
PREGNANT WOMAN'S PROTECTION ACT (UPDATED)

Model Legislation & Policy Guide
For the 2011 Legislative Year



Changing Law to Protect Human Life, State by State

INTRODUCTION

AUL's "Pregnant Woman's Protection Act" seeks to ensure that a pregnant woman and her unborn child are protected from unlawful criminal violence and that a woman's decision to carry her child to term is respected. Specifically, the model legislation was drafted in direct response to the well-documented and growing problem of pregnancy-related violence against women.

As detailed in the legislative findings section of the "Pregnant Woman's Protection Act," evidence has shown that violence and abuse are often higher during pregnancy than during any other period in a woman's lifetime. For example, according to the March of Dimes, one in six pregnant women has been abused by a partner.¹ A 1998 household survey determined that pregnant women are 60.6 percent more likely to be beaten than women who are not pregnant.²

Sadly, a pregnant woman is more likely to be a victim of homicide than to die of any other cause and homicide and other violent crimes are a leading cause of death for women of reproductive age. Moreover, case after case has demonstrated that husbands or boyfriends are often the perpetrators of pregnancy-associated violence and that this violence is often directed at the unborn child or intended to end or jeopardize the pregnancy.

Clearly, pregnant women face ominous threats of violence to themselves and their unborn children. It is precisely these risks that AUL's "Pregnant Woman's Protection Act" seeks to address.

The model language expressly provides that a pregnant woman may use force to protect her unborn child when she reasonably believes that unlawful force is threatening her unborn child and that her intervention and use of force are immediately necessary to protect her unborn child.

The model language also explicitly limits the use of force to a pregnant woman and does not expand it to third parties. Thus, under the express terms of AUL's carefully-crafted and narrow language, the "Pregnant Woman's Protection Act" could not be used to justify criminal violence against abortion providers or anyone else.

All 50 states permit the use of force in specified circumstances: for self defense, in the defense of others, and when a person reasonably believes that unlawful force is being used or will imminently be against him/her or a third person. "Self-defense" and "defense of others" are

¹ See http://www.marchofdimes.com/Pregnancy/stayingsafe_abuse.html (last visited Feb. 22, 2011).

² "Battering and Pregnancy," *Midwifery Today* 19: 1998.

affirmative defenses raised by a criminal defendant that, if proven true, can provide a complete defense to criminal liability.

With that in mind, it is easy to see that the application of the affirmative defense of “defense of others” to cases where a mother uses force to protect the life of her unborn child is a natural extension of accepted criminal jurisprudence including existing unborn victims of violence protections (*i.e.*, fetal homicide laws and fetal assault laws) that recognize the unborn as a potential victim of criminal violence.

The federal “Unborn Victims of Violence Act” (more commonly known as “Laci and Conner’s Law”) as well as the laws of 36 states³ recognize an unborn child as a separate victim of criminal violence and treat the killing of an unborn child as a form of homicide. In addition, twenty-two states⁴ define non-fatal assaults on unborn children as criminal offenses. Thus, it is clear that recognizing the unborn as “others” for purposes of the “defense of others” theory in no way diverges from approaches taken by the states in other areas of criminal law.

In April 2009, Oklahoma became the first state to enact AUL’s “Pregnant Woman’s Protection Act,” explicitly expanding the affirmative defense of “defense of others” to include instances where a woman uses force to protect her unborn child. Later, in June 2010, Missouri also adopted this groundbreaking, protective law.

A number of other states have considered AUL’s “Pregnant Woman’s Protection Act” or similar language in 2011. Unfortunately, some of the proposed language strayed from AUL’s model and generated significant controversy. Specifically, allegations were made that some of the language would sanction the use of force against abortion providers. While these claims were largely specious and politically-motivated, they do underscore the importance of faithfully following this model language in order to avoid legal issues and/or public relations problems.

³ Alabama, Alaska, Arizona, Georgia, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Texas, Utah, West Virginia, and Wisconsin define the killing of an unborn child at any state of gestation as a form of homicide. California defines the killing of an unborn child after the embryonic stage (seven to eight weeks) as a form of homicide. Arkansas defines the killing of an unborn child after 12 weeks of gestation as a form of homicide. Florida, Nevada, Rhode Island, and Washington define the killing of an unborn child after “quickening” (discernible movement in the womb) as a form of homicide. Maryland, Massachusetts, and Tennessee defined the killing of an unborn child after viability as a form of homicide. New York defines the killing of an unborn child after 24 weeks gestation as a form of homicide.

