

1 AN ACT relating to unborn children.

2 WHEREAS, the Fourteenth Amendment to 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. A NEW SECTION OF KRS CHAPTER 507 IS CREATED TO
18 READ AS FOLLOWS:

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

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

25 *This chapter shall not apply to the unintentional death of an unborn child when the*
26 *death results from:*

27 *(1) The undertaking of life-saving procedures on a pregnant woman when the*

1 *procedures are accompanied by reasonable steps, if available, to save the life of*
 2 *her unborn child; or*

3 *(2) A spontaneous miscarriage.*

4 ➔Section 3. KRS 507.010 is amended to read as follows:

5 As used in this chapter:

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

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

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

11 ~~(4)(3)~~ "Physically helpless" and "mentally helpless" have the same meaning as in
 12 KRS 508.090;

13 *(5) "Spontaneous miscarriage" means the natural or accidental termination of a*
 14 *pregnancy and the expulsion of the unborn child; and*

15 *(6) "Unborn child" means an individual from fertilization until live birth.*

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

18 *As used in KRS 508.010, 508.020, 508.025, 508.030, 508.032, and 508.040 and Sections*
 19 *4 to 6 of this Act:*

20 *(1) "Person" includes an unborn child;*

21 *(2) "Spontaneous miscarriage" means the natural or accidental termination of a*
 22 *pregnancy and the expulsion of the unborn child; and*

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

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

26 *Unless specifically provided otherwise, in a prosecution under KRS 508.010, 508.020,*
 27 *508.025, 508.030, 508.032, and 508.040 where the victim is an unborn child,*

1 enforcement shall be subject to the same legal principles as would apply to the assault
2 of a person who had been born alive, including presumptions, defenses, justifications,
3 laws of parties, immunities, and clemencies.

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

6 This chapter shall not apply to the unintentional death of an unborn child when the
7 death results from:

8 (1) The undertaking of life-saving procedures on a pregnant woman when the
9 procedures are accompanied by reasonable steps, if available, to save the life of
10 her unborn child; or

11 (2) A spontaneous miscarriage.

12 ➔SECTION 7. A NEW SECTION OF KRS CHAPTER 15 IS CREATED TO
13 READ AS FOLLOWS:

14 The Attorney General shall have concurrent jurisdiction with Commonwealth's
15 attorneys and county attorneys for the investigation and prosecution of offenses under
16 KRS Chapter 507 and KRS 508.010, 508.020, 508.025, 508.030, 508.032, and 508.040
17 when the victim is an unborn child as defined in Sections 3 and 4 of this Act.

18 ➔Section 8. KRS 439.265 is amended to read as follows:

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

1 (2) The court shall consider any motion filed in accordance with subsection (1) of this
2 section within sixty (60) days of the filing date of that motion, and shall enter its
3 ruling within ten (10) days after considering the motion. The defendant may, in the
4 discretion of the trial court, have the right to a hearing on any motion he or she may
5 file, or have filed for him or her, that would suspend further execution of sentence.
6 Any court order granting or denying a motion to suspend further execution of
7 sentence is not reviewable.

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

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

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

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

26 1.—]a violation of either KRS 507.040 or 507.050†~~507A.040~~ and a
27 violation of KRS 189A.010 arising out of the same incident†; †

1 ~~2.—A violation of either KRS 507.050 or 507A.050 and a violation of KRS~~
2 ~~189A.010 arising out of the same incident].~~

3 (5) If the defendant has been convicted of an offense under KRS 510.050, 510.080,
4 530.020, 530.064(1)(a), or 531.310, or criminal attempt to commit any of these
5 offenses under KRS 506.010, the sentence shall not be suspended, in accordance
6 with KRS 532.045.

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

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

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

27 ➔Section 9. The following KRS sections are repealed:

- 1 507A.010 Definitions -- Exceptions.
- 2 507A.020 Fetal homicide in the first degree.
- 3 507A.030 Fetal homicide in the second degree.
- 4 507A.040 Fetal homicide in the third degree.
- 5 507A.050 Fetal homicide in the fourth degree.
- 6 507A.060 Death sentence prohibited.

7 ➔Section 10. The changes in law made by this Act apply only to conduct that
8 occurs on or after the effective date of this Act. Conduct that occurs before the effective
9 date of this Act is governed by the law in effect at the time the conduct occurred, and that
10 law is continued in effect for that purpose.

11 ➔Section 11. Existing provisions relating to prenatal homicide or assault or
12 regulating abortion or abortion facilities are not repealed but are superseded to the extent
13 that those provisions may conflict with or may be inconsistent with Section 1, 2, 3, 4, 5,
14 6, or 7 of this Act.

15 ➔Section 12. This Act may be cited as the Prenatal Equal Protection Act.