

1 **H. B. 2311**

2  
3 (By Delegate Hatfield)

4 [Introduced January 12, 2011; referred to the  
5 Committee on the Judiciary.]  
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10 A BILL to amend the Code of West Virginia, 1931, as amended, by  
11 adding thereto a new section, designated §61-2-31, relating to  
12 creating the criminal offense of injury to a pregnant woman  
13 that results in miscarriage or stillbirth; specifying  
14 penalties for such offense; providing for escalating levels of  
15 punishment that are proportionate to the degree of violence  
16 involved and for when the offense involves criminal acts of  
17 domestic violence; defining terms; providing an exception; and  
18 providing that certain additional prosecutions and convictions  
19 are not barred.

20 *Be it enacted by the Legislature of West Virginia:*

21 That the Code of West Virginia, 1931, as amended, be amended  
22 by adding thereto a new section, designated §61-2-31, to read as  
23 follows:

24 **ARTICLE 2. CRIMES AGAINST THE PERSON.**

1 **§61-2-31. Injury to pregnant woman.**

2 (a) The Legislature finds and declares that:

3 (1) Intentional criminal acts that cause a miscarriage or  
4 interrupt normal fetal development are tragic and should be  
5 punished accordingly;

6 (2) The harm that results from an underlying offense against  
7 a pregnant woman is greater when it results in injury to or death  
8 of her fetus; and

9 (3) Violent crimes against pregnant women are especially  
10 heinous and deserve appropriately severe penalties.

11 Accordingly, the Legislature declares that penalties for  
12 certain crimes of violence against a pregnant woman that result in  
13 miscarriage or interruption of the normal development of her fetus  
14 should reflect the gravity of the offense, as set forth in the  
15 above stated legislative findings.

16 (b) Unless the context clearly requires a different meaning,  
17 the following terms have the meanings indicated:

18 (1) "Miscarriage" means the interruption of the normal  
19 development of a fetus, other than by a live birth and which is not  
20 an induced abortion, that results in the complete expulsion or  
21 extraction of the fetus from a pregnant woman; and

22 (2) "Stillbirth" means the death of a fetus prior to the  
23 complete expulsion or extraction of the fetus from a pregnant  
24 woman, irrespective of the duration of the pregnancy, and which is

1 not an induced abortion.

2 (c) Except for the offense set forth in subsection (d) of this  
3 section, any person who, in the commission of a felony, causes  
4 injury to a woman, knowing the woman to be pregnant, which injury  
5 results in a miscarriage or stillbirth by the woman, is guilty of  
6 a second felony in addition to the underlying offense and, upon  
7 conviction thereof, shall be confined in a state correctional  
8 facility for a definite term that is not less than three years nor  
9 more than fifteen years.

10 (d) Notwithstanding the provision of subsection (c) of this  
11 section, any person who, in the commission of a misdemeanor that  
12 constitutes an act of domestic violence as defined in section  
13 twenty-eight of this article, causes injury to a woman, knowing the  
14 woman to be pregnant, which injury results in a miscarriage or  
15 stillbirth by the woman, is guilty of a felony offense in addition  
16 to the underlying misdemeanor and, upon conviction thereof, shall  
17 be confined in a state correctional facility for a definite term of  
18 not less than one year nor more than five years. If the underlying  
19 offense of domestic violence constitutes a felony, the defendant is  
20 guilty of a second felony offense in addition to the underlying  
21 felony and, upon conviction thereof, shall be confined in a state  
22 correctional facility for a definite term of not less than five  
23 years nor more than fifteen years.

24 (e) This section does not apply to acts committed by a

1 pregnant woman which result in a miscarriage or stillbirth by the  
2 woman.

3 (f) A prosecution for or conviction under this section does`  
4 not bar additional prosecutions, convictions or penalties for any  
5 other offense committed by the defendant that arises from the same  
6 incident that may be prosecuted under this section.

NOTE: The purpose of this bill is to create a new criminal offense based on acts of violence against a pregnant woman that result in a miscarriage or stillbirth of her fetus.

This section is new; therefore, it has been completely underscored.