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# PREGNANT WOMAN'S PROTECTION ACT

Model Legislation & Policy Guide  
*For the 2011 Legislative Year*



*Changing Law to Protect Human Life, State by State*

# INTRODUCTION

In 1999, Jaclyn Kurr suffered a miscarriage after being physically attacked by her boyfriend, Antonio Pena. Jaclyn was more than 16 weeks pregnant with quadruplets when Pena punched her stomach multiple times during an argument. Jaclyn stabbed Pena in defense of her unborn children. Pena subsequently died, and Jaclyn was charged with and found guilty of manslaughter. On appeal, the Michigan Court of Appeals held that Jaclyn, as a pregnant woman, was justified in using force – including deadly force – to protect the lives of her unborn children.<sup>1</sup>

This ruling by the Michigan Court of Appeals has brought attention to an area of law that has long been neglected. Applying the affirmative defense of “defense of others” to protect the unborn is a victory for women and children, and opens a new chapter in the fight to protect the lives of the unborn.

All 50 states permit the use of force including deadly force in specified circumstances: for self defense, in the defense of others, and when a person reasonably believes that unlawful force is being used or will imminently be against him/her or a third person. In the Kurr case, the court applied the affirmative defense of “defense of others” to situations where a woman believes that the life of her unborn child is at risk.

“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. If force is used in defense of another, the person using the force is not required to believe that his or her own life is at risk for the defense to apply.

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 unborn victims of violence protections (*i.e.*, fetal homicide laws and fetal assault laws) that recognize the unborn as a potential victim of criminal violence.

The federal “Unborn Victims of Violence Act” (more commonly known as “Laci and Conner’s Law”) as well as the laws of 36 states<sup>2</sup> recognize an unborn child as a separate victim of criminal

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<sup>1</sup> 654 N.W.2d 651, 657 (Mich. Ct. App. 2002).

<sup>2</sup> Alabama, Alaska, Arizona, Georgia, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Texas, Utah, West Virginia, and Wisconsin define the killing of an unborn child at any state of gestation as a form of homicide. California defines the killing of an unborn child after the embryonic stage (seven to eight weeks) as a form of homicide. Arkansas defines the killing of an unborn child after 12 weeks of gestation as a form of homicide.

violence and treat the killing of an unborn child as a form of homicide. In addition, twenty-two states<sup>3</sup> define non-fatal assaults on unborn children as criminal offenses. Thus, it is clear that 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 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, in June 2010, Missouri also adopted this groundbreaking, protective law.

For more information and drafting assistance, please contact AUL’s Legislative Coordinator (202) 741 - 4907 or Legislation@AUL.org.

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Florida, Nevada, Rhode Island, and Washington define the killing of an unborn child after “quickenings” (discernible movement in the womb) as a form of homicide. Maryland, Massachusetts, and Tennessee 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.

<sup>3</sup> 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 provides general guidance and should be specifically tailored to the requirements of each state’s criminal code. Please contact AUL for specific 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) Women are more likely to suffer increased abuse as a result of unintended pregnancies;
  - (3) Younger women are at a higher risk for pregnancy-associated homicide;
  - (4) A pregnant woman is more likely to be a victim of homicide than to die of any other cause;
  - (5) Homicide and other violent crimes are the leading cause of death for women of reproductive age;
  - (6) Husbands, ex-husbands, or boyfriends are often the perpetrators of pregnancy-associated homicide or violence;
  - (7) Moreover, when husbands, ex-husbands, or boyfriends are involved, the violence is often directed at the unborn child or intended to end or jeopardize the pregnancy; and

- (8) Violence against a pregnant woman puts the life and bodily integrity of both the pregnant woman and the unborn child at risk.
- (b) By adopting this Act, the [Legislature] intends to:
- (1) Ensure that the affirmative 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; 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 eight (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]* 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 (*which may otherwise be provided for under alternate sections of this State’s criminal code*);
- (b) Acts where the pregnant woman would be obligated under Section(s) *[Insert state criminal code section(s) requiring retreat before acting in self-defense, if any]* to retreat, to surrender the possession of a thing, or to comply with a demand before using 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; or
- (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, shall be construed so as to give it maximum effect permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which event such

provision shall be deemed severable herefrom and shall not affect the remainder hereof or the application of such provision to other persons not similarly situated or to other, dissimilar circumstances.

