

## **CHAPTER 12.1-17.1 OFFENSES AGAINST UNBORN CHILDREN**

### **12.1-17.1-01. Definitions.** As used in this chapter:

1. "Abortion" means the termination of human pregnancy with an intention other than to produce a live birth or to remove a dead embryo or fetus.
2. "Person" does not include the pregnant woman.
3. "Unborn child" means the conceived but not yet born offspring of a human being, which, but for the action of the actor would beyond a reasonable doubt have subsequently been born alive.

### **12.1-17.1-02. Murder of an unborn child.**

1. A person is guilty of murder of an unborn child, a class AA felony, if the person:
  - a. Intentionally or knowingly causes the death of an unborn child;
  - b. Causes the death of an unborn child under circumstances manifesting extreme indifference to the value of the life of the unborn child or the pregnant woman; or
  - c. Acting either alone or with one or more other persons, commits or attempts to commit treason, robbery, burglary, kidnapping, felonious restraint, arson, gross sexual imposition, or escape and, in the course of and in furtherance of such crime or of immediate flight therefrom, the person, or another participant, if any, causes the death of an unborn child; except that in any prosecution under this subsection in which the defendant was not the only participant in the underlying crime, it is an affirmative defense that the defendant:
    - (1) Did not commit the homicidal act or in any way solicit, command, induce, procure, counsel, or aid the commission thereof;
    - (2) Was not armed with a firearm, destructive device, dangerous weapon, or other weapon that under the circumstances indicated a readiness to inflict serious bodily injury;
    - (3) Reasonably believed that no other participant was armed with such a weapon; and
    - (4) Reasonably believed that no other participant intended to engage in conduct likely to result in death or serious bodily injury.

Subdivisions a and b are inapplicable in the circumstances covered by subsection 2.

2. A person is guilty of murder of an unborn child, a class A felony, if the person causes the death of an unborn child under circumstances which would be class AA murder, except that the person causes the death of the unborn child under the influence of extreme emotional disturbance for which there is reasonable excuse. The reasonableness of the excuse must be determined from the viewpoint of a person in the person's situation under the circumstances as the person believes them to be. An extreme emotional disturbance is excusable, within the meaning of this subsection only, if it is occasioned by substantial provocation or a serious event or situation for which the offender was not culpably responsible.

**12.1-17.1-03. Manslaughter of an unborn child.** A person is guilty of manslaughter of an unborn child, a class B felony, if the person recklessly causes the death of an unborn child.

**12.1-17.1-04. Negligent homicide of an unborn child.** A person is guilty of negligent homicide of an unborn child, a class C felony, if the person negligently causes the death of an unborn child.

**12.1-17.1-05. Aggravated assault of an unborn child.** A person is guilty of assault of an unborn child, a class C felony, if that person willfully assaults a pregnant woman and inflicts serious bodily injury on an unborn child.

**12.1-17.1-06. Assault of an unborn child.** A person is guilty of assault of an unborn child, a class A misdemeanor, if the person willfully assaults a pregnant woman and inflicts bodily injury on an unborn child.

**12.1-17.1-07. Exception.** This chapter does not apply to acts or omissions that cause the death or injury of an unborn child if those acts or omissions are committed during an abortion performed by or under the supervision of a licensed physician to which the pregnant woman has consented, nor does it apply to acts or omissions that are committed pursuant to usual and customary standards of medical practice during diagnostic or therapeutic treatment performed by or under the supervision of a licensed physician.

**12.1-17.1-08. Other convictions not prohibited.** A prosecution for or conviction under this chapter is not a bar to conviction of or punishment for any other offense committed by a person as part of the same conduct.