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

Introduced and read first time: February 7, 2005

Assigned to: Health and Government Operations

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A BILL ENTITLED

1 AN ACT concerning

2 **Unlawful Termination of Pregnancy**

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

17 BY repealing and reenacting, without amendments,  
18 Article - Criminal Law  
19 Section 2-101(a)  
20 Annotated Code of Maryland  
21 (2002 Volume and 2004 Supplement)

22 BY adding to  
23 Article - Criminal Law  
24 Section 2-101(d), 2-103, 2-104, 2-202(b)(3), 3-201.1, and 3-201.2

1        Annotated Code of Maryland  
2        (2002 Volume and 2004 Supplement)

3 BY repealing and reenacting, with amendments,  
4 Article - Criminal Law  
5 Section 3-201, 3-203, and 3-207  
6 Annotated Code of Maryland  
7 (2002 Volume and 2004 Supplement)

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

10 Article - Criminal Law

11 2-101.

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

13 (D) "FETUS" MEANS A PRODUCT OF HUMAN CONCEPTION CARRIED IN THE  
14 WOMB, AS ESTABLISHED BY MEDICAL TEST OR AUTOPSY.

15 2-103.

16 (A) SUBJECT TO THE PROVISIONS OF THIS SECTION, THIS TITLE APPLIES TO  
17 THE KILLING OF A FETUS BY A PERSON OTHER THAN THE PREGNANT WOMAN.

18 (B) THIS TITLE DOES NOT APPLY TO AN ACT THAT CAUSES THE DEATH OF A  
19 FETUS IF THE ACT IS COMMITTED DURING AN ABORTION TO WHICH THE PREGNANT  
20 WOMAN CONSENTS.

21 (C) THIS TITLE DOES NOT APPLY TO AN ACT THAT CAUSES THE DEATH OF A  
22 FETUS IF THE ACT IS COMMITTED IN ACCORDANCE WITH USUAL AND CUSTOMARY  
23 STANDARDS OF MEDICAL PRACTICE DURING DIAGNOSTIC TESTING OR THERAPEUTIC  
24 TREATMENT.

25 2-104.

26 IN THIS TITLE, IF THE NAME OF A VICTIM IS REQUIRED IN A CHARGING  
27 DOCUMENT AND THE VICTIM IS A FETUS, THE NAME OF THE VICTIM SHALL BE  
28 STATED AS "THE FETUS OF" FOLLOWED BY THE NAME OF THE WOMAN WHO WAS  
29 PREGNANT WITH THE FETUS.

30 2-202.

31 (b) (3) (I) FOR A MURDER IN WHICH THE VICTIM WAS A FETUS, A  
32 DEFENDANT MAY NOT BE SENTENCED TO DEATH.

33 (II) A MURDER IN WHICH THE VICTIM WAS A FETUS MAY NOT BE  
34 CONSIDERED WHEN DETERMINING WHETHER THE DEFENDANT COMMITTED MORE

1 THAN ONE MURDER AS AN AGGRAVATING CIRCUMSTANCE FOR PURPOSES OF DEATH  
2 PENALTY ELIGIBILITY.

3 3-201.

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

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

7 (2) "ASSAULT" INCLUDES AN ASSAULT AGAINST A FETUS BY A PERSON  
8 OTHER THAN THE PREGNANT WOMAN.

9 (C) "FETUS" HAS THE MEANING STATED IN § 2-101 OF THIS ARTICLE.

10 (D) (1) THE DEFINITION IN THIS SUBSECTION APPLIES ONLY TO §§ 3-202,  
11 3-203, 3-204, 3-211, AND 3-213 OF THIS SUBTITLE.

12 (2) "ANOTHER" INCLUDES A FETUS.

13 [c] (E) "Serious physical injury" means physical injury that:

14 (1) creates a substantial risk of death; or

15 (2) causes permanent or protracted serious:

16 (i) disfigurement;

17 (ii) loss of the function of any bodily member or organ; or

18 (iii) impairment of the function of any bodily member or organ.

19 3-201.1.

20 (A) THIS SUBTITLE DOES NOT APPLY TO AN ACT COMMITTED AGAINST A  
21 FETUS IF THE ACT IS COMMITTED DURING AN ABORTION TO WHICH THE PREGNANT  
22 WOMAN CONSENTS.

23 (B) THIS SUBTITLE DOES NOT APPLY TO AN ACT COMMITTED AGAINST A  
24 FETUS IF THE ACT IS COMMITTED IN ACCORDANCE WITH USUAL AND CUSTOMARY  
25 STANDARDS OF MEDICAL PRACTICE DURING DIAGNOSTIC TESTING OR THERAPEUTIC  
26 TREATMENT.

27 3-201.2.

28 IN THIS SUBTITLE, IF THE NAME OF A VICTIM IS REQUIRED IN A CHARGING  
29 DOCUMENT AND THE VICTIM IS A FETUS, THE NAME OF THE VICTIM SHALL BE  
30 STATED AS "THE FETUS OF" FOLLOWED BY THE NAME OF THE WOMAN WHO IS  
31 PREGNANT OR WAS PREGNANT WITH THE FETUS.

1 3-203.

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

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

6 3-207.

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

9 (1) the victim OR, IN THE CASE OF A FETUS, THE WOMAN WHO IS  
10 PREGNANT OR WAS PREGNANT WITH THE FETUS and the defendant agree to the  
11 dismissal; and

12 (2) the court considers the dismissal proper.

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

15 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
16 October 1, 2005.