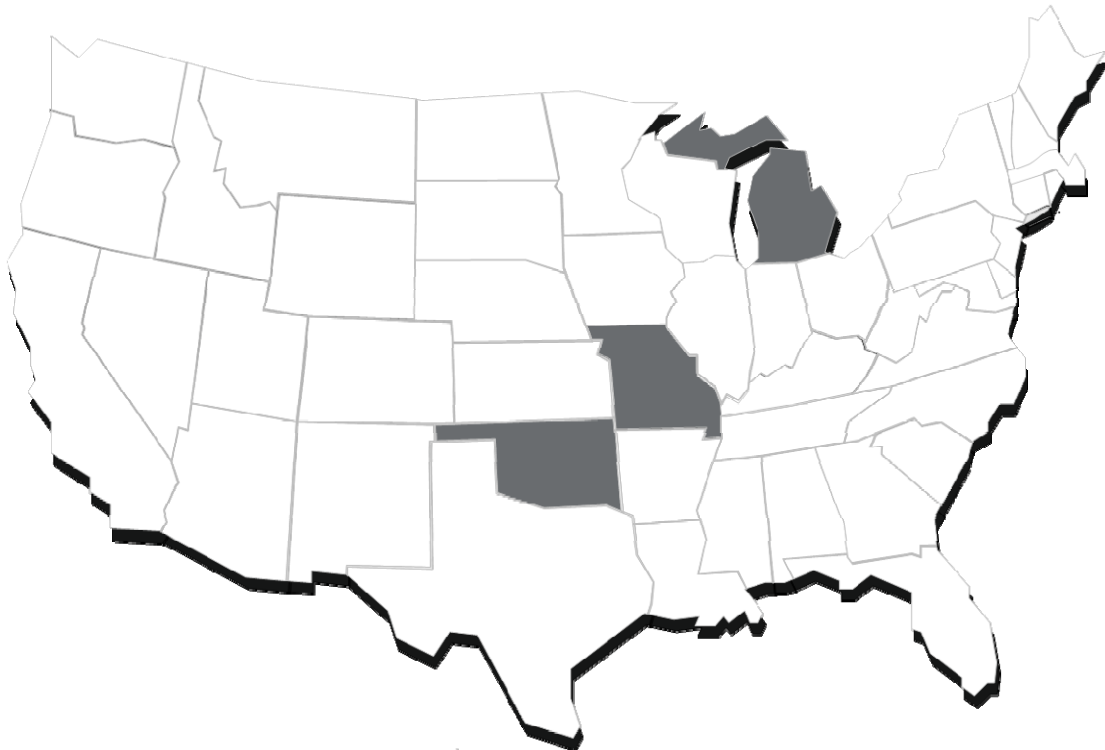
**Section 7. Effective Date.**

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

# STATE OF THE STATES: WHERE ARE WE NOW?

## USE OF FORCE TO PROTECT THE UNBORN

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Three states specifically permit the application of the affirmative defense of “defense of others” to cases where a woman uses force (including deadly force) to protect her unborn child: MI, MO, and OK.

More detailed information about the need and justification for the “Pregnant Woman’s Protection Act” and other legislation protecting unborn children can be found in AUL’s annual publication *Defending Life 2010: A State by State Legal Guide to Abortion, Bioethics, and the End of Life*.

*Defending Life 2010* is available online at [AUL.org](http://AUL.org) or for purchase at [Amazon.com](http://Amazon.com).

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

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