H-1776.1

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**HOUSE BILL 2130**

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**State of Washington 64th Legislature 2015 Regular Session**

**By** Representatives Klippert, Scott, and Haler

AN ACT Relating to the murder of an unborn viable child; amending RCW 9A.32.030 and 9A.32.050; adding a new section to chapter 9A.32 RCW; and prescribing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

**Sec.**  RCW 9A.32.030 and 1990 c 200 s 1 are each amended to read as follows:

(1) A person is guilty of murder in the first degree when:

(a)(i) With a premeditated intent to cause the death of another person, he or she causes the death of such person or of a third person, or (ii) with a premeditated intent to cause the death of an unborn viable child, he or she causes the death of the unborn viable child by intentionally inflicting any injury upon the mother of such child; or

(b) Under circumstances manifesting an extreme indifference to human life, he or she engages in conduct which creates a grave risk of death to any person, and thereby causes the death of a person; or

(c) Under circumstances manifesting an extreme indifference to human life, he or she engages in conduct which creates a grave risk of death to an unborn viable child, and thereby causes the death of an unborn viable child; or

(d) He or she commits or attempts to commit the crime of either ((~~(1)~~)) (i) robbery in the first or second degree, ((~~(2)~~)) (ii) rape in the first or second degree, ((~~(3)~~)) (iii) burglary in the first degree, ((~~(4)~~)) (iv) arson in the first or second degree, or ((~~(5)~~)) (v) kidnapping in the first or second degree, and in the course of or in furtherance of such crime or in immediate flight therefrom, he or she, or another participant, causes the death of a person other than one of the participants: Except that in any prosecution under this ((~~subdivision~~)) subsection (1)((~~(c)~~)) (d) in which the defendant was not the only participant in the underlying crime, if established by the defendant by a preponderance of the evidence, it is a defense that the defendant:

(i) Did not commit the homicidal act or in any way solicit, request, command, importune, cause, or aid the commission thereof; and

(ii) Was not armed with a deadly weapon, or any instrument, article, or substance readily capable of causing death or serious physical injury; and

(iii) Had no reasonable grounds to believe that any other participant was armed with such a weapon, instrument, article, or substance; and

(iv) Had no reasonable grounds to believe that any other participant intended to engage in conduct likely to result in death or serious physical injury.

(2) For purposes of this section, an unborn viable child is a fetus who has reached the gestational age of twenty-four weeks or older.

(3) Murder in the first degree is a class A felony.

**Sec.**  RCW 9A.32.050 and 2003 c 3 s 2 are each amended to read as follows:

(1) A person is guilty of murder in the second degree when:

(a) With intent to cause the death of another person but without premeditation, he or she causes the death of such person or of a third person; ((~~or~~))

(b) With intent to cause the death of an unborn viable child but without premeditation, he or she causes the death of the unborn viable child by intentionally inflicting any injury upon the mother of such child; or

(c) He or she commits or attempts to commit any felony, including assault, other than those enumerated in RCW 9A.32.030(1)((~~(c)~~)) (d), and, in the course of and in furtherance of such crime or in immediate flight therefrom, he or she, or another participant, causes the death of a person other than one of the participants; except that in any prosecution under this ((~~subdivision~~)) subsection (1)((~~(b)~~)) (c) in which the defendant was not the only participant in the underlying crime, if established by the defendant by a preponderance of the evidence, it is a defense that the defendant:

(i) Did not commit the homicidal act or in any way solicit, request, command, importune, cause, or aid the commission thereof; and

(ii) Was not armed with a deadly weapon, or any instrument, article, or substance readily capable of causing death or serious physical injury; and

(iii) Had no reasonable grounds to believe that any other participant was armed with such a weapon, instrument, article, or substance; and

(iv) Had no reasonable grounds to believe that any other participant intended to engage in conduct likely to result in death or serious physical injury.

(2) For purposes of this section, an unborn viable child is a fetus who has reached the gestational age of twenty-four weeks or older.

(3) Murder in the second degree is a class A felony.

NEW SECTION. **Sec.**  A new section is added to chapter 9A.32 RCW to read as follows:

RCW 9A.32.030 and 9A.32.050 do not apply to any act committed pursuant to and in compliance with chapter 9.02 RCW.

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