⁴ Alabama, Alaska, Arizona, Arkansas, Georgia, Idaho, Illinois, Indiana, Louisiana, Michigan, Minnesota, Mississippi, Nebraska, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Texas, West Virginia, and Wisconsin.

For more information and drafting assistance, please contact AUL's Legislative Coordinator
(202) 741 - 4907 or Legislation@AUL.org.

DENISE M. BURKE, ESQ.
Vice President of Legal Affairs
Americans United for Life

PREGNANT WOMAN’S PROTECTION ACT

[Drafter’s Note: This model language may need to be specifically tailored to the requirements of each state’s criminal code. Please contact AUL for specific drafting assistance.]

HOUSE/SENATE BILL No. _____
By Representatives/Senators _____

Section 1. Title.

This Act may be known and cited as the “Pregnant Woman’s Protection Act.”

Section 2. Legislative Findings and Purposes.

- (a) The [Legislature] of the State of [Insert name of State] finds that:
- (1) Violence and abuse are often higher during pregnancy than during any other period in a woman’s lifetime;
 - (2) According to the Centers for Disease Control, every year in the United States more than 300,000 pregnant women experience some kind of violence involving an intimate partner.
 - (3) According to the March of Dimes, one in six pregnant women "have been abused by a partner
 - (4) Further, one household survey determined that pregnant women are 60.6 percent more likely to be beaten than women who are not pregnant. *Battering and Pregnancy*, Midwifery Today 19: 1998.
 - (5) Women are more likely to suffer increased abuse as a result of unintended pregnancies;
 - (6) Younger women are at a higher risk for pregnancy-associated homicide;
 - (7) A pregnant woman is more likely to be a victim of homicide than to die of any other cause;

- (8) Homicide and other violent crimes are the leading cause of death for women of reproductive age;
 - (9) Husbands, ex-husbands, or boyfriends are often the perpetrators of pregnancy-associated homicide or violence;
 - (10) Moreover, when husbands, ex-husbands, or boyfriends are involved, the violence is often directed at the unborn child or intended to end or jeopardize the pregnancy; and
 - (11) Violence against a pregnant woman puts the life and bodily integrity of both the pregnant woman and the unborn child at risk.
- (b) By adopting this Act, the [*Legislature*] intends to:
- (1) Ensure that the affirmative right of a pregnant woman to carry her child to term is protected;
 - (2) Ensure that affirmative defenses to criminal liability provided for under [*Insert name of State*]’s criminal code at Section(s) [*Insert citation(s) to appropriate criminal code section(s)*] explicitly provide for a pregnant woman’s right to use force including deadly force to protect her unborn child; and
 - (3) Supplement, but not supersede, the applicability of any other affirmative defenses to criminal liability provided for under [*Insert name of State*]’s criminal code.

Section 3. Definitions.

As used in this Act only:

- (a) “**Another**” means a person other than the pregnant woman.
- (b) “**Deadly force**” means [*Insert specific language from and citation(s) to appropriate state criminal code section(s)*] (or “*force which, under the circumstances in which it is used, is readily capable of causing death or serious physical harm*”).
- (c) “**Force**” means [*Insert specific language from and citation(s) to appropriate state criminal code section(s)*] (or “*violence, compulsion, or constraint exerted upon or against another*”).

- (d) “**Embryo**” means an individual organism of species *homo sapiens* from the single cell stage to eight (8) weeks development.
- (e) “**Pregnant**” means the female reproductive condition of having an unborn child in the woman’s body.
- (f) “**Unborn child**” means the offspring of human beings from conception until birth.
- (g) “**Unlawful force**” means [*Insert specific language from and citation(s) to appropriate state criminal code section(s)*] (or “*force which is employed without the consent of the pregnant woman and which constitutes an offense under the criminal laws of this State or an actionable tort*”).

Section 4. Affirmative Defense to Criminal Liability.

A pregnant woman is justified in using force or deadly force against another to protect her unborn child if:

- (a) Under the circumstances as the pregnant woman reasonably believes them to be, she would be justified under Section(s) [*Insert citation(s) to state criminal code section(s) on self-defense and use of deadly force*] in using force or deadly force to protect herself against the unlawful force or unlawful deadly force she reasonably believes to be threatening her unborn child; and
- (b) She reasonably believes that her intervention and use of force or deadly force are immediately necessary to protect her unborn child.

Section 5. Exclusions.

