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CRIMES AGAINST UNBORN CHILDREN

1997 Wisconsin Act 295, passed by the legislature and signed by Governor Tommy Thompson to take effect July 1, 1998, creates penalties for causing harm or death to an unborn child which it defines as "any individual of the human species from fertilization until birth that is gestating inside a woman." The act first applies to offenses occurring on July 1, 1998.

BACKGROUND

This law was enacted in response to a Milwaukee incident in which a man struck his pregnant wife in the stomach a week before her expected delivery date. The child was stillborn. The police had no basis under existing law for charging the man with a crime against the unborn child.

CRIMINAL PENALTIES

Existing law imposes a variety of penalties, including prison terms or fines or both, for homicides and other crimes against life and bodily security of a person born alive. Act 295 provides that penalties for these same crimes apply if they are committed against an unborn child. The crimes for which the act provides include: intentional homicide; negligent homicide; homicide or injury resulting from negligent or intoxicated use of firearms, explosives or motor vehicles; battery; and reckless injury.

MOTOR VEHICLE PENALTIES

Act 295 (introduced as 1997 Assembly Bill 221) requires a 5-year revocation of operating privileges if a person is convicted of causing the death of an unborn child by intoxicated use of a motor vehicle. The revocation period doubles if an unborn child is a passenger in a vehicle involved in an offense of causing death by intoxicated use of a vehicle. If a driver is found guilty of causing injury to an unborn child by intoxicated use of a motor vehicle, a 2-year revocation is required, and the revocation doubles to four years if an unborn child is a passenger in a vehicle involved in an offense of causing injury by intoxicated use of a vehicle. As in other cases of death or injury due to intoxicated use of a vehicle, the court may order the seizure or immobilization of a motor vehicle if its use caused the death or injury of an unborn child.

EXCEPTIONS

Act 295 provides that none of the following is considered a crime against an unborn child under the new law:

1. An act committed during an induced abortion;

2. An act committed in accordance with the usual and customary standards of medical practice during diagnostic testing or therapeutic treatment performed by or under the supervision of a licensed physician;
3. An act by a health care provider in accordance with a pregnant woman's power of attorney for health care or the decision of an individual designated to act under her power of attorney for health care;
4. An act by the pregnant woman that results in the death of or bodily harm to the unborn child; and
5. The prescription, dispensation or administration by any lawfully authorized person, and the use by a woman, of any medicine, drug or device that is used for birth control or prevention of pregnancy.

FOR MORE INFORMATION

For copies of 1997 Wisconsin Act 295, contact the Legislative Reference Bureau at (608) 266-0342. Acts can be downloaded from the legislature's website at <http://www.legis.state.wi.us/billtrack.html>.