

An Bille um Cheartas Coiriúil (Íospartaigh na Coireachta gan Breith), 2026
Criminal Justice (Unborn Victims of Crime) Bill 2026

Meabhrán Míniúcháin
Explanatory Memorandum

AN BILLE UM CHEARTAS COIRIÚIL (ÍOSPARTAIGH NA COIREACHTA GAN BREITH), 2026
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EXPLANATORY MEMORANDUM

Purpose of the Bill

The purpose of this Bill is to reform the law in respect of certain crimes affecting unborn children. It appears that under current law, in the case of a crime (such as an assault against the mother of an unborn child) which occurs before birth and causes the death of the child, the perpetrator could not be convicted of homicide of the child, unless he or she is first born alive before dying as a result of that assault or other crime. It is also clear that under current law the death of (or serious bodily harm to) an unborn child is not properly recognised for the purposes of the offences of careless or dangerous driving causing death.

This Bill is designed to remedy those gaps in legal protection, particularly in the interests of protecting pregnant women and unborn children from crime; recognising an unborn child as a distinct victim in respect of a range of offences resulting in the child's death; and providing more appropriate penalties for such offences causing the death of an unborn child.

Provisions of the Bill

Section 1 defines key terms used in the Bill.

Section 2 ensures that, subject to *section 6(1)*, if a person (a) commits an offence of which a pregnant woman is a victim, (b) thereby causes the death of an unborn child, and (c) would (independently of this Bill) be guilty of manslaughter of that child but for the fact that the child was not born alive prior to the time of the death, then the accused person shall be guilty of manslaughter. This is to ensure that, in future, the mere fact that the child dies before rather than after birth will not by itself prevent the accused person from being convicted of manslaughter, in circumstances where the other ingredients of manslaughter are present.

Subsection (2) of this section provides that, subject to *section 6(1)*, a person who kills an unborn child unlawfully, in circumstances where the accused person intended to kill or cause serious injury to the mother (or to someone else other than the unborn child), shall be guilty of manslaughter. While there is provision in existing law relating to unlawful intentional killing of an unborn child, *subsection (2)* of this section of the Bill specifically addresses situations where the accused intended to kill or cause serious injury to a person other than an unborn child but in fact

caused the death of an unborn child. This subsection is essentially based on the criminal law principle of transferred malice.

Section 3 amends section 3(1) of the Road Traffic Act 1961 ('the Act of 1961') (as amended) by inserting a definition of 'unborn child' therein, for the purposes of the changes to sections 52 and 53 of that Act of 1961 effected by *sections 4* and 5 of the Bill.

Section 4 amends section 52 (concerning careless driving) of the Act of 1961 (as substituted by s. 4(1) of the Road Traffic (No. 2) Act 2011) by providing that, in that section 52, "another person" includes an unborn child. Consequently, where it is proved that a person by careless driving caused death or serious bodily harm to an unborn child, that driver could be sentenced in accordance with the provisions in section 52(2)(a) for such harms to an unborn child. The change effected by *section 4* of the Bill applies only in respect of an offence under section 52 committed by a person other than the mother of the unborn child concerned after the coming into operation of the Bill.

Section 5 amends section 53 (concerning dangerous driving) of the Act of 1961 (as substituted by s. 4(1) of the Road Traffic (No. 2) Act 2011 and amended by s. 5(k) of the Road Traffic and Roads Act 2023) by providing that, in that section 53, "another person" includes an unborn child. Consequently, where it is proved that a person by dangerous driving caused death or serious bodily harm to an unborn child, that driver could be sentenced in accordance with the provisions in section 53(2)(a) for such harms to an unborn child. The change effected by *section 5* of the Bill applies only in respect of an offence under section 53 committed by a person other than the mother of the unborn child concerned after the coming into operation of the Bill.

Section 6 ensures that no woman can be convicted of an offence under or by virtue of the Bill in respect of her own unborn child.

Section 7 provides for the short title of the Bill. The Bill would come into operation on the date of its passing, because it does not include provision for a commencement date.

For the avoidance of doubt, *section 6* also confirms that (a) in any proceedings for an offence to which the Bill applies, it is not a defence to prove that the accused person was not aware, and neither believed nor had reason to believe, that the mother of the unborn child was pregnant; and (b) that the Bill does not prevent the conviction of any person for any offence for which that person could lawfully be convicted under existing law.

Carol Nolan, TD, Michael Healy-Rae, TD, Michael Collins, TD, Ken O'Flynn, TD, Richard O'Donoghue, TD, Mattie McGrath, TD, Peadar Tóibín, TD, Paul Lawless, TD, Michael FitzMaurice, TD, Danny Healy-Rae, TD,

Samhain, 2026.