The affirmative defense to criminal liability provided for under this Act does not apply to:

- (a) Acts committed by anyone other than the pregnant woman (*which may otherwise be provided for under alternate sections of this State’s criminal code*);
- (b) Acts where the pregnant woman would be obligated under Section(s) [*Insert state criminal code section(s) requiring retreat before acting in self-defense, if any*] to retreat, to surrender the possession of a thing, or to comply with a demand before using force in self-defense. However, the pregnant woman is not obligated to retreat before using force or deadly

force to protect her unborn child, unless she knows that she can thereby secure the complete safety of her unborn child; or

(c) The defense of human embryos existing outside of a woman's body (*such as, but not limited to, frozen human embryos stored at fertility clinics or elsewhere*).

Section 6. Severability.

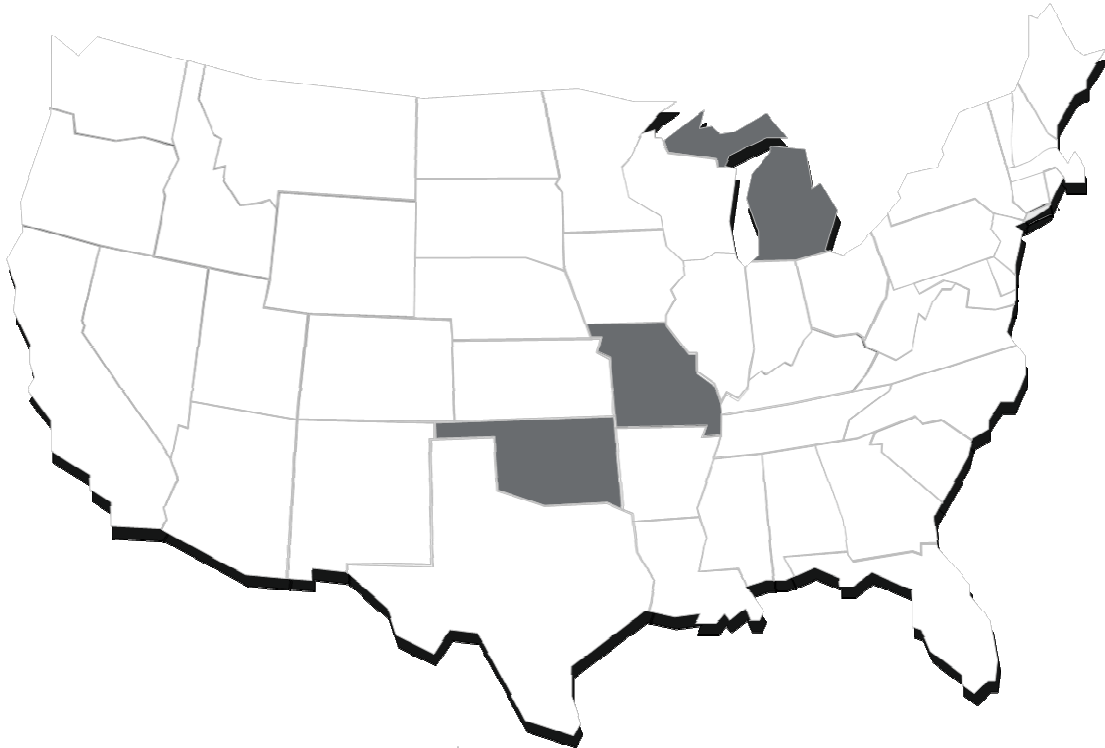
Any provision of this Act held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, shall be construed so as to give it maximum effect permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which event such provision shall be deemed severable herefrom and shall not affect the remainder hereof or the application of such provision to other persons not similarly situated or to other, dissimilar circumstances.

Section 7. Effective Date.

This Act takes effect on [*Insert date*].

STATE OF THE STATES: WHERE ARE WE NOW?

USE OF FORCE TO PROTECT THE UNBORN



Three states specifically permit the application of the affirmative defense of “defense of others” to cases where a woman uses force (including deadly force) to protect her unborn child: MI, MO, and OK.

More detailed information about the need and justification for the “Pregnant Woman’s Protection Act” and other legislation protecting unborn children can be found in AUL’s annual publication *Defending Life 2010: A State by State Legal Guide to Abortion, Bioethics, and the End of Life*.

Defending Life 2010 is available online at AUL.org or for purchase at Amazon.com.

For further information regarding this or other AUL policy guides, please contact:

AMERICANS UNITED FOR LIFE

655 15th Street NW, Suite 410

Washington DC 20005

202.289.1478 | Fax 202.289.1473 | Legislation@AUL.org

www.AUL.org

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