "such other person's unborn" means a member of the species *Homo Sapiens*, who is or was carried in the womb of another, during a period that begins with fertilization and that continues unless and until live birth occurs.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	01-20-99	p. 91
Reported, H. Criminal Justice	03-17-99	p. 317
Passed House (98-0)	04-14-99	p. 403
Reported, S. Judiciary	---	---

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