

POLICY BRIEF

HB 2159

Establishing a Woman's Right to Protect her Unborn Child

Sponsor: Rep. Gary Stubblefield

Summary: This bill protects a pregnant woman's right to use physical or deadly force in order to protect her unborn child against an assault.

Current Laws and History

- Arkansas law protects pregnant women against criminal assault, just the same as all other citizens.
- Arkansas law protects unborn children against murder, manslaughter, or homicide after 12 weeks of gestation if the child is killed during the commission of a crime.
- Arkansas law does not protect unborn children against assault or bodily harm at any time.
- While a pregnant woman has the right to defend her own body against a criminal assault, in Arkansas she has no legal right to defend the child inside her against assault.
- If an unborn child does not die in an assault, no crime has been committed against the child.
- It is considered capital murder, murder in the first degree, murder in the second degree, manslaughter, or negligent homicide to kill an unborn child during the commission of a crime, after 12 weeks of gestation¹.
- Arkansas parents or relatives are able to bring wrongful death (civil) lawsuits when a viable unborn child is killed through the negligence or criminal act of another.
- In the State of Arkansas a pregnant woman is not protected from criminal liability if she uses force to protect her unborn child. This bill would strengthen a woman's ability to protect her unborn child from physical harm.

Points to Consider

- In 1999, A Michigan woman was found guilty of manslaughter and sent to prison because she used force to defend her unborn quadruplets that resulted in the death of her attacker. The woman's conviction was eventually overturned on appeal².
- A March, 2005, article appearing in the *American Journal of Public Health* cited several studies that found homicide was a leading cause of death during pregnancy and the postpartum period, indicating pregnant women are at risk of being victims of violence³.
- All 50 states permit the use of force, including deadly force, in the circumstance of "defense of others".
- By expanding the "defense of others" to include instances where a woman feels the need to protect her unborn child, Arkansas would protect pregnant women who are often potential victims of violence.
- Missouri and Oklahoma have passed laws similar to this bill, and a 2002 Michigan court decision states a pregnant woman may use deadly force to protect her unborn child.

¹ AR Stat. Ann. §5-1-102 13(b)(i)(a)

² <http://www.foxnews.com/story/0,2933,70997,00.html>

³ "Homicide: A Leading Cause of Injury Deaths Among Pregnant and Postpartum Women in the United States, 1991–1999". Jeani Chang, MPH, Cynthia J. Berg, MD, MPH, Linda E. Saltzman, PhD, and Joy Herndon, MS. *American Journal of Public Health*. March, 2005



Q&A on HB 2159

1. Isn't it already illegal to assault a pregnant woman?

Answer: Yes, but it is not illegal to assault her unborn child. An assailant could break the bones of an unborn child, fracture the baby's skull, and leave it disabled for life. As long as the baby doesn't die, our laws do nothing to protect that baby.

2. Wouldn't an assault that is severe enough to seriously hurt an unborn baby be serious enough to be ruled self-defense if the mother used deadly force?

Answer: No. It wasn't enough for a pregnant woman in Michigan. A woman killed her boyfriend who was trying to kill her unborn child. That woman was convicted of a crime and she spent 2 years in prison until her conviction was overturned on appeal.

3. Why should this bill pass?

Answer: We don't want to wait until a pregnant woman is sent to prison for simply defending her unborn child against an assault. If she has a legal right to defend her child once it is born, why shouldn't she have the same right to defend her child before it is born?

4. Might the passage of this law allow pregnant women to get away with murder?

Answer: No. Trying to use this law to justify a homicide wouldn't be any different from trying to use our existing self-defense laws as justification for any other homicide. In each case, a court of law might have to sort things out.

5. What if the assailant does not know the woman is pregnant?

Answer: If the assailant is using unlawful force or deadly force, the woman not only would have a legal right to defend herself, but she would have a legal right to defend her unborn child as well. Again, if she has a right to defend herself and her baby after the baby is born, why shouldn't she have the right to defend herself and her baby while she is pregnant?

6. Don't we already have enough self-defense laws on the books?

Answer: No. Arkansas has laws on the books that allow individuals to defend themselves from death or bodily harm; and it has laws that allow a person to defend others from the threat of death or bodily harm; but it does not have a law specifying that an unborn child is one of the "others" a person may defend. In Michigan, the absence of such a law caused a woman to be imprisoned for manslaughter after she used deadly force defending her unborn children during an attack. This bill will help provide additional legal protection for any pregnant woman who is attacked, and make sure that no Arkansas woman ever has to fear being imprisoned for protecting her unborn child from a criminal assault.

7. Aren't our current self-defense laws sufficient to ensure women can defend their unborn child?

Answer: Passing this bill will ensure that Arkansas' laws are clear, because it will very specifically state that a woman has the legal ability to use force in protecting her unborn child from a criminal assault.

8. Would this bill somehow allow a person to attack or kill an abortion doctor?

Answer: Absolutely not. Abortion is a recognized medical procedure. This bill only takes into account individual cases of criminal assault.

9. Would this bill allow a person to attack or kill someone performing a "back alley" abortion?

Answer: No. A so-called "back alley" abortion—that is, an abortion that is performed in an illegal manner—involves some measure of consent on the part of the woman in order to undergo the procedure. By contrast, criminal assault and battery is never consensual on the part of the victim. A back alley abortion may be illegal, but it is not a form of criminal assault.

10. Would this bill allow a woman who regrets having an abortion to attack or kill the doctor who performed the abortion?

Answer: No. Even under criminal law, a victim cannot use force against their attacker once the immediate threat of injury or death has passed. This prevents victims of crimes from retaliating against their attackers after the crime has been committed. Abortion is not considered a crime under Arkansas law, but even if it were, this bill would in no way allow a woman to return to retaliate against her abortion doctor after the abortion has been performed.

11. Would this bill allow a pregnant woman to use force against a person attempting to coerce her into having an abortion?

Answer: No. The only instance in which a pregnant woman may use force under this bill is when a criminal assault is directed at her unborn child. Trying to get someone to have an abortion is not, in and of itself, a criminal assault against the unborn child.

12. Would this bill somehow inhibit a woman's ability to defend herself against a criminal assault?

Answer: No. Arkansas has other laws that allow individuals to defend themselves from a physical attack. This bill in no way preempts any of those laws. It merely clarifies that a pregnant woman may use force to protect her unborn child in addition to protecting herself.