
Pregnant Woman's Protection Act

Model Legislation & Policy Guide



*Advancing the Human Right to Life
in Culture, Law, and Policy*

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, this model language was drafted in direct response to the well-documented 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 2017 study shows that pregnant women are twice as likely to be a victim of an assault-related trauma, and die from their injuries, than an accident-related trauma, as compared to 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 leading causes of death for women of reproductive age.³ Moreover, case after case has demonstrated that a husband or boyfriend is often the perpetrator of pregnancy-associated violence, and that this violence is often intended to end or jeopardize the pregnancy.

Clearly, pregnant women face significant 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 (1) that unlawful force is threatening her

¹ See "Staying Safe," http://www.marchofdimes.com/Pregnancy/stayingsafe_abuse.html (last visited July 5, 2022).

² "Pregnancy Linked to Higher Risk of Death from Traumatic Injury," <https://www.pennmedicine.org/news/news-releases/2017/may/pregnancy-linked-to-higher-risk-of-death-from-traumatic-injury> (last visited July 5, 2022).

³ See, e.g., Nidhi Subbaraman, *Homicide is a Top Cause of Maternal Death in the United States*, *Nature* (Nov. 12, 2021), <https://www.nature.com/articles/d41586-021-03392-8#ref-CR1>; Maeve Wallace et al., *Homicide During Pregnancy and the Postpartum Period in the United States, 2018-2019*, 138 *Obstetrics and Gynecology* 762, 762-69 (2021); Olga Khazan, *Nearly Half of All Murdered Women Are Killed by Romantic Partners*, *The Atlantic* (July 20, 2017), <https://www.theatlantic.com/health/archive/2017/07/homicides-women/534306/>; *Pregnancy Linked to Higher Risk of Death from Traumatic Injury*, *Penn Medicine News* (May 05, 2017), <https://www.pennmedicine.org/news/news-releases/2017/may/pregnancy-linked-to-higher-risk-of-death-from-traumatic-injury>.

unborn child and (2) 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 language, the *Pregnant Woman's Protection Act* cannot 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, for the defense of others, and when a person reasonably believes that unlawful force is being used or will imminently be used against him/her or a third person. "Self-defense" and "defense of others" are 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 federal and state unborn victims of violence protections (*i.e.*, fetal homicide and assault laws) that recognize unborn children as potential victims of criminal violence.

The federal *Unborn Victims of Violence Act* (often referred to as "Laci and Conner's Law"), as well as the laws of 39 states⁴ 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, at least

⁴ Alabama, Alaska, Arizona, Arkansas, Florida, Georgia, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, and Wisconsin define the killing of an unborn child at any state of gestation as a form of homicide.

California and Montana define the killing of an unborn child after the embryonic stage (seven to eight weeks gestation) as a form of homicide.

Nevada, Rhode Island, and Washington define the killing of an unborn child after "quickening" (discernible movement in the womb) as a form of homicide.

New Hampshire defines the killing of an unborn child after 20 weeks gestation as a form of homicide.

Maryland and Massachusetts 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.

22 states⁵ define non-fatal assaults on unborn children as criminal offenses. Thus, 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 the 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, Missouri and Arkansas also adopted this groundbreaking law.

A number of other states have considered AUL’s *Pregnant Woman’s Protection Act* or similar language. Unfortunately, some of the proposed language strayed from AUL’s model language and subsequently generated controversy. Specifically, allegations were made that some of the language would sanction the use of force against abortion providers. While these claims were specious and politically motivated, they do underscore the importance of faithfully following this model language (and carefully confining the permitted use of force to pregnant women) to avoid legal issues and/or public relations problems.

For more information and drafting assistance, please contact AUL at Legislation@AUL.org.

⁵ 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.

PREGNANT WOMAN'S PROTECTION ACT

[**Drafter's Note:** *This model language may need to be specifically tailored to the provisions/requirements of a state's criminal code. Otherwise, the model language should be carefully duplicated. Please contact AUL for 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 324,000 pregnant women experience some form of violence involving an intimate partner.
 - (3) According to the March of Dimes, one (1) in six (6) pregnant women has 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 because of unintended pregnancies, and pregnant women are more likely to be victims of homicide than to die of any other cause.
 - (6) Homicide and other violent crimes are a leading cause of death for women of reproductive age.

- (7) Husbands, ex-husbands, or boyfriends are often the perpetrators of pregnancy-associated homicide or violence. Moreover, when a husband, ex-husband, or boyfriend is involved, the violence is often intended to end or jeopardize the pregnancy.
 - (8) Violence against a pregnant woman puts the life and bodily integrity of both the pregnant woman and the unborn child at risk.
- (b) Based on the findings in subsection (a), it is the purpose of this Act is to:
- (1) Ensure that the 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 in circumstances where 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; 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 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]* of *[Insert name of State]’s [criminal/penal]* code 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.
- (b) Acts where the pregnant woman would be obligated under *[Section(s)] [Insert citations to state criminal code section(s) requiring retreat before acting in self-defense, if any]* of *[Insert name of State]’s [criminal/penal]* code *[to retreat, to surrender the possession of a thing, or to comply with a demand before using force or deadly 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.

(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, is construed to give it the maximum effect permitted by law. If such holding wholly invalidates or renders the provision unenforceable, the provision is severable from and does not affect the remainder of this Act or to other persons not similarly situated or to other, dissimilar circumstances.

Section 7. Right of Intervention.

The [*Legislature*], by joint resolution, may appoint one or more of its members, who sponsored or cosponsored this Act in his or her official capacity, to intervene as a matter of right in any case in which the constitutionality of this Act is challenged.

Section 8. Effective Date.

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

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

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