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FISCAL IMPACT REPORT

SPONSOR Marquardt DATE TYPED 3/2/05 HB 698

SHORT TITLE Separate Offense for Killing Unborn Children SB _____

ANALYST Ford

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
	NFI				

(Parenthesis () Indicate Expenditure Decreases)

Conflicts with HB 111

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

Attorney General (AGO)

Department of Corrections (NMCD)

Public Defender Department (PDD)

SUMMARY

Synopsis of Bill

House Bill 698 creates a separate criminal offense for a person who causes injury or death of a child in utero in the commission of a crime. The penalties for such offense are the same as if the injury or death occurred to the unborn child's mother. The bill does not require proof that the person committing the crime knew that the woman was pregnant or intended to cause injury or death to the unborn child.

If the person intentionally causes injury or death of an unborn child, the person shall be punished as provided in the Criminal Code for intentionally causing death or injury to a human being.

The bill does not allow for the death penalty to be imposed for offenses under this section.

The bill does not apply to conduct relating to a consensual abortion, for medical treatment of a

pregnant woman or her unborn child, or of any woman with respect to her unborn child.

Significant Issues

The AGO and PDD note that this bill may be open to court challenge for vagueness because the definition of “unborn child” lacks detail. Other states have enacted similar statutes and have faced challenges for vagueness regarding the definition.

Subsection C specifically addresses the penalties for a person who intentionally causes injury or death to an unborn child, establishing that the person shall face the same penalties under the Criminal Code as if the offense had been committed against a human being. It is unclear how this differs from the preceding sections of the bill, which provide that penalties shall be the same as if the offense were committed against the mother. Presumably, these would be the same penalties since the mother is a human being. The AGO notes that the lack of clarity in this section could be problematic in a court challenge.

The AGO also notes that the language exempting acts related to an abortion are also unclear. The AGO suggests that the bill refer to the abortion statute. The AGO also notes that Subsection E(3), which excludes conduct of any woman with respect to her unborn child, could open the bill for a challenge under the equal protection clause.

Finally, the AGO notes that the bill could be challenged on double jeopardy grounds since a person could be convicted under both this bill and the criminal abortion statute, injury to a pregnant woman, injury to a pregnant woman by vehicles, and abandonment or abuse of a child.

FISCAL IMPLICATIONS

Because the bill creates a new criminal offense, it may result in increased costs to the courts and to the NMCD. However, NMCD anticipates few convictions under the new statute. The fiscal impact to the state is likely to be minimal.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

House Bill 698 conflicts with House Bill 111, which enacts the “Unborn Victims of Violence Act.”

EF/yr:lg