To amend titles 10 and 18, United States Code, to protect unborn victims of violence.

IN THE SENATE OF THE UNITED STATES

MAY 7, 2003

Mr. DeWine (for himself, Mr. Graham of South Carolina, Mr. Hatch, Mr. Brownback, Mr. Santorum, Mr. Bunning, Mr. Chambliss, Mr. Coleman, Mr. Ensign, Mr. Enzi, Mr. Fitzgerald, Mr. Grassley, Mr. Inhofe, Mr. Kyl, Mr. McCain, Mr. Nickles, Mr. Shelby, Mr. Talent, Mr. Voinovich, and Mr. Allen) introduced the following bill; which was read the first time

MAY 8, 2003

Read the second time and placed on the calendar

A BILL

To amend titles 10 and 18, United States Code, to protect unborn victims of violence.

1 Be it enacted by the Senate and House of Representa-
2 tives of the United States of America in Congress assembled,
3
4 SECTION 1. SHORT TITLE.

5 This Act may be cited as the “Unborn Victims of Vio-
   lence Act of 2003”.
SEC. 2. PROTECTION OF UNBORN CHILDREN.

(a) IN GENERAL.—Title 18, United States Code, is amended by inserting after chapter 90 the following:

“CHAPTER 90A—PROTECTION OF UNBORN CHILDREN

“Sec.
“1841. Causing death of or bodily injury to unborn child.

§ 1841. Causing death of or bodily injury to unborn child

“(a)(1) Any person who engages in conduct that violates any of the provisions of law listed in subsection (b) and thereby causes the death of, or bodily injury (as defined in section 1365) to, a child, who is in utero at the time the conduct takes place, is guilty of a separate offense under this section.

“(2)(A) Except as otherwise provided in this paragraph, the punishment for that separate offense is the same as the punishment provided for that conduct under Federal law had that injury or death occurred to the unborn child’s mother.

“(B) An offense under this section does not require proof that—

“(i) the person engaging in the conduct had knowledge or should have had knowledge that the victim of the underlying offense was pregnant; or
“(ii) the defendant intended to cause the death of, or bodily injury to, the unborn child.

“(C) If the person engaging in the conduct thereby intentionally kills or attempts to kill the unborn child, that person shall be punished as provided under section 1111, 1112, or 1113, as applicable, for intentionally killing or attempting to kill a human being, instead of the penalties that would otherwise apply under subparagraph (A).

“(D) Notwithstanding any other provision of law, the death penalty shall not be imposed for an offense under this section.

“(b) The provisions referred to in subsection (a) are the following:


“(2) Section 408(e) of the Controlled Substances Act of 1970 (21 U.S.C. 848(e)).
“(c) Subsection (a) does not permit prosecution—
“(1) for conduct relating to an abortion for which the consent of the pregnant woman has been obtained or for which such consent is implied by law in a medical emergency;
“(2) for conduct relating to any medical treatment of the pregnant woman or her unborn child; or
“(3) of any woman with respect to her unborn child.
“(d) In this section—
“(1) the terms ‘child in utero’ and ‘child, who is in utero’ mean a member of the species homo sapiens, at any stage of development, who is carried in the womb; and
“(2) the term ‘unborn child’ means a child in utero.”.

(b) Clerical Amendment.—The table of chapters for part I of title 18, United States Code, is amended by inserting after the item relating to chapter 90 the following:

“90A. Causing death of or bodily injury to unborn child 1841”.

SEC. 3. MILITARY JUSTICE SYSTEM.

(a) Protection of Unborn Children.—Subchapter X of chapter 47 of title 10, United States Code
(the Uniform Code of Military Justice), is amended by insert- 
inserting after section 919 (article 119) the following: 

§ 919a. Art. 119a. Causing death of or bodily injury to unborn child 

“(a)(1) Any person subject to this chapter who en-
gages in conduct that violates any of the provisions of law 
listed in subsection (b) and thereby causes the death of, 
or bodily injury (as defined in section 1365 of title 18) 
to, a child, who is in utero at the time the conduct takes 
place, is guilty of a separate offense under this section. 

“(2)(A) Except as otherwise provided in this para-
graph, the punishment for that separate offense is the 
same as the punishment for that conduct under this chap-
ter had that injury or death occurred to the unborn child’s 
mother. 

“(B) An offense under this section does not require 
proof that— 

“(i) the person engaging in the conduct had 
knowledge or should have had knowledge that the 
victim of the underlying offense was pregnant; or 

“(ii) the defendant intended to cause the death 
of, or bodily injury to, the unborn child. 

“(C) If the person engaging in the conduct thereby 
intentionally kills or attempts to kill the unborn child, that 
person shall be punished as provided under section 918,
919, or 880 of this title (article 118, 119, or 80), as applicable, for intentionally killing or attempting to kill a human being, instead of the penalties that would otherwise apply under subparagraph (A).

“(D) Notwithstanding any other provision of law, the death penalty shall not be imposed for an offense under this section.

“(b) The provisions referred to in subsection (a) are sections 918, 919(a), 919(b)(2), 920(a), 922, 924, 926, and 928 of this title (articles 111, 118, 119(a), 119(b)(2), 120(a), 122, 124, 126, and 128).

“(c) Subsection (a) does not permit prosecution—

“(1) for conduct relating to an abortion for which the consent of the pregnant woman has been obtained or for which such consent is implied by law in a medical emergency;

“(2) for conduct relating to any medical treatment of the pregnant woman or her unborn child; or

“(3) of any woman with respect to her unborn child.

“(d) In this section—

“(1) the terms ‘child in utero’ and ‘child, who is in utero’ mean a member of the species homo sapiens, at any stage of development, who is carried in the womb; and
“(2) the term ‘unborn child’ means a child in
uterus.”.

(b) CLERICAL AMENDMENT.—The table of sections
at the beginning of subchapter X of chapter 47 of title
10, United States Code (the Uniform Code of Military
Justice), is amended by inserting after the item relating
to section 919 the following:

“919a. 119a. Causing death of or bodily injury to unborn child.”.
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