By Representatives Yarbrough, Harrison, Butler, Gidley, Whorton

RFD: Judiciary

First Read: 09-May-23

2023 Regular Session
SYNOPSIS:

Under existing law, duress is not a defense available in a prosecution for murder.

This bill would allow duress as a defense in a prosecution for murder, provided the victim is an unborn child and the defendant is the child's mother.

Under existing law, a person may not be prosecuted for homicide or assault if the victim is an unborn child in utero and the death or injury results from certain lawful medical care or medication.

This bill would expand the definition of person for the purposes of the criminal code to include an unborn child from the moment of fertilization.

This bill would provide that a person may not be prosecuted for homicide or assault if the victim is an unborn child and death or injury is incidentally or accidentally caused by certain lawful medical care or treatment, provided the care or treatment is to avert the death of the pregnant woman and all other reasonable alternatives to the medical care or treatment have been exhausted.

Under existing law, no person may be prosecuted for homicide or assault relating to a lawful abortion, and no woman may be prosecuted for the homicide or assault of her own unborn child.
This bill would repeal the provision that prohibits the prosecution of homicide or assault following any abortion and the provision that prohibits the prosecution of homicide or assault against any woman with respect to her own unborn child.

This bill would also provide that prosecutions of homicide or assault where the victim is an unborn child shall be treated the same as prosecutions of homicide or assault of a person born alive.

Section 111.05 of the Constitution of Alabama of 2022, prohibits a general law whose purpose or effect would be to require a new or increased expenditure of local funds from becoming effective with regard to a local governmental entity without enactment by a 2/3 vote unless: it comes within one of a number of specified exceptions; it is approved by the affected entity; or the Legislature appropriates funds, or provides a local source of revenue, to the entity for the purpose.

The purpose or effect of this bill would be to require a new or increased expenditure of local funds within the meaning of the amendment. However, the bill does not require approval of a local governmental entity or enactment by a 2/3 vote to become effective because it comes within one of the specified exceptions contained in the amendment.
HB454 INTRODUCED

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A BILL
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TO BE ENTITLED
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AN ACT
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63 Relating to abortion; to amend Sections 13A-3-30 and
64 13A-6-1, Code of Alabama 1975; to provide legislative
65 findings; to amend the definition of "person" to include an
66 unborn child from the moment of fertilization; to provide
67 duress as a defense to a murder charge against a woman for the
68 death of her unborn child; to prohibit certain criminal
69 prosecutions for certain medical care resulting in incidental
70 or unintentional death or injury to an unborn child, provided
71 all other reasonable alternatives to the medical care were
72 exhausted; to repeal provisions prohibiting certain
73 prosecutions for lawful abortions and against any woman with
74 respect to her unborn child; to provide that prosecutions of
75 homicide or assault where the victim is unborn shall be
76 treated the same as if he or she were born alive; and in
77 connection therewith would have as its purpose or effect the
78 requirement of a new or increased expenditure of local funds
79 within the meaning of Section 111.05 of the Constitution of
80 Alabama of 2022.
81 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:
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83 Section 1. This act shall be known and may be cited as
84 the Equal Protection Act.
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86 Section 2. The Legislature finds and declares the
following:

(1) That the sanctity of innocent human life, created in the image of God, is acknowledged and should be equally protected from fertilization to natural death.

(2) That all preborn children from the moment of fertilization have the right to life and equal protection of the laws.

(3) That the Constitution of the United States requires that "no state...shall deny to any person within its jurisdiction the equal protection of the laws," and that to fulfill this equal protection requirement, the lives of preborn individuals must be protected with the same criminal and civil laws protecting the lives of born individuals.

(4) That all persons potentially subject to such laws are entitled to due process protections.

Section 3. Sections 13A-3-30 and 13A-6-1, Code of Alabama 1975, are amended to read as follows:

"§13A-3-30

(a) It is a defense to prosecution that the actor engaged in the proscribed conduct because he was compelled to do so by the threat of imminent death or serious physical injury to himself or another.

