

CHAPTER 340

CRIMINAL LAW AND PROCEDURE

HOUSE BILL 03-1138

BY REPRESENTATIVE(S) Hefley, Schultheis, Cloer, May M., Crane, Lee, Rhodes, Boyd, Brophy, Butcher, Fritz, Harvey, Hoppe, Jahn, Lundberg, Miller, Spradley, Stafford, Stengel, and Wiens;
also SENATOR(S) Hillman, Andrews, Arnold, Cairns, Johnson S., Jones, Lamborn, May R., McElhany, Nichol, Owen, and Teck.

AN ACT

**CONCERNING OFFENSES AGAINST PREGNANT WOMEN THAT AFFECT THEIR UNBORN CHILDREN, AND
MAKING AN APPROPRIATION IN CONNECTION THEREWITH.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Legislative declaration. (1) The general assembly hereby finds that:

(a) In the summer of 2002, a young woman was brutally murdered in a town in Colorado;

(b) Autopsy results indicate that the young woman was between sixteen and seventeen weeks pregnant at the time of her murder;

(c) Autopsy results further indicate that the young woman's child was a healthy boy who, presumably, would have been alive at birth;

(d) Under current Colorado law, the young woman's murderer can be charged with her murder, but this person cannot be held directly accountable for the termination of her pregnancy;

(e) Justice requires a change to Colorado's law in order to hold persons who assault or murder pregnant women directly and fully accountable for the harm they cause both to the women and to their unborn children.

SECTION 2. Title 18, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW ARTICLE to read:

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

ARTICLE 3.5
Unlawful Termination of Pregnancy

18-3.5-101. Unlawful termination of pregnancy. (1) A PERSON COMMITS THE OFFENSE OF UNLAWFUL TERMINATION OF A PREGNANCY IF, WITH INTENT TO TERMINATE UNLAWFULLY THE PREGNANCY OF ANOTHER PERSON, THE PERSON UNLAWFULLY TERMINATES THE OTHER PERSON'S PREGNANCY.

(2) UNLAWFUL TERMINATION OF A PREGNANCY IS A CLASS 4 FELONY.

18-3.5-102. Exclusions. NOTHING IN THIS ARTICLE SHALL PERMIT THE PROSECUTION OF A PERSON FOR PROVIDING MEDICAL TREATMENT, INCLUDING BUT NOT LIMITED TO AN ABORTION, IN UTERO TREATMENT, OR TREATMENT RESULTING IN LIVE BIRTH, TO A PREGNANT WOMAN FOR WHICH THE CONSENT OF THE PREGNANT WOMAN, OR A PERSON AUTHORIZED BY LAW TO ACT ON HER BEHALF, HAS BEEN OBTAINED OR FOR WHICH CONSENT IS IMPLIED BY LAW.

SECTION 3. 18-1.3-401 (13) (a) (II) and (13) (a) (III), Colorado Revised Statutes, are amended to read:

18-1.3-401. Felonies classified - presumptive penalties. (13) (a) The court, if it sentences a defendant who is convicted of any one or more of the offenses specified in paragraph (b) of this subsection (13) to incarceration, shall sentence the defendant to a term of at least the midpoint, but not more than twice the maximum, of the presumptive range authorized for the punishment of the offense of which the defendant is convicted if the court makes the following findings on the record:

(II) The defendant knew or reasonably should have known that the victim of the offense was pregnant. ~~and~~

(III) ~~The underlying factual basis of the offense includes an act of domestic violence, as defined in section 18-6-800.3 (1).~~

SECTION 4. 18-1.3-501 (6) (b) and (6) (c), Colorado Revised Statutes, are amended to read:

18-1.3-501. Misdemeanors classified - penalties. (6) For a defendant who is convicted of assault in the third degree, as described in section 18-3-204, the court, in addition to any fine the court may impose, shall sentence the defendant to a term of imprisonment of at least six months, but not longer than the maximum sentence authorized for the offense, as specified in this section, which sentence shall not be suspended in whole or in part, if the court makes the following findings on the record:

(b) The defendant knew or should have known that the victim of the offense was pregnant. ~~and~~

(c) ~~The underlying factual basis of the offense includes an act of domestic violence, as defined in section 18-6-800.3 (1).~~

SECTION 5. 18-1.3-1201 (5), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

18-1.3-1201. Imposition of sentence in class 1 felonies - appellate review.

(5) For purposes of this section, aggravating factors shall be the following factors:

(q) THE VICTIM WAS A PREGNANT WOMAN, AND THE DEFENDANT INTENTIONALLY KILLED THE VICTIM, KNOWING SHE WAS PREGNANT.

