
PRE-BORN VICTIMS OF CRIME LAW

Model Legislation & Policy Guide



INTRODUCTION

Canada is failing pregnant women and their pre-born children. Pre-born children are not recognized as persons for the purpose of the law, so the law fails to count their death or injury at the hands of violent criminals. It's time to fix this gap in the law by introducing a law recognizing that when a pregnant woman is killed there are two victims.

Canada's lack of abortion law comes with a failure to recognize pre-born children as human beings prior to birth. But women who choose motherhood should be honored and respected in that choice. Pre-born children should be recognized as persons in cases of crime against pregnant women and in sentencing decisions.

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Pre-born Victims of Crime Draft Law

SUMMARY

This enactment amends the *Criminal Code* to make it an offence to cause injury or death to a pre-born child while committing or attempting to commit an offence against a pregnant woman and to make the victim's pregnancy a factor in sentencing.

Preamble

Whereas no charges can be laid for the death of a pre-born child victimized by violent crime because existing criminal law does not recognize the harm caused to a pre-born child as a separate offence when a pregnant woman is the victim of a crime;

Whereas not being considered a human being under the *Criminal Code* does not mean that a pre-born child does not deserve protection under the law;

Whereas a majority of Canadians support the adoption of legislation that would make it a separate offence to cause injury or death to a pre-born child during the commission of an offence against the child's mother;

Whereas Parliament wishes to address this gap in the law and allow for two charges to be laid in such circumstances;

And whereas Parliament wishes to more strongly denounce violence against pregnant women by explicitly including pregnancy as an aggravating circumstance in sentencing;

Now, therefore, His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

1. The *Criminal Code* is amended by adding the following after section 238:

Definition of *pre-born child*

238.1 (1) For the purposes of this section, *pre-born child* means a child at any stage of

development that has not yet become a human being within the meaning of section 223.

Offence — causing the death of a pre-born child while committing an offence

(2) Every person who, while committing or attempting to commit an offence under this Act against a pregnant person, directly or indirectly causes the death of her pre-born child

- (a) is guilty of an indictable offence and liable
 - (i) if the person means to cause injury or death to the pre-born child or injury to the mother that the person knows is likely to cause the pre-born child's death, and is reckless as to whether death ensues or not, to imprisonment for life and to a minimum punishment of imprisonment for a term of 10 years,
 - (ii) if the person shows wanton or reckless disregard for the life or safety of the pre-born child, to imprisonment for life, or
 - (iii) in any other case, to imprisonment for a term not exceeding 14 years; or
- (b) is guilty of an offence punishable on summary conviction and liable to imprisonment for a term not exceeding 18 months.

Offence — injuring a pre-born child while committing an offence

(3) Every person who, while committing or attempting to commit an offence under this Act against a pregnant person, directly or indirectly causes injury to a pre-born child

- (a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding 10 years; or
- (b) is guilty of an offence punishable on summary conviction and liable to imprisonment for a term not exceeding 18 months.

(4) An offence referred to in this section is not included in any offence committed against the mother of the pre-born child.

The Criminal Code is amended by adding the following after Paragraph 718.2(a)

subparagraph (ii.1):

(ii.2) evidence that the offender, in committing the offence, abused a pregnant person;

(ii.3) evidence that the offence had a significant negative impact on a pregnant victim's pre-born child.

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