

1 AN ACT relating to unborn children.

2 WHEREAS, the Fourteenth Amendment of the Constitution of the United States
3 requires that no state "shall deny to any person within its jurisdiction the equal protection
4 of the laws"; and

5 WHEREAS, innocent human life, created in the image of God, should be equally
6 protected under the laws from fertilization to natural death; and

7 WHEREAS, to ensure the right to life and equal protection of the laws, all preborn
8 children should be protected with the same homicide laws protecting all other human
9 persons; and

10 WHEREAS, all persons potentially subject to such laws are entitled to due process
11 protections; and

12 WHEREAS, pregnant mothers should be protected from being pressured to abort
13 their children by repealing provisions that may otherwise allow a person to solicit,
14 command, aid, or counsel a mother to abort her child;

15 NOW, THEREFORE,

16 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

17 ➔Section 1. KRS 507.010 is amended to read as follows:

18 As used in this chapter:

19 (1) "Abuse" has the same meaning as in KRS 508.090;

20 (2) "Criminal homicide" means that a person is guilty of causing the death of another
21 human being under circumstances which constitute murder, manslaughter in the
22 first degree, manslaughter in the second degree, or reckless homicide; ~~and~~

23 **(3) "Person" and "human being" include an unborn child;**

24 **(4) "Spontaneous miscarriage" means the natural or accidental termination of a**
25 **pregnancy and the expulsion of the unborn child; and**

26 **(5) "Unborn child" means an individual from fertilization until live birth.**

27 ~~(6)~~(3) "Physically helpless" and "mentally helpless" have the same meaning as in

1 KRS 508.090.

2 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 507 IS CREATED TO
3 READ AS FOLLOWS:

4 *Unless specifically provided otherwise, in a prosecution under this chapter where the*
5 *victim is an unborn child, enforcement shall be subject to the same legal principles as*
6 *would apply to the homicide of a person who had been born alive, including*
7 *presumptions, defenses, justifications, laws of parties, immunities, and clemencies.*

8 ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 507 IS CREATED TO
9 READ AS FOLLOWS:

10 *(1) Nothing in this chapter shall apply to a lawful medical procedure:*

11 *(a) Performed by a licensed physician;*

12 *(b) Performed on a pregnant woman to avert the death of the pregnant woman;*

13 *(c) That results in the accidental or unintentional death of the unborn child the*
14 *pregnant woman is carrying; and*

15 *(d) Performed when all reasonable alternatives to save the life of the unborn*
16 *child:*

17 *1. Are unavailable; or*

18 *2. Were attempted unsuccessfully before the performance of the medical*
19 *procedure.*

20 *(2) Nothing in this chapter shall be construed to allow for prosecution for a*
21 *spontaneous miscarriage.*

22 ➔SECTION 4. A NEW SECTION OF KRS CHAPTER 508 IS CREATED TO
23 READ AS FOLLOWS:

24 *The following definitions apply in KRS 508.010 to 508.040 and Sections 4, 5, and 6 of*
25 *this Act:*

26 *(1) "Person" and "human being" include an unborn child;*

27 *(2) "Spontaneous miscarriage" means the natural or accidental termination of a*

1 *pregnancy and the expulsion of the unborn child; and*

2 *(3) "Unborn child" means an individual from fertilization until live birth.*

3 ➔SECTION 5. A NEW SECTION OF KRS CHAPTER 508 IS CREATED TO
4 READ AS FOLLOWS:

5 *(1) Nothing in this chapter shall apply to a lawful medical procedure:*

6 *(a) Performed by a licensed physician;*

7 *(b) Performed on a pregnant woman to avert the death of the pregnant woman;*

8 *(c) That results in the accidental or unintentional death of the unborn child the*
9 *pregnant woman is carrying; and*

10 *(d) Performed when all reasonable alternatives to save the life of the unborn*
11 *child:*

12 *1. Are unavailable; or*

13 *2. Were attempted unsuccessfully before the performance of the medical*
14 *procedure.*

15 *(2) Nothing in this chapter shall be construed to allow for prosecution for a*
16 *spontaneous miscarriage.*

17 ➔SECTION 6. A NEW SECTION OF KRS CHAPTER 508 IS CREATED TO
18 READ AS FOLLOWS:

19 *Unless specifically provided otherwise, in a prosecution under KRS 508.010 to 508.040*
20 *and Sections 4, 5, and 6 of this Act where the victim is an unborn child, enforcement is*
21 *subject to the same presumptions, defenses, justifications, laws of parties, immunities,*
22 *and clemencies as would apply to the assault of or related offense against a person who*
23 *had been born alive.*

24 ➔Section 7. KRS 501.090 is amended to read as follows:

25 (1) In any prosecution for an offense other than an intentional homicide, it is a defense
26 that the defendant engaged in the proscribed conduct because he *or she* was coerced
27 to do so by the use of, or a threat of the use of, unlawful physical force against him

1 or her or another person which a person in his or her situation could not reasonably
2 be expected to resist.

3 (2) The defense provided by subsection (1) of this section is unavailable if the
4 defendant intentionally or wantonly placed himself or herself in a situation in
5 which it was probable that he or she would be subjected to coercion.

