

## House Bill 441

By: Representatives Dunahoo of the 31<sup>st</sup>, Cameron of the 1<sup>st</sup>, Byrd of the 20<sup>th</sup>, Mathis of the 133<sup>rd</sup>, Kelley of the 16<sup>th</sup>, and others

A BILL TO BE ENTITLED  
AN ACT

1 To amend Title 16 of the Official Code of Georgia Annotated, relating to crimes and  
2 offenses, so as to provide for a coercion defense to a charge of murder for defendant mothers  
3 of unborn children; to provide a short title; to provide for a definition; to provide for  
4 construction; to provide for exceptions; to provide for concurrent prosecuting authority of  
5 the Attorney General and prosecuting attorneys in certain cases; to provide for applicability;  
6 to remove exceptions that allow for assault and battery on an unborn child; to amend Code  
7 Section 19-7-1 of the Official Code of Georgia Annotated, relating to in whom parental  
8 power lies, how such power lost, and recovery for homicide of a child or unborn child, so as  
9 to provide for the right to recovery for the life of a child beginning at the stage of  
10 fertilization; to provide for related matters; to provide for legislative findings and  
11 determinations; to repeal conflicting laws; and for other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

13 **SECTION 1.**

14 The General Assembly finds and determines that:  
15 (1) Article I, Section I, Paragraph I of the Georgia Constitution provides, "No person shall  
16 be deprived of life, liberty, or property except by due process of law.";

17 (2) Article I, Section I, Paragraph II of the Georgia Constitution provides, "Protection to  
18 person and property is the paramount duty of government and shall be impartial and  
19 complete. No person shall be denied the equal protection of the laws.";

20 (3) The Fourteenth Amendment to the Constitution of the United States requires that "[n]o  
21 state...shall deny to any person within its jurisdiction the equal protection of the laws";

22 (4) To fulfill such right to life and equal protection requirements, the lives of unborn  
23 persons in this state should be protected with the same criminal and civil laws protecting  
24 the lives of born persons by removing provisions that enable the commission of willful  
25 prenatal homicide and assault; and

26 (5) Current provisions could be interpreted to allow a person to pressure a pregnant mother  
27 to abort her child, and such provisions should be removed.

## SECTION 2.

29 Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is  
30 amended by revising Code Section 16-3-26, relating to coercion, as follows:

31 "16-3-26.

32 A person is not guilty of a crime, except murder, if the act upon which the supposed  
33 criminal liability is based is performed under such coercion that the person reasonably  
34 believes that performing the act is the only way to prevent his imminent death or great  
35 bodily injury.

36       (a) A person is not guilty of a crime if the act upon which the supposed criminal liability  
37       is based is performed under such coercion that the person reasonably believes that the  
38       performance of the act is the only way to prevent his or her imminent death or great bodily  
39       injury.

40       (b) The defense of coercion provided by subsection (a) of this Code section shall not apply  
41       to a charge of murder unless the victim is an unborn child and the defendant is the child's  
42       mother."

43

**SECTION 3.**

44 Said title is further amended in Article 1 of Chapter 5, relating to homicide, by adding a new  
45 Code section to read as follows:

46 "16-5-6.

47 (a) This Code section shall be known and may be cited as the 'Georgia Prenatal Equal  
48 Protection Act.'

49 (b) As used in this article, the term 'human being' includes a living human and an unborn  
50 child at every stage of development from fertilization until birth.

51 (c) Enforcement pursuant to this Code section is subject to the same presumptions,  
52 defenses, justifications, laws of parties, immunities, and clemencies as would apply to the  
53 homicide of a person who had been born alive.

54 (d) This chapter shall not apply to the unintentional injury or death of an unborn child  
55 when resulting from:

56 (1) The undertaking of procedures to save the life of a mother when accompanied by  
57 reasonable steps, if available, to save the life of her unborn child; or

58 (2) A spontaneous miscarriage.

59 (e) Prosecuting attorneys and the Attorney General shall have concurrent authority to  
60 prosecute any criminal cases arising under the provisions of this Code section and to  
61 perform any necessary related duty. For purposes of investigating offenses or criminal  
62 cases arising under the provisions of this Code section, the Attorney General shall have the  
63 authority to employ peace officers.

64 (f) This Code section prevails over other law to the extent of any conflict.

65 (g) In accordance with Article I, Section I, Paragraph X of the Georgia Constitution,  
66 Article I, Section 9, Clause 3 of the Constitution of the United States, and Code  
67 Section 1-3-5, this Code section is prospective only and shall not apply to any act  
68 committed prior to the effective date of this Act."

69

**SECTION 4.**

70 Said title is further amended by revising Code Section 16-5-28, relating to assault on an  
71 unborn child, as follows:

72 "16-5-28.

73 (a) For the purposes of this Code section, the term 'unborn child' means a member of the  
74 species homo sapiens at any stage of development who is carried in the womb.

75 (b) A person commits the offense of assault of an unborn child when such person, without  
76 legal justification, attempts to inflict violent injury to an unborn child.

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

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

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

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

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

86

**SECTION 5.**

87 Said title is further amended by revising Code Section 16-5-29, relating to battery of an  
88 unborn child, as follows:

89 "16-5-29.

90 (a) For the purposes of this Code section, the term 'unborn child' means a member of the  
91 species homo sapiens at any stage of development who is carried in the womb.

92 (b) A person commits the offense of battery of an unborn child when such person, without  
93 legal justification, intentionally inflicts physical harm upon an unborn child.

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

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

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

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

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

## SECTION 6.

103 Code Section 19-7-1 of the Official Code of Georgia Annotated, relating to in whom parental  
104 power lies, how such power lost, and recovery for homicide of a child or unborn child, is  
105 amended by revising paragraph (1) of subsection (c) as follows:

106 "(c)(1) In every case of the homicide of a child, minor or sui juris, there shall be some  
107 party entitled to recover the full value of the life of the child, either as provided in this  
108 Code section or as provided in Chapter 4 of Title 51. For the homicide of an unborn  
109 child, the right to recover for the full value of the life of such child shall begin at the point  
110 at which a detectable human heartbeat, as such term is defined in Code Section 1-2-1, is  
111 present fertilization."

## SECTION 7.

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