

**STATE OF TENNESSEE**

OFFICE OF THE  
**ATTORNEY GENERAL**  
P.O. Box 20207  
NASHVILLE, TENNESSEE 37202

November 3, 2010

Opinion No. 10-110

Fetuses as Victims of Criminal Offenses

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**QUESTION**

If enacted into law, would the provisions of HB 3495/SB 3699 of the 106<sup>th</sup> General Assembly, which would have amended Tenn. Code Ann. §§ 39-13-107(a) and 39-13-214(a) to expand the category of fetuses that may be considered victims of criminal assaultive offenses and of criminal homicide, interfere with any statutory provision that now allows for legal abortion?

**OPINION**

No. The bill would leave in place existing statutory provisions, *i.e.*, Tenn. Code Ann. §§ 39-13-107(c) and 39-13-214(c), which expressly provide that neither statute affects legal abortion.

**ANALYSIS**

House Bill 3495/Senate Bill 3699 would have amended Tenn. Code Ann. §§ 39-13-107(a) and 39-13-214(a), two sections of the criminal code that establish who may be considered a victim of an assaultive offense or of criminal homicide. Presently, the sections recognize that a “viable fetus of a human being” may be considered to have been a victim of these offenses under certain circumstances.

HB 3495/SB 3699 would amend the above sections by providing that when at the time of the criminal act the victim was pregnant, her human fetus, “regardless of viability of the fetus,” may also be considered to have been a victim of the offense. HB 3495/SB 3699, §§ 1, 2.

While the bill’s provisions would clearly broaden the category of fetuses that could be considered to be victims of criminal assault or of criminal homicide,<sup>1</sup> we do not believe that the provisions would impact other statutes that now allow for legal abortion in Tennessee. Existing provisions of both Tenn. Code Ann. § 39-13-107 and § 39-13-214 expressly state that

[i]t is the legislative intent that this section *shall in no way affect abortion, which is legal in Tennessee*. This section shall in no way apply to acts that are

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<sup>1</sup> In Op. Tenn. Att’y Gen. 10-69 (May 20, 2010), this Office concluded that SB 3699 was constitutionally defensible. A copy of that opinion is attached.

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committed pursuant to usual and customary standards of medical practice during diagnostic or therapeutic treatment.

Tenn. Code Ann. §§ 39-13-107(c), 39-13-214(c) (emphasis added). Because HB 3495/SB 3699 would leave these existing statutory provisions in place, the amendments contained in the bill would have no effect upon legal abortion in Tennessee.

ROBERT E. COOPER, JR.  
Attorney General and Reporter

GORDON W. SMITH  
Associate Solicitor General

SUE A. SHELDON  
Senior Counsel

Requested by:

The Honorable Jeanne Richardson  
State Representative  
26 Legislative Plaza  
Nashville, Tennessee 37243-0189