



2005 ASSEMBLY BILL 994

February 7, 2006 - Introduced by Representatives PETTIS, GUNDERSON, ALBERS, HINES, JESKEWITZ, KRAWCZYK, LEMAHIEU, LOEFFELHOLZ, LOTHIAN, MUSSER, NEWCOMER, OTT, PRIDEMORE, TOWNS and TOWNSEND, cosponsored by Senators ROESSLER and S. FITZGERALD. Referred to Committee on Judiciary.

1 **AN ACT** *to renumber and amend* 939.75 (2) (a) and 939.75 (2) (b) 3.; *to amend*
2 961.01 (6); and *to create* 939.75 (2) (a) 1., 939.75 (2) (a) 2. and 939.75 (2) (c) of
3 the statutes; **relating to:** delivery of a controlled substance by a pregnant
4 woman to an unborn child and providing penalties.

Analysis by the Legislative Reference Bureau

Current law prohibits the delivery of illegal drugs, with the maximum penalties depending on the type and the amount of the drug involved. (For example, delivery of more than 40 grams of cocaine or more than 50 grams of heroin or methamphetamine is a Class C felony, while delivery of 200 grams or less of marijuana is a Class I felony.) "Delivery" is defined as the transfer or attempted transfer of a drug from one person to another. This bill revises the definition of "delivery" so that it includes a transfer of an illegal drug from a pregnant woman to her unborn child.

Current law also prohibits a person from causing the death of an unborn child through reckless conduct or by an act that was intended to cause the death of the unborn child, the woman who was pregnant with the unborn child, or any other person. The maximum penalties for these offenses depend on the state of mind of the person convicted of the offense. (The most severe penalty is for first-degree intentional homicide, which is a Class A felony; the least severe penalty is for second-degree reckless homicide, which is a Class D felony.) Under current law, however, none of these homicide statutes cover a pregnant woman who causes the death of her unborn child. This bill makes the intentional and reckless homicide

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statutes applicable to a pregnant woman who uses illegal drugs if the unborn child dies as a result.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 939.75 (2) (a) of the statutes is renumbered 939.75 (2) (a) (intro.)
2 and amended to read:

3 939.75 (2) (a) (intro.) In this subsection, “induced;

4 3. “Induced abortion” means the use of any instrument, medicine, drug or other
5 substance or device in a medical procedure with the intent to terminate the
6 pregnancy of a woman and with an intent other than to increase the probability of
7 a live birth, to preserve the life or health of the infant after live birth or to remove
8 a dead fetus.

9 **SECTION 2.** 939.75 (2) (a) 1. of the statutes is created to read:

10 939.75 (2) (a) 1. “Controlled substance” has the meaning given in s. 961.01 (4).

11 **SECTION 3.** 939.75 (2) (a) 2. of the statutes is created to read:

12 939.75 (2) (a) 2. “Controlled substance analog” has the meaning given in s.
13 961.01 (4m).

14 **SECTION 4.** 939.75 (2) (b) 3. of the statutes is renumbered 939.75 (2) (d) and
15 amended to read:

16 939.75 (2) (d) ~~An Sections 940.08 (2), 940.09 (1) (c) to (e) and (1g) (c), (cm), and~~
17 (d), 940.10 (2), 940.195, 940.23 (1) (b) and (2) (b), 940.24 (2), and 940.25 (1) (c) to (e)
18 do not apply to an act by a woman who is pregnant with an unborn child that results

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1 in the death of or great bodily harm, substantial bodily harm, or bodily harm to that
2 unborn child.

3 **SECTION 5.** 939.75 (2) (c) of the statutes is created to read:

4 939.75 (2) (c) Sections 940.01 (1) (b), 940.02 (1m), 940.05 (2g) and (2h), and
5 940.06 (2) do not apply to an act by a woman who is pregnant with an unborn child
6 that results in the death of or great bodily harm, substantial bodily harm, or bodily
7 harm to that unborn child unless the woman uses a controlled substance or a
8 controlled substance analog that she is not authorized to possess and the unborn
9 child dies as a result.

10 **SECTION 6.** 961.01 (6) of the statutes is amended to read:

11 961.01 (6) "Deliver" or "delivery", unless the context otherwise requires, means
12 the actual, constructive, or attempted transfer ~~from one person to another~~ of a
13 controlled substance or controlled substance analog from one person to another,
14 whether or not there is any agency relationship, or, if the woman is not authorized
15 under this chapter to possess the controlled substance or controlled substance
16 analog, from a pregnant woman to her unborn child.

17 (END)