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LEGISLATIVE TESTIMONY

To: Joint Committee on the Judiciary

From: James F. Driscoll, Esq., Executive Director

Re: House 2216, "An Act Relative to Fetal Homicide."

Date: October 5, 2011

The Massachusetts Catholic Conference ("Conference") respectfully submits this testimony in support of House 2216, "An Act Relative to Fetal Homicide."

The bill would add provisions to the Massachusetts criminal code creating a separate category of criminal offenses causing injuries to or the death of "a child in utero" at any time throughout pregnancy. The Massachusetts courts hold as a matter of common law that an individual injuring or killing an unborn child can be prosecuted if while still in the womb the child was viable, that

is, capable of living outside of the womb, at the time the criminal act occurred.^{1[1]} The bill would extend the protection of the state's homicide law to previability by including offenses inflicted on unborn children "at any stage of development." Section 1 (adding M.G.L. c. 265 § 13M(a)).

The bill is modeled after a federal statute, "The Unborn Victims of Violence Act of 2004," whereby Congress has afforded legal protection throughout pregnancy to unborn children against crimes prohibited by the federal criminal code and the Uniform Code of Military Justice.^{2[2]} Twenty-six (26) states similarly define the killing of an unborn child at any stage of gestation as homicide while six (6) other states provide homicide protection to unborn children at various previability starting points between seven (7) to twenty-four (24) weeks of gestation. Twenty-one (21) states currently prohibit non-fatal criminal assaults against unborn children.^{3[3]}

House 2216, in line with these laws at the federal and state levels, expressly excludes legal abortion from its scope. Section 1 (adding M.G.L. c. 265 § 13M(d)). The bill focuses instead on criminal violence against a pregnant woman and her unborn child, not legal abortion, by acknowledging the separate existence of the child for the statutory purpose of identifying crime victims. The Supreme Judicial Court has noted, irrespective of constitutional rulings on abortion, that the definition of "person" under the Massachusetts criminal code is synonymous with "human being," and that "an offspring of human parents cannot reasonably be considered to be other than human being, and therefore a person, first within, and then in normal course outside, the womb."^{4[4]} The bill advances the common good by extending the logic of this judicial premise to all unborn victims of criminal violence.

For the foregoing reasons, the Conference respectfully urges the Committee to give House 2216 a favorable report recommending the bill's passage.

Attached: Pages 305-06 from the Americans United for Life annual report, *A State-by-State Legal Guide to Abortion, Bioethics, and the End of Life* (2011).

The Massachusetts Catholic Conference is the public policy office of the Roman Catholic Bishops in the Commonwealth, representing the Archdiocese of Boston and the Dioceses of Fall River, Springfield, and Worcester.

^{1[1]} Commonwealth v. Crawford, 430 Mass. 683 (2000); Commonwealth v. Lawrence, 404 Mass 378 (1989); Commonwealth b. Cass, 392 Mass. 799 (1984).

^{2[2]} Pub. L. No. 108-212, 118 Stat. 558.

^{3[3]} Americans United for Life, *A State-by-State Legal Guide to Abortion, Bioethics, and the End of Life* 305-06 (2011).

^{4[4]} Cass, 392 Mass. at 801.