6 **(3) The defense provided by subsection (1) of this section is available for an offense**
7 **of intentional homicide where the victim is an unborn child as defined in Section**
8 **1 of this Act and the defendant is the child's mother.**

9 ➔SECTION 8. A NEW SECTION OF KRS CHAPTER 15 IS CREATED TO
10 READ AS FOLLOWS:

11 **The Attorney General shall have concurrent jurisdiction with the Commonwealth's**
12 **attorneys and county attorneys for the investigation and prosecution of offenses under**
13 **KRS Chapters 507 and 508 where the victim is an unborn child, as defined in Sections**
14 **1 and 4 of this Act.**

15 ➔Section 9. KRS 439.265 is amended to read as follows:

16 (1) Subject to the provisions of KRS Chapter 439 and Chapters 500 to 534, any Circuit
17 Court may, upon motion of the defendant made not earlier than thirty (30) days nor
18 later than one hundred eighty (180) days after the defendant has been incarcerated
19 in a county jail following his or her conviction and sentencing pending delivery to
20 the institution to which he or she has been sentenced, or delivered to the keeper of
21 the institution to which he or she has been sentenced, suspend the further execution
22 of the sentence and place the defendant on probation upon terms the court
23 determines. Time spent on any form of release following conviction shall not count
24 toward time required under this section.

25 (2) The court shall consider any motion filed in accordance with subsection (1) of this
26 section within sixty (60) days of the filing date of that motion, and shall enter its
27 ruling within ten (10) days after considering the motion. The defendant may, in the

1 discretion of the trial court, have the right to a hearing on any motion he or she may
2 file, or have filed for him or her, that would suspend further execution of sentence.
3 Any court order granting or denying a motion to suspend further execution of
4 sentence is not reviewable.

5 (3) (a) During the period in which the defendant may file a motion pursuant to this
6 statute, the sentencing judge, within his or her discretion, may order that the
7 defendant be held in a local detention facility that is not at or above maximum
8 capacity until such time as the court rules on said motion. During this period
9 of detention, and prior to the court's ruling on said motion, the court may
10 require the defendant to participate in any approved community work program
11 or other forms of work release. Persons held in the county jail pursuant to this
12 subsection shall not be subject to transfer to a state correctional facility until
13 the decision is made not to place the petitioner on shock probation.

14 (b) The provisions concerning community work programs or other forms of work
15 release shall apply only to persons convicted of Class C or Class D felonies,
16 and may be granted only after a hearing at which the Commonwealth's
17 attorney has the opportunity to present arguments in favor or opposition
18 thereto.

19 (4) (a) If the defendant is a violent offender as defined in KRS 439.3401, the
20 sentence shall not be probated under this section.

21 (b) The sentence shall not be probated under this section if the defendant has been
22 convicted of:

- 23 1. A violation of ~~either~~ KRS 507.040 ~~or 507A.040~~ and a violation of
24 KRS 189A.010 arising out of the same incident; or
- 25 2. A violation of ~~either~~ KRS 507.050 ~~or 507A.050~~ and a violation of
26 KRS 189A.010 arising out of the same incident.

27 (5) If the defendant has been convicted of an offense under KRS 510.050, 510.080,

1 530.020, 530.064(1)(a), or 531.310, or criminal attempt to commit any of these
2 offenses under KRS 506.010, the sentence shall not be suspended, in accordance
3 with KRS 532.045.

4 (6) When a defendant has been convicted of a sex crime, as defined in KRS 17.500, the
5 court shall order a comprehensive sex offender presentence evaluation, unless one
6 has been provided within the past six (6) months, in which case the court may order
7 an update of the comprehensive sex offender presentence evaluation of the
8 defendant conducted by the sex offender treatment program operated or approved
9 by the Department of Corrections or the Sex Offender Risk Assessment Advisory
10 Board. The comprehensive sex offender presentence evaluation shall provide to the
11 court a recommendation related to the risk of a repeat offense by the defendant and
12 the defendant's amenability to treatment, and shall be considered by the court in
13 determining whether to suspend the sentence. If the court suspends the sentence and
14 places the defendant on probation, the provisions of KRS 532.045(3) to (7) shall
15 apply.

16 (7) The authority granted in this section shall be exercised by the judge who imposed
17 sentence on the defendant, unless he or she is unable to act and it appears that his or
18 her inability to act should continue beyond the expiration of the term of the court.
19 In such case, the judge who imposed sentence shall assign a judge to dispose of a
20 motion filed under this section, or as prescribed by the rules and practices
21 concerning the responsibility for disposition of criminal matters.

22 (8) The provisions of this section shall not apply where a sentence of death has been
23 imposed.

24 ➔Section 10. The following KRS sections are repealed:

25 507A.010 Definitions -- Exceptions.

26 507A.020 Fetal homicide in the first degree.

27 507A.030 Fetal homicide in the second degree.

1 507A.040 Fetal homicide in the third degree.

2 507A.050 Fetal homicide in the fourth degree.

3 507A.060 Death sentence prohibited.

4 →Section 11. The changes in law made by this Act apply only to conduct that
5 occurs on or after the effective date of this Act. Conduct that occurs before the effective
6 date of this Act is governed by the law in effect immediately before the effective date of
7 this Act, and that law is continued in effect for that purpose.

8 →Section 12. Existing provisions relating to prenatal homicide or assault or
9 regulating abortion or abortion facilities are not repealed but are superseded to the extent
10 that such provisions may conflict with or may be inconsistent with Sections 1, 2, 3, 4, 5,
11 6, 7, and 8 of this Act.

12 →Section 13. This Act may be cited as the Prenatal Equal Protection Act.