SECTION 6. Part 1 of article 1 of title 17, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

17-1-146. Appropriation to comply with section 2-2-703 - HB 03-1138.

(1) PURSUANT TO SECTION 2-2-703, C.R.S., THE FOLLOWING STATUTORY APPROPRIATIONS, OR SO MUCH THEREOF AS MAY BE NECESSARY, ARE MADE IN ORDER TO IMPLEMENT H.B. 03-1138, ENACTED AT THE FIRST REGULAR SESSION OF THE SIXTY-FOURTH GENERAL ASSEMBLY:

(a) FOR THE FISCAL YEAR BEGINNING JULY 1, 2005, IN ADDITION TO ANY OTHER APPROPRIATION, THERE IS HEREBY APPROPRIATED FROM THE CAPITAL CONSTRUCTION FUND CREATED IN SECTION 24-75-302, C.R.S., TO THE CORRECTIONS EXPANSION RESERVE FUND CREATED IN SECTION 17-1-116, THE SUM OF ONE HUNDRED THIRTY-EIGHT THOUSAND NINE HUNDRED THIRTY-FOUR DOLLARS (\$138,934).

(b) (I) FOR THE FISCAL YEAR BEGINNING JULY 1, 2006, IN ADDITION TO ANY OTHER APPROPRIATION, THERE IS HEREBY APPROPRIATED, FROM THE CAPITAL CONSTRUCTION FUND CREATED IN SECTION 24-75-302, C.R.S., TO THE CORRECTIONS EXPANSION RESERVE FUND CREATED IN SECTION 17-1-116, THE SUM OF ONE HUNDRED TWENTY-FIVE THOUSAND FORTY-ONE DOLLARS (\$125,041).

(II) FOR THE FISCAL YEAR BEGINNING JULY 1, 2006, IN ADDITION TO ANY OTHER APPROPRIATION, THERE IS HEREBY APPROPRIATED TO THE DEPARTMENT OF CORRECTIONS, OUT OF ANY MONEYS IN THE GENERAL FUND NOT OTHERWISE APPROPRIATED, THE SUM OF FIFTY-SIX THOUSAND FOUR HUNDRED THIRTY-SIX DOLLARS (\$56,436).

(c) FOR THE FISCAL YEAR BEGINNING JULY 1, 2007, IN ADDITION TO ANY OTHER APPROPRIATION, THERE IS HEREBY APPROPRIATED TO THE DEPARTMENT OF CORRECTIONS, OUT OF ANY MONEYS IN THE GENERAL FUND NOT OTHERWISE APPROPRIATED, THE SUM OF ONE HUNDRED SEVEN THOUSAND TWO HUNDRED TWENTY-EIGHT DOLLARS (\$107,228).

SECTION 7. 24-75-302 (2) (r) and (2) (s), Colorado Revised Statutes, are amended to read:

24-75-302. Capital construction fund - capital assessment fees - calculation.

(2) As of July 1, 1988, and July 1 of each year thereafter through July 1, 2006, a sum as specified in this subsection (2) shall accrue to the capital construction fund. The state treasurer and the controller shall transfer such sum out of the general fund and into the capital construction fund as moneys become available in the general fund during the fiscal year beginning on said July 1. Transfers between funds pursuant to this subsection (2) shall not be deemed to be appropriations subject to the limitations of section 24-75-201.1. The amount which shall accrue pursuant to this subsection (2) shall be as follows:

(r) On July 1, 2005, one hundred million dollars, plus four hundred forty-nine thousand seven hundred ninety-nine dollars pursuant to S.B. 02-050, enacted at the second regular session of the sixty-third general assembly; PLUS ONE HUNDRED THIRTY-EIGHT THOUSAND NINE HUNDRED THIRTY-FOUR DOLLARS PURSUANT TO H.B. 03-1138, ENACTED AT THE FIRST REGULAR SESSION OF THE SIXTY-FOURTH GENERAL ASSEMBLY;

(s) On July 1, 2006, twenty-two thousand nine hundred twenty-four dollars pursuant to section 3 of H.B. 02S-1006, enacted at the third extraordinary session of the sixty-third general assembly; PLUS ONE HUNDRED TWENTY-FIVE THOUSAND FORTY-ONE DOLLARS PURSUANT TO H.B. 03-1138, ENACTED AT THE FIRST REGULAR SESSION OF THE SIXTY-FOURTH GENERAL ASSEMBLY.

SECTION 8. Effective date - applicability. This act shall take effect July 1, 2003, and shall apply to offenses committed on or after said date.

SECTION 9. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 3, 2003