

## BILL ANALYSIS

C.S.H.B. 3318  
By: Farrar  
Criminal Jurisprudence  
Committee Report (Substituted)

### BACKGROUND AND PURPOSE

Perinatal mood disorders, and their effects on women and families, have become a topic of interest in the last few years. This is due in large part to the high level of media attention given to the Andrea Yates case and other similar cases throughout the state and country in which mothers took the lives of their children due to severe mental illness.

There are different kinds of perinatal mood disorders. The perinatal period begins with pregnancy and can last up to one year after delivery. Postpartum Support International (PSI) estimates that up to 10 percent of women will experience depression or anxiety during pregnancy. After pregnancy, many new mothers experience what has been traditionally referred to as the "baby blues," which include mood swings, anxiousness, changes in appetite, trouble sleeping, and other symptoms. In most cases, the unpleasant symptoms go away and professional help is not needed.

According to PSI, as many as 15 percent of women develop postpartum depression following the birth of a child. Symptoms of postpartum depression include low mood, despair, tearfulness, anxiety, irritability, feelings of worthlessness or guilt, being afraid of hurting the baby or oneself, no interest or pleasure, difficulty sleeping even when baby is asleep, lack of motivation, appetite disturbance, and difficulty concentrating and getting organized. Though some of the symptoms are similar to the baby blues, the symptoms of postpartum depression are more intense and do not disappear after a few hours or days. Postpartum depression can be mild, moderate, or severe, and the particular treatment required will depend on the severity of the symptoms.

A very small number of women develop postpartum psychosis, a rare and extreme condition that affects between one and two women per 1,000 women who have given birth. Signs of postpartum psychosis include hallucinations, delusions, illogical thoughts, insomnia, refusing to eat, extreme feelings of anxiety and agitation, periods of delirium or mania, and suicidal or homicidal thoughts. Postpartum psychosis has a five percent suicide rate and a four percent infanticide rate.

Although these topics are more openly discussed now than in the past, they are still very much misunderstood by the general public and the legal community. Because of this lack of understanding and the difficulties mothers and families face in seeking out and receiving proper medical care, this illness is responsible, in some instances, for harm inflicted upon a child.

C.S.H.B. 3318 authorizes a defendant, at the punishment stage of a trial in which the defendant has been found guilty of causing the death of a child to whom the defendant gave birth within the 12-month period preceding the child's death, to raise the issue as to whether the defendant caused the child's death because the defendant's judgment was impaired as a result of the effects of giving birth or the effects of lactation following birth. The bill makes such a murder a state jail felony if the defendant proves the issue in the affirmative by a preponderance of the evidence.

## **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

## **ANALYSIS**

C.S.H.B. 3318 amends the Penal Code to authorize a defendant, at the punishment stage of a trial in which the defendant has been found guilty of causing the death of a child to whom the defendant gave birth within the 12-month period preceding the child's death, to raise the issue as to whether the defendant caused the child's death because the defendant's judgment was impaired as a result of the effects of giving birth or the effects of lactation following birth. The bill makes such a murder a state jail felony if the defendant proves the issue in the affirmative by a preponderance of the evidence.

## **EFFECTIVE DATE**

September 1, 2009.

## **COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.H.B. 3318 removes a provision from the original creating the state jail felony offense of infanticide, and instead authorizes a defendant, at the punishment stage of a trial in which the defendant has been found guilty of murder for causing the death of a child to whom the defendant gave birth within the 12-month period preceding the child's death, to raise the issue as to whether the defendant caused the child's death because the defendant's judgment was impaired as a result of the effects of giving birth or the effects of lactation following birth, and makes such a murder a state jail felony if the defendant proves the issue in the affirmative by a preponderance of the evidence. The substitute removes a provision from the original including infanticide among the offenses that are classified as criminal homicide. The substitute differs from the original in the savings provision by making its provisions applicable to a trial that commences, rather than an offense committed, on or after the effective date of the bill.