(b) The defense provided by this section is unavailable if the actor intentionally or recklessly placed himself in a situation in which it was probable that he would be subjected to duress. The defense is also unavailable if he was negligent in placing himself in such a situation, whenever negligence suffices to establish culpability for the offense charged."
(c) It is no defense that a person acted at the command or persuasion of his or her spouse, unless such compulsion would establish a defense under this section. The presumption that a woman is subject to compulsion when acting in the presence of her husband is abolished.

(d) Except where the victim is an unborn child and the defendant is the child's mother, the defense provided by this section is unavailable in a prosecution for either of the following:

(1) murder; or Murder.

(2) any Any killing of another under aggravated circumstances, as provided by Article 2 of Chapter 5 of this title."

"§13A-6-1

(a) As used in Article 1 and Article 2, the following terms shall have the following meanings ascribed to them by this section:

(1) CRIMINAL HOMICIDE. Murder, manslaughter, or criminally negligent homicide.

(2) FERTILIZATION. The fusion of a human spermatozoon with a human ovum.

(2)-(3) HOMICIDE. A person commits criminal homicide if he intentionally, knowingly, recklessly, or with criminal negligence causes the death of another person.

(3)-(4) PERSON. The term, when referring to the victim of a criminal homicide or assault, means a human being, including an unborn child in utero from the moment of fertilization at any stage of development, regardless of
(b) (1) Article 1 or Article 2 shall not apply to the death or injury to an unborn child alleged to be caused by medication or medical care or treatment provided to a pregnant woman when performed by a physician or other licensed health care provider the incidental, accidental, or unintentional injury or death to an unborn child caused by medical care or treatment lawfully provided by a licensed physician to avert the death of a pregnant woman, provided all reasonable alternatives to save the life of the unborn child were attempted, or no alternatives were available.

(2) Mistake or unintentional error on the part of a licensed physician or other licensed health care provider or his or her employee or agent or any person acting on behalf of the patient shall not subject the licensed physician or other licensed health care provider or person acting on behalf of the patient to any criminal liability under this section.

(3) Medical care or treatment includes, but is not limited to, ordering, dispensation, or administration of administering prescribed medications and medical procedures.

(c) A victim of domestic violence or sexual assault may not be charged under Article 1 or Article 2 for the injury or death of an unborn child caused by a crime of domestic violence or rape perpetrated upon her.

(d) Notwithstanding any other law to the contrary, both of the following apply in any prosecution under Article 1 or Article 2 where the victim is an unborn child:

(1) Enforcement shall be subject to the same legal
principles as would apply if the victim were a person who had been born alive, including the same legal presumptions, defenses, justifications, laws of parties, immunities, and clemencies.

(2) District attorneys and the Attorney General shall have concurrent authority to prosecute criminal cases and to perform any duty that necessarily appertains to such authority.

(d) Nothing in Article 1 or Article 2 shall permit the prosecution of (1) any person for conduct relating to an abortion for which the consent of the pregnant woman or a person authorized by law to act on her behalf has been obtained or for which consent is implied by law or (2) any woman with respect to her unborn child.

(e) Nothing in this section shall make it a crime to perform or obtain an abortion that is otherwise legal. Nothing in this section shall be construed to make an abortion legal which is not otherwise authorized by law."

Section 4. The changes in law made by this act apply only to conduct that occurs on or after the effective date of this act. Conduct that occurs before the effective date of this act is governed by the law in effect immediately before the effective date of this act, and that law is continued in effect for that purpose.

Section 5. Although this bill would have as its purpose or effect the requirement of a new or increased expenditure of local funds, the bill is excluded from further requirements and application under Section 111.05 of the Constitution of
Alabama of 2022, because the bill defines a new crime or
amends the definition of an existing crime.

Section 6. This act shall become effective immediately
following its passage and approval by the Governor, or its
otherwise becoming law.